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A NORMATIVE ACCOUNT OF POLITICAL REPRESENTATION

by

KEN COURTNEY

A dissertation submitted to the Graduate Faculty in Philosophy in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2017

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This manuscript has been read and accepted for the Graduate Faculty in
Philosophy in satisfaction of the dissertation requirement for the degree of
Doctor of Philosophy.

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ABSTRACT

A Normative Account of Political Representation

by

Ken Courtney

Advisor: Carol Gould

The phrase “political obligation” has rarely suggested for theorists what it might for the person in the street, namely, the kinds and magnitudes of obligations held by our political representatives, as opposed to obligations held by citizens. In a related way, despite the existence of widespread expectations of political representatives, a theoretical account of these expectations and their normative import are subjects that have received surprisingly little attention. In what follows I develop an account of obligations and duties specifically belonging to political representatives. I argue that the relevant obligations derive in the first instance not from particular political or legal frameworks but from the moral relation introduced when one person represents another, or a group of persons, and in a complimentary way from the ethical relation introduced in an institutional setting where certain roles come to have expectations attached to them. The quasi-promissory relation thus introduced generates obligations for political representatives. Principle among these, I argue, is the obligation to advocate for the interests of their constituents. I thus defend the familiar—but often criticized—view that the main activity of political representation is interest advocacy, but offer an account of interests sufficiently robust to make sense of the sorts of obligations at stake.

I go on to argue that the magnified influence of those occupying representative roles results in the magnification of their general duties (borrowing traditional language, for reasons I

will explain). Political representatives have general duties owed to all other persons just like the rest of us do, but, as with the rest of us, what counts as a reasonable notion of the content of these duties depends upon circumstance. Demands imposed by general duties upon those occupying representative roles should reasonably be thought to be significantly greater than the demands posed by such duties upon average citizens. Further, I defend the view that being the bearer of such magnified general duties and obligations to constituents is integral to and partially constitutive of being a political representative; upholding such duties and obligations to a relevant threshold is integral to representing well.

Finally, I explore how the normative framework here developed with respect to political representation might be applied in the international domain. While representative roles in the context of international affairs are complex and often controversial, I argue that certain normative elements familiar from domestic circumstances still obtain. Interests, carefully considered and qualified, should still form the main content of a representative's agenda. A circumspect account of these interests, however, must take account of unprecedented connectivity, of evolving circumstances in geopolitics and of the state of the natural environment. With this interpretation of interests in place, I defend the view that the interests of constituents and non-constituents harmonize more often—and conflict less frequently—than is often assumed to be the case, particularly from the perspective of International Relations, but also in a number of philosophical accounts of state sovereignty. Other things equal, as a consequence of general duties obtaining it is among a constituent's interests that the interests of non-constituents are not compromised. It follows from this that political representatives can be partial to those they represent only in limited ways, and that the interests of non-constituents are also relevant to the activity of representatives.

ACKNOWLEDGMENTS

I am indebted to many for their support during the research and writing of what follows. First and foremost, the patience, responsiveness, and collaborative spirit of my dissertation supervisor, Carol Gould, have been truly remarkable. Carol's commitment to her students exemplifies what academic mentorship should aspire to, and her dedication to seeing me improve my work has rendered it far superior to what it could have been without her guidance. Carol belongs, more generally, to that narrow subset of educators and philosophers whose gentle intolerance of complacency makes working with them both reward and challenge; her feedback is always constructive and affirming, while also hinting toward the magnitude of work yet to be done. Perhaps most tellingly, Carol's stature as a scholar and the reputation of her work do not impede her from allowing those working with her to take their own direction, even when a student comes close to violating certain positions to which she is deeply committed. In this regard I hope that our interactions thus far are the beginning of a still more lengthy and lively dialogue.

Virginia Held and Jesse Prinz both graciously served on my advisory committee, dedicating summer hours to reading drafts and preparing for my defense. They have my lasting gratitude for accommodating my schedule and for providing the caliber of feedback all early-career academics yearn for. Steven Cahn and Sibyl Schwarzenbach formed the remainder of my dissertation committee, and both generously expedited the process required to organize my defense. Much more than this, the pointed questions from Virginia, Jesse, Steve, Sibyl and Carol offered during my defense will significantly inform the future use to which this dissertation will be put. Among the other excellent professors with whom I took courses, I thank Stephen Neale and David Rosenthal, whose co-taught proseminar removed any doubt for all of us then beginning the program that the Graduate Center was a terrific place to do philosophy. I thank the

Graduate Center more generally for the support of a teaching assistantship throughout my coursework.

Finally, I am grateful to my family. My wife Christina has endured my writing process while we have both been employed and during the birth of our son Jude, and her tolerance and steadiness have been crucial to the project's completion. My parents and sister have remained a mooring in my life regardless of distance or other contingencies, and are in this as all things, *sine qua non*. Over the past six years Christina's family has become ever more thoroughly my own. I am particularly indebted to her father, John, whose editorial assistance made the dissertation bearable for others to read.

September 2016

Portland, Maine

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INTRODUCTION

For those working in social and political philosophy, the phrase “political obligation” will signal something quite specific. On the one hand, political obligation refers to the obligations that citizens have (if they do) to obey the law. On the other hand, as an area of inquiry, political obligation refers to the constellation of challenging issues relating to what role legitimate authority, consent, fairness, benefits enjoyed, and overall utility might have in justifying the existence of this obligation. The subject is rightly considered central to political philosophy, for it bears upon the fundamental concepts of individual autonomy, political legitimacy, and the rule of law, and the tension between these. Literature addressing the political obligations of citizens has taught us much about problems with consent and the limitations of fair-play arguments and has shown us difficulties with a notion of autonomy that treats citizens as isolated individuals.

The subject of political representation has received an equally generous amount of attention, though of late this subject has tended to be the purview of political theorists and political scientists more frequently than that of philosophers. While classically controversial—diminished by Plato and reviled by Rousseau, enshrined by Locke and Madison—something of a theoretical consensus has emerged in recent decades regarding the centrality of political representation and the value in increasing, rather than decreasing, its role in governance. Theorists writing in this vein have shown how representation and participation, once thought inimical to one another, can be understood as mutually supportive. They have encouraged us to reconsider the role of deliberation in representation, to question limiting deliberation only to the overall aims of the political process, and to more squarely face practical challenges related to greater participation and deliberation at all levels of society.

It is curious, then, that political obligation and political representation are less frequently discussed together, and that the phrase “political obligation” has rarely suggested for theorists what it might for the person in the street: namely, the obligations held by our political representatives. Further, despite the fact that having expectations of our political representatives is a commonplace, a theoretical account of these expectations and their normative basis are subjects that have received little attention.¹ In what follows I develop an account of obligations and duties specifically pertaining to political representatives. I argue that the obligations derive, first, not from particular political or legal frameworks but from the moral relation introduced when one person represents another or a group of persons; and second, in a complementary way, from the ethical relation introduced in institutional settings in which certain roles come to have expectations attached to them. The promissory relation thus manifested generates an obligation for political representatives to advocate for the interests of their constituents.

I also argue that the magnified influence of those occupying representative roles results in the expansion of their general duties. Political representatives have general duties owed to all other persons just as the rest of us do; but, as with the rest of us, what counts as a reasonable notion of the content of these duties depends upon circumstance. The demands that general duties should reasonably be thought to impose upon a resource-less young man living in the shanty-town outside Mumbai are minimal; the demands that general duties should reasonably be thought to impose upon powerful politicians are significantly greater. As a generalization, being the bearer of such magnified general duties and obligations is integral to being a political representative, and upholding such duties and obligations is integral to representing well.

¹ One notable exception is to be had in Dovi, Suzanne Lynn. *The Good Representative*. Malden, MA: Wiley-Blackwell, 2012, whose views I take up and compare with my own later on.

This view can be contrasted with Andrew Rehfeld's account that defines political representation minimally in terms of recognition by an appropriate body, with certain other conditions met.² By treating such recognition as sufficient, Rehfeld thus makes representation strictly a matter of how (ostensible) representatives are regarded, without reference to the kinds or quality of activity they are engaged in. His approach—discussed further in chapter 1—has the merit of providing resources to distinguish between representing and representing well and thus avoids building legitimate democratic representation into our concept of representation *simpliciter*. It also offers an explanation for the fact that “representatives” who do nothing particularly democratic, acting with no apparent regard for the interests of their constituencies, are still sometimes regarded as representatives. There are reasons to be critical of this approach, however. While it is undoubtedly important to be able to point to examples of representing poorly but which nonetheless count as representation, a “general” account like this one gives no discernable role to constituents. In an effort to cover all instances of “recognized representation,” it removes citizens and their interests from the equation. Further, because this account treats recognition, with certain other conditions met, as sufficient, it entails counterintuitive consequences. These consequences include, by Rehfeld's own admission that the dead might be regarded as representatives, since it does not matter what representatives do as long as they are regarded as representatives. In contrast, my inclusion of obligations that necessarily obtain for representatives—merely as a consequence of their voluntarily acting as representatives—reintroduces the role of citizens and their interests in a normatively powerful way.

Thomas Christiano's democratic theory gives a much more robust role to political representation, arguing that it is crucial for a political division of labor wherein citizens and

² Rehfeld, Andrew. "Towards a General Theory of Political Representation." *The Journal of Politics* 68.01 (2006): 1-21.

governments have clearly defined roles. Within this structure, however, the aims of society are to be specified by the citizenry, and the means to achieving those aims are to be determined by the (representative) government. Arguments for this conclusion include that citizens lack relevant expertise for determining appropriate means and that their participation in determining these means would require too much of individuals. One reason to be dubious about Christiano's claims here is that the capacities of citizens are contingent and might be improved through better education and circumstances of greater social equality. Moreover, and as other theorists have argued,³ the political capacities of citizens and the degree to which citizens are well-informed can best be improved through their participation in the political process and by their engagement in public deliberation. Thus any limitation upon these activities reproduces the problematic disparity of knowledge. Finally, the aims of society referred to in this account are best seen as malleable and shifting rather than as a fixed point toward which a capable captain steers his passengers. Because deliberation about the use of particular means will—rightly—result in the ongoing reevaluation and reshaping of aims, an account like Christiano's that treats these aims as static and not susceptible to revision is problematic.

While I am critical of the limitations Christiano sets for political participation, his work is germane and important because it brings attention to the roles and obligations of both citizens and political representatives. He is well aware that the value of political participation is bound up with the achievement of a sufficiently informed electorate (or lack thereof), and he justifies limitations upon the kinds of participation that are desirable in terms of the level of popular political wherewithal that seems feasible. On this basis I argue that individual political

³ See Pateman, Carole. *Participation and Democratic Theory*. Cambridge: Cambridge UP, 1970; *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*. Chichester: Wiley, 1979. See also Gould, Carol C. *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*. Cambridge: Cambridge UP, 1988, esp. chapter 1.

representatives are obliged to promote an informed electorate to the best of their ability, for only in this case could one be said to be pursuing a constituency's interests in a robust way. The relevant sorts of informing should consist not only in increasing familiarity with significant ongoing political issues but also in sharing the representative's (and government's more generally) reasons for particular strategies and decisions.⁴ I further argue that representatives should work within their respective political structures (or "spheres") to increase opportunities for public deliberation. This requirement is bound up not only with the previously mentioned educative function of such deliberation, but also with recognizing citizens as situated in relations with their fellow constituents, as opposed to being isolated individuals.⁵ Put differently, encouraging deliberation is a way of appropriately heeding the importance of relations between persons, and acknowledging that the attitudes and opinions of citizens are created and conditioned through interaction with one another.

Among the widely recognized constraints upon both the ends political representatives can pursue and the means used to pursue them, human rights have been appealed to by a number of theorists.⁶ A carefully constructed account of human rights that includes an ontology of persons and agency might justify a moral requirement to observe these parameters on its own. I argue, however, that parallel consequences can be derived from a robust account of political representation. This approach makes novel use of the so-called particularity problem: it has been argued that if legitimate authority is sufficient to ground an obligation to obey the law, it is not clear why citizens of one state as opposed to another have this obligation—that is, why the

⁴ See Rawls, John. *The Law of Peoples; With, The Idea of Public Reason Revisited*. Cambridge, MA: Harvard UP, 1999, esp. 135.

⁵ See Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, esp. Chapters 2 and 3.

⁶ See Buchanan, Allen. "Political Legitimacy and Democracy." *Ethics* 112.4 (2002): 689-719; *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford: Oxford UP, 2004.

obligation would obtain specifically for citizens of that nation as opposed to others. Turning this around, I will argue that because the obligations of political representatives are owed first and foremost to persons, and who their constituencies are is contingent in the sense that they might have been born elsewhere and come (or failed to come) to represent citizens of a different nation, they cannot act in ways that would undermine the possibility of political representation for others. As I elaborate below, general duties dictate that moral concern cannot be confined within political borders. Because political representatives have obligations and duties specific to their roles, these general (or “universal”) aspects of morality obtain for them in ways specific to the activity of representation. This leaves room for the special obligations held by representatives to the constituents they are understood to represent, and the prioritization of their interests to a certain degree, but also suggests limits to this prioritization.

I argue on this basis that political representatives face the challenge of upholding obligations of partiality (those owed specifically to their constituents) and of upholding demands of impartiality (best seen as a hybrid of duties and obligations) in unique ways. Given Kant’s careful attention to the notion of duty, it might seem tempting to appeal to his taxonomy of duties in this regard. It should be remembered, however, that though he recognized their importance, Kant did not intend for his lengthy discussion of duty in the *Metaphysics of Morals* to apply to those duties pertaining to relations emerging from social institutions.⁷ Thus while the notion of general duties appealed to here is significantly indebted to Kant, my focus upon the intersection of these duties with complex social and political associations largely removes them from his frame of reference: the specific ways in which general duties might be enhanced as a consequence of occupying an obligation-bearing role, like that of the political representative, are

⁷ See Wood, Allen W. *Kant's Ethical Thought*. Cambridge: Cambridge UP, 1999, Chapter 3.

little discussed in Kant or indeed elsewhere. A significant contribution of what follows, then, to my knowledge not specifically addressed by other theorists, is an analysis of the relation between duties and obligations specific to political representatives, once each of these has been sufficiently spelled out.

Discussions of interests as they relate to political representation have been reserved in the main—tacitly or otherwise—to national interests, and there has long existed a presumption in favor of conceiving of citizens’ interests in nationalist terms. Allen Buchanan offers a critique of this tendency by appealing to human rights and a Natural Duty of Justice.⁸ That there is such a duty, he argues, undermines the justification for the pursuit of narrowly conceived national interest at any cost to outsiders. While friendly to this view and its conclusions, I argue that something is missing in this account when, in response to concerns raised by David Luban,⁹ Buchanan explicitly avoids exploring what specific justifications are available for using state power for the pursuit of progress toward greater justice in the international domain.¹⁰ The problem is framed by him, in other words, as one of discovering when and how those in positions of power can be justified in temporarily setting aside or overriding the (national) interests of their constituents, rather than framing constituent interests more inclusively. In order to make this case, I develop an account of these interests and defend their centrality to an account of political representation.

Given that persons have interests across a vast range of eccentric issues, an obligation to represent their interests must be qualified. In liberal democratic societies the difficulty of

⁸ Buchanan, Allen E. *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford: Oxford UP, 2004, 97-105.

⁹ Luban, David. "Intervention and Civilization: Some Unhappy Lessons of the Kosovo War." *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization*. Ed. Pablo De Greiff and Ciaran Cronin. Cambridge, MA: MIT, 2002. 79-115.

¹⁰ Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*, 104-5.

representing diverse individuals has typically been addressed by making a distinction between public and private interests and by assuring sufficient individual liberty for the pursuit of private interests. However, the classical distinction does little to explain or justify what makes some interests public and others private, and thus which are rightly the purview of political representatives, which are rightly the purview of citizens, and how these categories might overlap or interface. Because in my account the obligations of political representatives arise in a promissory context, they answer to the interests of constituents in a broad, thoroughgoing way, and specifically in a way that recognizes their interests *qua* persons prior to their interests *qua* citizens.

I thus argue that interests are a proper and central (but not necessarily the only) subject of political representation,¹¹ and that treatments like Buchanan's frame national interests too narrowly. Other things equal, it is among a constituency's interests that others—inside or outside their constituency—do not to suffer injustice. More specifically, constituents have an acute interest such that others do not suffer injustice as a consequence of things done in their name¹² or in the pursuit of constituents' other interests. My country's economy might be strengthened by unfairly orchestrating trade deals that work to its advantage. In whatever ways my interests are furthered by this more robust economy, however, my interest in not having such unfairness be perpetrated would have been comprised *en route*. A contemporary focus on game-theoretic approaches and social contract theory, with their characteristic assumption of individual rationally-self-interested actors, has tended to obscure the relevance of interests in the well-being of others. But this is to theorize as though our interests could be characterized independently of

¹¹ In one sense I thus follow the classical view of Hanna Pitkin (Pitkin, Hanna Fenichel. *The Concept of Representation*. Berkeley: U of California, 1967, 155), though of course my reasons for emphasizing interests as the subject of political representation substantially differ from hers.

¹² See Beerbohm, Eric Anthony. *In Our Name: The Ethics of Democracy*. Princeton, NJ: Princeton UP, 2012.

our values, and specifically as independent of a commitment to justice, which is misleading. If general duties as invoked here—the demands of which are owed to all other persons—obtain for all persons, then promoting my interests, as my political representative is obligated to do, includes assisting me in the performance of my general duties. Put differently, upholding my general duties forms part of my interests; other things equal, my political representative ought to promote the fulfillment of my general duties. I in turn argue that the pursuit of justice and advocacy for human rights stand as reasonable approximations of what promoting these general duties consists in.

This does not mean, of course, that tensions between interests will not arise or that mediating between narrower national interests and the wider interests I am gesturing toward is not a complex affair. Rather, it is to suggest that fulfilling a Natural Duty of Justice is better seen as substantially within the category of national interests, not as external and oppositional to them. That the pursuit of justice may be a source of conflict with other cherished interests makes it no different from other, more traditionally recognized, interests that populate the category. A parallel point can be made with regard to the possible tension between popular sovereignty and the wider pursuit of justice. As I will argue, to the extent that political representatives are at times justified in acting independently, as trustee rather than as delegate, they are so justified because they pursue the interests of their constituency broadly construed, not because they have found it necessary to abandon those interests. Further, because political representatives have a duty not to undermine structures necessary for representation more broadly, they are constrained

in the means they may employ to further the (national) interests of their constituents¹³—a subject I take up in chapter 3.

Having argued throughout for a robust conception of political representation, and that there are strong normative reasons for working toward greater participation and deliberation with an eye to rendering political representation more both more effective and more legitimate, I conclude by considering the implications of this view in the international domain. Philip Pettit has argued that global governance threatens domination and arbitrary uses of power and that if individual states function in nondominating ways, a desire for citizens to exercise a degree of democratic control over the international order individually rather than through the influence of their respective states seems unmotivated.¹⁴ Further, he characterizes one dimension of legitimacy in terms of nondomination, arguing that the legitimacy of the international order turns significantly upon the legitimacy of states making up this order. What is largely absent from this account is an explanation of how domestic legitimacy relates to state activity in the international arena.

Pettit's recommendation for a "system of fair democratic association" of states remains largely at the level of the procedural, offering little with regard to the content of what counts as justifiable conduct between states. In the account developed here, the conduct of governments is constrained by the obligations belonging to political representatives, as they cannot consistently act in ways that prevent either citizens or noncitizens from having opportunities for political

¹³ See Dovi, Suzanne Lynn. *The Good Representative: Suzanne Dovi*. Malden, MA: Wiley-Blackwell, 2012. As I discuss below, Dovi focuses upon procedural elements of democracy in defining what makes "good representatives," with their function being "...to advocate on behalf of their constituents in ways that allow for the fair and peaceful resolution of political disagreements within a pluralist society" (7). While friendly to these arguments, I argue that they are incomplete without the inclusion of further (not merely procedural) normative parameters of the sort I am pressing. Further, for reasons already suggested, I argue that political representation cannot be sufficiently analyzed without reference to both domestic and international domains simultaneously.

¹⁴ Pettit, Philip. "Legitimate International Institutions: A Neo-Republican Perspective." Ed. John Tasioulas. *The Philosophy of International Law*. Ed. Samantha Besson. Oxford: Oxford UP, 2010. 139-60.

representation. I thus argue that *both* international and domestic legitimacy are threatened when a government exercises domination in the international system, which need not follow in the account of nondomination defended by Pettit. I in turn show that Pettit's view, while valuable, should be augmented with a more reciprocal, rather than one-directional, understanding of legitimacy. Non-domination is an important tool for criticizing the sorts of internal injustices allowed by a Westphalian conception of sovereignty, and in this regard it harmonizes with advocacy of human rights. It also, in turn, offers resources for criticizing an international order where significant forms of domination persist. It is less clear, however, how a state's behavior abroad affects domestic legitimacy, spelled out only in terms of nondomination. According to the understanding argued for here, the two "tiers"—domestic and international—of legitimacy cannot be considered in isolation from one another, in part because the normative demands that obtain for political representatives apply to both domains.

Because domestic political representatives have an obligation to pursue the interests of their constituents, and because these interests encompass the consequences of their government's actions for non-constituents, there are stronger reasons for more citizen control of international policy—through increased participation and more effective democratic procedures specifically oriented to the international domain—than Pettit allows. Further, as suggested above with regard to deliberation in a domestic context, the path to a better-informed, more engaged global citizenry is via greater, rather than lesser, participation. As in domestic settings, representative structures are necessary for aggregation, creating deliberative fora, and mediating diverse conceptions of the good life at the global level. Progress on this front requires greater participation and deliberation not only concerning the democratically chosen aims of society—including how this society engages in the international system—but also concerning the means

through which these aims are pursued. In both global and domestic political arrangements, however, the ideal of political representation as elaborated here is better approximated to the extent that obligations to uphold the interests of persons are pursued.¹⁵ While the utilitarian goods of robust representation are numerous and significant, it is the duties and obligations of political representatives that are essential to the activity of representing.

It might be worried that I write about “political representation” as though it were a notion that is fixed in time and space, when this is of course not so. The arguments made here apply to a limited domain in at least the following sense: I simply take on board a host of moral and political concepts inherited from our (predominantly Western) tradition, without, for example, considering a view that is critical of (the existence of) duties, or that doubts the value of any familiar political institutions. I proceed in this way not because I hold this tradition up as exemplary or because I doubt the existence of other possible conceptions of value, but because of its status and continued influence in our social and political thought. The project can thus be characterized as taking (Western) political philosophy largely “as it is” and arguing that the roles and responsibilities I assign to political representatives should be understood as entailed by this tradition.

There are, however, three interrelated normative points that I take to apply quite generally and that form the basis of an argument for what political representation is and should be. First, if a person claims (or otherwise insinuates) to speak or act for another, or for a group of others, in a context where this claim is likely to be taken seriously and where there will likely be consequences for those on whose behalf the first individual speaks or acts, then the speaker or

¹⁵ Chapter 3 is largely dedicated to analyzing what political representatives owe to constituents as well as what they owe to distant others, how these commitments may at times conflict, and what the prospects for resolving such conflicts are.

actor bears a degree of responsibility for the resultant welfare of those spoken or acted for. A sufficiently wide understanding that this is so generates reasonable—and normatively important—expectations of constituents that political representatives advocate for their interests.

Second, I will argue that there is no reason to assume that the interests of “insiders” and “outsiders” are fundamentally at odds with one another; because, *ceteris paribus*, all persons have an interest in the well-being of others, at least one important set of interests is held in common. Finally, I take it as uncontroversial that those in voluntarily occupied positions of relative influence and power bear a greater responsibility for their decisions than those not occupying such positions, given the greater consequences of these decisions. It is less frequently appreciated, however, that this responsibility should amplify and ramify general duties belonging to political representatives, not the least of which is acting in ways that harmonize with the general duties of their constituents. Taken together these points impugn political representation as it exists in many of its current incarnations and offer a foundation from which it is reasonable to demand better.

In defending a normative account of political representation I follow a trajectory that moves roughly from circumstances of less to more political structure. In chapter 1, I argue that the duties and obligations of political representatives obtain even in circumstances of minimal structure, and defend this claim against arguments to the contrary. I also argue, however, that paradigm examples of political representation include democratic procedures, and that these procedures provide additional justification for representative practices. In chapter 2, I show that greater political participation and deliberation are valuable primarily because they help to define and refine the interests of citizens, and participation, in particular, provides a conduit for transmitting these interests to representatives, who in turn are obligated to advocate for them.

Upon this basis I argue that, all else equal, greater participation and deliberation is desirable at all levels of the political process. Representatives thus have an obligation to work for more and better participation and deliberation. Then in chapter 3, I argue for a number of specific constraints upon the activity of representatives as a consequence of their general duties. I provide an account of how these duties owed to all persons interface with the particular obligations representatives owe to their constituents, and argue that the tension between partial obligations and impartial duties is often exaggerated. Finally in chapter 4, I explore the implications of the first three chapters for the international domain. I argue that, while a great deal remains to be done to create a responsible political order at the global level, matters would be significantly improved if representatives better understood and more fully met the duties and obligations appropriate to their position.

CHAPTER 1:

An Argument for Representational Obligations

I. Introduction

Since Hanna Pitkin's seminal work on representation,¹⁶ disputes have continued concerning how to balance obligations to enact the popular mandate (as delegate) and, when appropriate, how to act as an independent maker of decisions (as trustee). While much has since been written regarding the forms through which popular mandates might be best realized, and—though considerably less—about those occasions on which representatives are empowered to act independently of such mandates, surprisingly little has been said about the normative grounding of the obligations of representatives to act in any way at all. More recent work in political philosophy has even proffered something approaching a purely descriptive account of political representation, suggesting that normative aspects play a role only with regard to a decision rule being used: if a relevant audience in the right circumstances recognizes an individual to be a representative, he or she should be understood as a representative.

Such an approach undervalues normative dimensions that I argue are central to our best understanding of political representation. As I shall argue, an account that identifies representation with democratic legitimacy would be too narrow, yet an account that says nothing about obligations held by representatives both with regard to those they represent and with regard to the frameworks within which representation occurs remains inadequate. Considerations

¹⁶ Pitkin, Hanna Fenichel. *The Concept of Representation*. Berkeley: U of California, 1967.

invoked in a wide, general account like Andrew Rehfeld's¹⁷ regarding what constitutes representation—determining the relevant audience, specifying appropriate circumstances, and providing criteria for the selection of representatives—end up requiring judgments that are best seen as irreducibly normative after all. We can better begin to discern normative features of political representation by considering the role of representative and the practice of representation more carefully.

The principal aim of this chapter is to motivate the analysis of obligations I take to obtain in the context of political representation. Near its end I discuss two sources of obligation that will be further elaborated and analyzed in following chapters, but a prior task is to show that normative elements, including obligations and duties, are integral to a robust account of political representation. The complex relations between those represented and their representatives are thus given greater attention here than is typical in the literature on representation.¹⁸ While there has been a trend to minimize or ignore these normative relations, I propose that evaluating instances of political representation as better or worse in terms of the performance of obligations and duties illuminates our understanding of it far more than attempting to understand political representation stripped of its normative dimensions.

In addition, I argue for the stronger claim that normative elements are constitutive of a coherent and widely shared concept of political representation. Specifically, while assumptions relating to obligations held by representatives may not be universal or timeless, I argue that they are paradigmatic and thus deserve to be understood as central, rather than peripheral, to a salient

¹⁷ As mentioned in the introduction, and further discussed below. See Rehfeld, Andrew. "Towards a General Theory of Political Representation." *The Journal of Politics* 68.01 (2006): 1-21. Print.

¹⁸ An exception might be, for example, the notion of "joint commitment" in Gilbert, Margaret. *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*. Oxford: Clarendon, 2006. A substantial difference is that Gilbert does not take political obligations to count as moral considerations.

concept of representation. Finally, I make the case that what constitutes the relevant criteria for evaluation might shift with regard to the sort of representation under discussion, but also that something like an “all-things-considered” evaluation is both possible and desirable. In this vein it is reasonable to suppose that both democratic and non-democratic categories of representation should be recognized. According to the view defended here, better and worse instances of representation can occur within both these categories depending in part upon performance related to obligations and duties. Also and crucially, however, from an all-things-considered perspective, democratic representation has clear normative merits that are unrealizable in non-democratic contexts, for many familiar reasons, some of which are considered in the following chapters. Less frequently noted, however, is the complex set of relations between obligations, duties, representation, and democracy. On the one hand, the relevant notion of representative duties, though applicable to non-democratic instances of political representation, is significantly bound up with democracy.¹⁹ On the other hand, longstanding discussions of the value of democracy are enhanced by considering the ways in which obligations and duties figure into its practice, as I argue below.

The chapter is organized into three parts. In part one, I examine an account of political representation by Andrew Rehfeld that gives a narrowly circumscribed role to normative considerations, outlining a few salient features that characterize this approach.²⁰ This account is defined by its author as “general” in the sense that is meant to accommodate a wide range of (what he takes to be) representational phenomena, including non-democratic ones. In part two, I

¹⁹ To telegraph: general duties (classically) are owed to all by all. Representatives have enhanced versions these duties given their large spheres of influence. But the nature of their duties is also informed by their roles within political practices, because often their most efficacious means of realizing their general duties will be through respecting and enhancing representative structures, including but not limited to those structures within which the given representative works. The goods conferred upon individuals by democracy can hardly be left out of account when their welfare is understood to be the subject of general duties.

²⁰ Rehfeld, "Towards a General Theory of Political Representation." 1-22.

highlight two shortcomings of limiting appeals to normativity to the extent that Rehfeld does.

First, I argue that the sorts of considerations he argues to be involved in deciding what constitutes representation—even those considerations characterized as free of normativity, such as determining the relevant audience, specifying appropriate circumstances, and providing criteria for the selection of representatives—unavoidably end up including appeals to value.

Second, I argue that structural components of formal political representation, by which I mean the practice(s), practice-defined roles, and institutional rules associated with it, even while they vary widely, are integral to our conception of it, and are underappreciated in a general account. A general account of political representation, like that of Rehfeld, under-appreciates these structural dimensions and also gives no role for the obligations and duties of representatives.

Without these conditions in place, and by aiming at such a wide swath of phenomena, the sufficiency criteria of such an account thus end up being too weak. In contrast, providing an account of roles relevant to political representation tightens these criteria and rules out a number of problematic cases.

Further and crucially, it is the occupation of such roles in the context of established practices that generates new obligations and amplifies other preexisting duties. That is, obligations obtain in circumstances of political representation partially as a consequence of justified expectations relating to widely shared understandings of the role. These obligations can, with appropriate qualification, be analyzed in terms of tacit agreement or a promissory context, as I argue shortly. Further, the kinds of power typically manifested by political representatives provide them with greater opportunities to uphold or fail to uphold general duties, given the large number of people affected by their actions within their role.

In the third part of the chapter I distance the view being advocated here from two other distinct positions. First, I concur with Rehfeld that it is unacceptable to conclude that representation only occurs when strict democratic procedures are upheld. Building too many formal requirements into an account of representation limits its scope unnecessarily.²¹ With certain conditions met, it is reasonable to suppose that non-governmental organizations (NGOs) sometimes represent those on whose behalf they advocate. At the limit, it may also be reasonable to characterize the activity of celebrities intending to act on the behalf of impoverished or otherwise imperiled peoples as representation, though the conditions to be met for this to be so will be greater.²² Specifying these conditions is both difficult and important. In the case of NGOs, the formal recognition typically required for them to operate offers some assurance of their legitimacy as representative bodies. An intuitive reason for this is that, in the ideal case, an NGO might perform a representative function in circumstances where the democratic structures needed for authorization by those in need of representation are unavailable.²³

A celebrity, on the other hand, does not represent “the impoverished peoples of Africa,” for example, merely by claiming to do so. Here the absence of authorization is more problematic because it is compounded by the lack of appropriate procedures and formal recognition. Indeed, as I will discuss in chapter 2, it is a commonplace for radicals to claim—dubiously—that they represent of some group of people when attempting to justify acts of violence. Thus to argue that a celebrity serves as a political representative would seem to require a convincing narrative about

²¹ Dovi, Suzanne Lynn. *The Good Representative: Suzanne Dovi*. Malden, MA: Wiley-Blackwell, 2012, 53-62. The following citations—and others not listed here—cast doubt on Rehfeld’s claim that the identification of representation with robust democratic procedures represents the theoretical status quo.

²² A status claimed for Bono and, separately, Angelina Jolie, in, respectively, Dryzek, John S., and Simon Niemeyer. "Discursive Representation." *American Political Science Review* 102.04 (2008): 481, and Dovi, Suzanne Lynn. *The Good Representative: Suzanne Dovi*. Malden, MA: Wiley-Blackwell, 2012, 62-3.

²³ The slogan of the legal / conservationist non-profit Earthjustice—“Because the Earth needs a good lawyer”—though admittedly an extreme case, is suggestive in this regard.

that individual's relation to the group ostensibly represented and the ways that she advocates for what are believably framed as their interests, perhaps in addition to other criteria.

Where I agree with Rehfeld, then, is in his assertion that in special cases political representation can operate in the absence of robust democratic procedures and the authorization they afford. I argue that it is a mistake, however, to take the further step of thinking that representation can be sufficiently analyzed with no appeal to value; to whatever extent the obligations of representatives are realized or fail to be realized, and however the values underpinning these obligations are characterized, such values and obligations remain irreducible elements in a viable account of political representation. Put differently, political representation as developed here could not obtain Feinberg's "Nowheresville," where rights and correlative duties are entirely absent; constituents paradigmatically have valid claims against their political representatives that the latter are obligated to fulfill.²⁴

The second position from which I distinguish my own is that of "role realism"—the view that the role of a representative (or any other role) is somehow preordained with particular duties or obligations constitutive of it.²⁵ On the contrary, the socially and culturally determined nature of obligations for representatives will be central to my account of them. Nonetheless, understanding political representation as the (voluntary) occupation of a role that in turn forms part of a practice sheds significant light on the nature and content of these obligations. I thus aim to set out an account of political representation in which values are not intrinsic to the role in a

²⁴ Feinberg, Joel, and Jan Narveson. "The Nature and Value of Rights." *The Journal of Value Inquiry J Value Inquiry* 4.4 (1970): 243-60.

²⁵ Following Applbaum, Arthur Isak. *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*. Princeton, NJ: Princeton UP, 1999.

strong (preordained) sense but are inextricable from the role as a consequence of established practices and justified expectations.²⁶

Before proceeding, it is worth setting aside one interpretation of these matters that would make them merely a matter of verbal dispute. If there were simply two alternative accounts of representation under consideration, a descriptive one that outlines criteria for political representation to occur, and a normative one that outlines criteria for representing well, little more would need to be said. On the contrary I will argue that normative commitments constitute an aspect of representation. If this is correct, then to describe an occurrence of political representation is in part to describe the normative relations in which a representative is enmeshed. Rehfeld introduces the example of Libya's emissary, Najat Al-Hajjaji, being present at the convening of the World Trade Organization in order to suggest that, if asked who represented Libya on that occasion, Al-Hajjaji would be the correct answer, in spite of her not being elected and the unlikelihood of her having the interests of anyone other than Muammar Gaddafi, then in power, in mind. And similarly for Khrushchev at the United Nations (UN), who certainly was not democratically elected but (according the Rehfeld) was unmistakably the representative of the Soviet Union in those particular circumstances.

The potential for a kind of ambiguity arises because what counts as representation in a recognition-dependent theory like that provided by Rehfeld depends upon the nature of this recognition and how it comes about. Suppose I was naively wondering whether Vladimir Putin or Dmitry Medvedev had appeared before the United Nations. When I inquire who represented

²⁶ I will say more about the normative weight of these expectations further along. As put to use here, they refer specifically to expectations attached to particular roles situated within recognized practices; they are related to the justified expectations of those that have been given promises, but in the case of formal political representation they are informed by their institutional circumstance. For instance, individual promises are personal in character, while political obligations, as I am characterizing them, belong to whomever occupies the position of representative.

Russia at last week's UN summit, the reply Putin would be the correct answer. To the question does Putin represent Russia, however, it would be coherent for me to respond no. Clearly the first question is seeking a referent, while the second is reasonably interpreted as seeking a qualitative judgment. A person affirming both that Putin represented Russia last week at the United Nations and that Putin does not represent Russia is not confused or being inconsistent, but using "represent" in differing senses.

Consider a related example. Suppose I believe A to be the father of B on the basis of thorough, competent DNA testing. It might still be coherently claimed, again using the word in a different sense, that A is no father to B.²⁷ Roughly speaking, the latter sense in which "father" is being used presupposes some threshold of obligation performance and hence something like a normative account of fatherhood. The present dispute would be merely verbal if a general account of representation invoked the first, descriptive sense, and a normative account invoked this latter, qualitative sense.

It is not clear, however, that there is an analogous "DNA test" in the case of political representation that might provide a similarly objective basis for determining when it occurs. It seems instead that the determination of who counts as political representatives involves judgments of a different kind than those made in the biological case. Note that it is a commonplace for substate groups to claim someone who is not recognized by the United Nations or other elite international institutions to be their representatives; and further that in many cases it is controversial whether such institutions are the "relevant bodies" that should be empowered

²⁷ Hence Fetyokovich in his defense of Dimitri Karamazov: "Gentlemen of the jury, what is a father?...What is the meaning of that great word? ...the murdered old Karamazov cannot be called a father and does not deserve to be..." Dostoyevsky, Fyodor. *The Brothers Karamazov: The Constance Garnett Translation Revised by Ralph E. Matlaw: Backgrounds and Sources, Essays in Criticism*. Trans. Constance Garnett. Ed. Ralph E. Matlaw. New York: Norton, 1976.

to recognize (or refuse recognition of) representatives. This suggests, borrowing a familiar distinction, that—even prior to addressing the question of *de jure* representation—a *de facto* account of political representation is fraught with questions of judgment.²⁸

If this is correct, it is not just that “representative” is being used in two different senses—though this of course may be true—but that a purely descriptive sense is unavailable in the way that it is (perhaps) available in the scientific case. Because judgments about when representation takes place are significantly qualitative judgments, part of what is needed to better comprehend political representation is an analysis and fleshing out of the content of these qualitative judgments and the values that underlie them. Opposing the idea that representation occurs whenever an individual is taken to be or receives recognition as a representative, I argue that representation occurs when an individual—the representative—enters into a particular kind of relation with another person or persons—the represented. In the paradigmatic case, one (knowingly, voluntarily) occupies a role within a structural framework required for representation and to some minimal degree engages in the activities associated with that role. Obligations relating to the performance of these activities, in turn, are informed by the justified expectations of the represented. Below, I argue that, with other things equal, constituents are justified in expecting representatives to advocate for their interests.

Importantly, however, the required framework might vary widely in its formality, and at the limit might be absent altogether. If, for example, a military coup deposed a democratically

²⁸ See Wolff, Robert Paul. "In Defense of Anarchism." *The Journal of Philosophy* 68.18 (1971): 561ff. Wolff's subject, viz., political authority, is of course importantly different from political representation, and one need not concede his conclusions to find useful his *de jure / de dicto* distinction with regard to normative concepts. Whereas he is—safely—able to assume the normative character of authority, the role of normativity in political representation is central to the present debate. In certain regards my arguments mirror his structurally—being regarded as if one is an authority does not bestow authority, and I claim that being regarded as a political representative does not bestow representative status. Nonetheless, this latter position requires defending with reasons for thinking that other criteria obtain in the case of political representation.

elected leader who still had the widespread support of the people, and was nonetheless able to continue advocating for their interests in various ways, it might reasonably be thought that she remains their representative. As previously suggested, less formal instances—the activities of unelected NGOs and, perhaps, well-intentioned celebrities—might also rightly be thought of as representation, but in any case it is the relation between represented and representative that is definitive on this account. The right relation to relevant obligations and duties can, in principle, confer representative status outside a role established in a formal setting, as I will argue for shortly. Again, however, it must be borne in mind that democratic values inform the relevant obligations and duties, since representatives act not on the basis of individual wills but on the basis of aggregate interests and opinions. As will I argue with regard to majoritarianism below, the obligations representatives owe to individuals strengthen, rather than weaken, the justification for democratic procedures.

One further aside regarding the use of the words “recognize” and “recognition” is in order. There is at least one sense in which the concept of recognition implies the truth of what is recognized, as “...expressing the fact acknowledged,”²⁹ or when to recognize is understood as “...to perceive clearly, realize.”³⁰ Note that if used in this sense, recognition of political representatives would after all imply their being such, as the prior fact of their being representatives is required for them to be so recognized. In the present context this sense of recognition is unavailable, however, because whether certain individuals in the contexts considered are representatives is precisely the question being debated. The relevant sense must instead be, “To acknowledge by special notice, approval or sanction; to treat as valid, as having

²⁹ The (Complete) Compact Oxford English Dictionary, **3b**.

³⁰ *Ibid.*, **5c**.

existence or entitled to consideration.”³¹ This latter sense does not presuppose factual basis in the same way as the others considered, but describes actions based on judgments. The distinction is important to the account of political representation being developed here, since interpreting recognition in the second way implies that the “recognized representative” is not redundant—one might represent yet fail to be recognized as representative, or might receive recognition for having such status mistakenly.

While I use Andrew Rehfeld’s so-called general account³² in order to focus my initial discussion in this chapter, my intent is to elaborate a dimension of representation he chooses not to explore and to emphasize (what I take to be) its centrality. The point is not that it is impossible to provide a non-normative account of representation³³—a version of Rehfeld’s approach may succeed in doing so, though as the DNA analogy suggests certain difficulties arise. Rather, when we appreciate what such an account leaves out, we can notice aspects of representation that deserve much more analysis than they typically receive.³⁴

II. Non-Normative Political Representation

In his “Towards a General Theory of Political Representation,”³⁵ Andrew Rehfeld resists (what he takes to be) widespread identification of political representation with democratic legitimacy.

³¹ Ibid., 4a.

³² Rehfeld, “Towards a General Theory of Political Representation,” 1-22.

³³ To be clear, Rehfeld argues that “...political representation has a robust non-normative descriptive sense,” but also that “...normative judgments play a part in the recognition of political representation” because “...it is the rules that audiences use to recognize representatives rather than the institutions or practices of representatives themselves that explain why they are, or fail to be legitimate or just.” Ibid., 5. I argue that the first claim here is dubious, and that the second claim introduces normativity in a way that is too narrow: normative judgments are present elsewhere in the process where Rehfeld hopes to purge them.

³⁴ There may be good reasons to compile statistics about twitches of the eye—a study of the evolution of facial musculature in primates, for example—but this will not provide us with a satisfactory theory of winking and its communicative goal.

³⁵ Rehfeld, “Towards a General Theory of Political Representation,” 1-22.

Construed so narrowly, Rehfeld complains, “representation” would be very rare indeed, contrary to a wide swath of familiar usage: anyone not placed in his or her position by free and fair elections, through procedures embodying authorization and accountability, fails to be a representative at all. This leads to two grave difficulties. First, if the above identification is made, imbuing our concept of political representation with this highly specific normativity, the useful notions of bad representatives, representing poorly, and the idea of illegitimate representation all seem unavailable—to represent would be to represent well (legitimately) by definition: “By simultaneously defining conditions by which someone becomes a political representative and the conditions for her legitimacy we are unable to explain how...cases of illegitimate representation...arise.”³⁶ Second, free and fair elections, authorization, and accountability are all known to be problematic concepts and are perhaps best thought of as ideals to be sought but unlikely to be reached, in which case—though Rehfeld does not go so far—one might worry that such criteria are simply never met, entailing that representation never occurs.

As an alternative that avoids such difficulties, Rehfeld provides an account of political representation according to which “...political representation arises simply by reference to a relevant audience accepting a person as such.”³⁷ In this conception, a representative must come from a *qualified set* and be chosen in accordance with the *decision rule* of a *selection agent*, with the decision rule and selection agent being recognized as appropriate by a *relevant audience*.³⁸ This structure allows for sufficient generality to explain both familiar instances of legitimate

³⁶ Rehfeld, "Towards a General Theory of Political Representation," 3.

³⁷ *Ibid.*, 2.

³⁸ *Ibid.*, 10.

democratic procedures and a monarch (the selection agent) selecting who he likes (the qualified set) because he likes them (the decision rule) as cases of representation.³⁹

While there is clearly a great deal to unpack here, and I do not analyze Rehfeld's technical account in any detail, three preliminary criticisms can be made. First, as already mentioned above, his characterization of the status quo as treating robust democratic procedures as synonymous with political representation is misleading, as a number of theorists argue that less formal and undemocratic forms arrangements may count as political representation.⁴⁰ This leads to a second criticism, which is that, if one grants the wide understanding of political representation pressed by Rehfeld, it is not clear what makes instances of such representation better or worse on his account. Put differently, if legitimacy is only one measure of representation, we are left wanting alternative criteria for evaluating circumstances of illegitimate representation. Absent the provision of such criteria, it seems likely that democratic values (and related questions of legitimacy) sneak back in as a means to defining effective representation. A third criticism is that a particularly troubling sort of counterintuitive result emerges as a consequence of his theorizing, because on Rehfeld's account, with these background conditions in place, recognition by an appropriate audience (via a selection agent) is sufficient to confer the status of representative.⁴¹

Such a wide definition of political representation avoids the untenable result that only idealized democratic elections can result in representation (rather than legitimate representation) and accommodates a broad range of apparently representative phenomena. It offers one

³⁹ Ibid., 5.

⁴⁰ See n. 3 and n. 4 above.

⁴¹ Also worth noting in Rehfeld's own example involving the monarch is the divergence of a "selection agent" from an "Audience" or "the Represented," or indeed the disappearance of the latter from the equation. I return to this difficulty below.

explanation, for example, of how it comes to be that in the above-mentioned cases Hajjaji and Khrushchev find themselves in ostensibly representative contexts. It does so, however, at a high price. Because recognition, properly qualified, is sufficient on Rehfeld's account, he is forced to concede that if a relevant audience chose a dead person as a representative, or used random selection as their decision rule, or a local book group was deemed the appropriate set of agents for selecting national leaders, "...then of course, representation would obtain."⁴² Rehfeld thus encounters the opposite difficulty to the one faced by the theorist who identifies representation with democratic legitimacy: representation obtains anywhere a relevant audience recognizes representatives as such according to their decision rule, no matter how dubious the audience or whimsical the decision rule. It is worth noting a radical consequence of this account with regard to interests. Theorists differ over the centrality and usefulness of constituent interests in accounts of representation, as I discuss—ultimately defending their centrality—below. Rarely, however, do theorists go so far as to suggest constituent interests are simply not relevant to representation. The Hobbesian monarch gets a very low score by the standard of liberal democratic representation, but he is justified (by Hobbes) precisely in terms of his fiduciary obligation and capacity to promote the interests (as conceived by the monarch) of the people. Corpses do not occupy a position further down a continuum of responsiveness to a constituency but belong to another category altogether, and thus theoretical parameters that permit their inclusion should be seen as troubling.

While in Rehfeld's account it is also possible for a relevant audience to deny the representative status of one it should acknowledge according to their own decision rule, or for a relevant audience to accept an individual to be their representative when they should not

⁴² Ibid., 12 n.22.

according to their own decision rule, recognition confers the status of representative nonetheless. By contrast, in the account I develop here, if a would-be representative does not occupy the right sort of role and does not perform—to some minimal, context-sensitive threshold—the activities informed by obligations tied to this role, she would fail to represent and in turn fail to be a representative, regardless of her being taken to be a representative by an audience. While I elaborate the point below, distinguishing this position from the “status quo” criticized by Rehfeld early on is crucial: rather than equating representation with robust democratic representation, I argue that representation has to be understood in the normative context of relations between representatives and those represented, and paradigmatically in the context of roles, practices, and attendant responsibilities.

Questions of legitimacy, while ultimately related to the moral demands I am focusing upon regarding obligations and duties, represent a significantly distinct, further set of criteria for evaluating representation. To oversimplify for the moment, an individual in a representative position who was not elected or who has arrived at this position by procedures of questionable legitimacy might represent, and might do so well or poorly with reference to upholding obligations and duties. These obligations and duties, in turn, can be understood in terms of the interests of the represented. These constituent interests can be better formed, understood, and promoted in circumstances of democratic legitimacy, where representatives are in fact empowered by those they represent, but representation can occur absent these desirable attributes, and can still manifest a range of quality and effectiveness.

The additional requirements relating to obligations imposed in my account thus create a critical divergence with Rehfeld. Here I quote him at length with an eye to bringing out the distinction fully:

[O]ne coherent but imprecise response to a case in which an Audience makes a mistake would be, “That person should be considered a representative,” or “That person is no representative at all.” The reason such a statement is coherent is because we understand colloquially what the claim means. But it is imprecise because, consistent with this account there is no representation so long as the audience fails to recognize that a case conforms to its rules. Representation depends formally on the recognition by an audience, not on the coherence (or lack of coherence) of a purported case to a set of rules that the audience uses. In short, it is the beliefs of the Audience that matter, not whether those beliefs are true.⁴³

The obverse entailment is also true for Rehfeld as we have seen, viz., that representation just does obtain when an audience recognizes that a case conforms to its rules—and even if they are mistaken in the belief that it does, their (mistaken) recognition is sufficient: the imposter is a representative (and no longer an imposter?) if the relevant audience takes her to be so.

It is easy to admire the parsimony and wide applicability of a general account like the one being examined, as avoiding normative analysis saves one from a great deal of additional complexity.⁴⁴ Obligations are notoriously controversial and difficult to specify, and talk of obligation performance thresholds inevitably introduces a degree of imprecision. For all these difficulties, a fuller understanding of political representation requires that we address just such challenges, as I hope to now show.

III. Problems with Non-Normative Political Representation

Three things are problematic in the general account as described. First, it ushers in what I call the fallibility problem: if—even qualified—recognition were sufficient, it would entail that a relevant audience cannot be mistaken about whether an individual is a representative or not.

Second, there is insufficient acknowledgment of background conditions required for

⁴³ Rehfeld, "Towards a General Theory of Political Representation," 15. Emphasis original.

⁴⁴ Rehfeld concludes by arguing that there is, after all, a normative or “substantive” dimension to political representation, but that this is entirely independent from the “formal” dimension. I argue that this separation cannot be made as completely as his account requires.

representation to occur—a structural problem. By viewing political representation as a role exercised within sets of established practices, my alternative account characterizes and emphasizes the context required for representation to be possible. Third and finally, on examination this role and the set of practices within which it is situated show themselves to be steeped in normativity. To the extent that political representatives act on behalf of others (and are very often assumed to do so), and to the extent that their decisions and actions have an outsized effect on the lives of the many, they wield a kind of super-agency that carries elevated responsibility and moral obligations. I take up each of these three problems in in turn.

1. THE FALLIBILITY PROBLEM

Consider two cases of mistaken beliefs, the first bearing upon the fallibility problem, the second raising questions about relevant audiences and their selection agents. In the first, suppose fellow legislators (collectively a selection agent) mistakenly acknowledge a disoriented banker who has wandered into their chambers as one of their own and hence as a representative. It is perhaps possible that, if undiscovered, the banker will eventually “fall into the role.” At such time, the obligations and offices required of him or her will obtain, and with a certain threshold of these performed and other conditions met it may become appropriate to deem her a representative. On the first day, however, the mistaken beliefs of the other legislators would be a strange ground for deeming her such. Further, if the delusional banker continued to balance accounts and do banking tasks but engaged in none of the activities associated with the role of legislator, and her colleagues somehow remained oblivious to these facts, their (still mistaken) beliefs should not be seen as conferring the status of representative. That is, the bankers should be seen as fallible.

To be clear, I mean to say that the other legislators are—*ex hypothesi*—mistaken in their beliefs about the origins and activities of the person in question—not to directly claim that they are mistaken in believing the banker to be a representative. This is, of course, just the conclusion for which I am arguing, but to claim this directly would be to beg the question against Rehfeld or others who just do take the legislators’ belief—assuming them to be the selection agent in question, and their belief to be based on their decision rule—to confer representative status. The fallibility problem suggests, however, that something has gone wrong in a general account because it implies that no kind or magnitude of factual error could imply that an audience (or their selection agent, in this case the other legislators) is mistaken about who is a representative or whether one is a representative if they follow their decision rule. This condition met, the question of whether some individual is a representative is one about which they cannot be wrong. As already suggested in the discussion of the corpse, however, this view seems untenable. It will be useful to compare this case with others in which institutional facts, as defined by Searle, play a role.⁴⁵ For Searle, when there is sufficient collective agreement to uphold an institution, facts manifested within that institution become equivalent to brute facts: saying “I do” when prompted by an ordained minister in a particular context changes one from a single to a married person. Despite the fact that the individual in question became married through an institutional practice, that he or she is married constitutes a brute fact in the world. Searle’s related distinction between epistemological objectivity and ontological objectivity is useful to my current purposes: certain pieces of paper come to count as money on the basis of a critical mass of subjective agreement that it counts as such, making it epistemologically objective. It

⁴⁵ Searle, John R. *Speech Acts: An Essay in the Philosophy of Language*. London: Cambridge UP, 1969.

remains ontologically subjective, however, for in the absence of the institution, money is only pieces of paper after all.⁴⁶

Applying this reasoning to representatives, when such status is attained it, too, is a matter of epistemological objectivity. That is, the institutional fact and its underlying concept or concepts of political representation are constituted by the collective judgments of people. Although it is true that paradigm cases of political representation take place within certain structures and established institutions, what makes these paradigm cases is once again a set of social and institutional facts.⁴⁷ Thus a person meeting the criteria of such a concept counts as a representative, regardless of any one person's denying it. What this leaves open is the content of the concept;⁴⁸ if there were sufficient collective agreement that any institution of representation includes advocating for the interests of those represented, for example, then this would be epistemologically objective. It would follow that it is an institutional fact that to be a representative is to advocate for the interests of constituents. Of course, to make such a case soundly would require a highly impractical empirical investigation of beliefs and judgments surrounding the concept(s) of representation, specifying the degree of collective agreement required for the existence of a stable concept, and so on. For the moment we must be contented with the observation that those deemed political representatives frequently come in for criticism—across widely disparate spatiotemporal circumstances—for failing to advocate for the interests of those supposedly represented.

A related argument from Searle helps to cast further doubt upon the view that recognition is sufficient to make one a representative. Here, Searle makes a crucial distinction between types

⁴⁶ Searle, John R. *The Construction of Social Reality*. New York: Free, 1995, 7-13.

⁴⁷ I discuss the importance of established (institutional) practices and the roles they designate below.

⁴⁸ I am using “concepts” here as mental representations, roughly in their “prototype” sense. See Prinz, Jesse J. “Can Moral Obligations Be Empirically Discovered?” in *Midwest Studies in Philosophy* 31.1 (2007): 271-91.

and tokens as they relate to institutional facts, and this distinction bears directly upon what I am calling the fallibility problem:

A single dollar bill might fall from the printing presses into the cracks of the floor and never be used or thought of as money at all... In such a case a particular token instance would be money, even though no one ever thought it was money or thought about it or used it at all. Similarly, there might be a counterfeit bill in circulation even if no one ever knew that it was counterfeit, not even the counterfeiter. *In such a case everyone who used that particular token would think it was money even though it was not in fact money. About particular tokens it is possible for people to be systematically mistaken. But where the type of thing is concerned, the belief that the type is a type of money is constitutive of its being money...*⁴⁹

The same logic can be applied, *mutatis mutandis*, with regard to the practices or institutions of political representation, on the one hand, and token political representatives on the other. The imposter (banker) in my above example remains a “counterfeit” in spite of the recognition he is afforded by fellow legislators or by anyone else for that matter. Conversely, if an individual meets the conceptual criteria of “representative” to some sufficient degree—acknowledging that this set of criteria is itself socially constructed just as it is in the case of money—he or she will be a representative even if disdained or doubted by her peers. Note that a univocal notion of representation is not implied here and is not required for my argument, any more than a single form of money is required for the institution(s) of money: the monetary system of Yapese people involves large wheel-like stones that gain value relative to how far they have traveled, but the same analysis vis-à-vis counterfeits and genuine articles can be applied.

This analysis of concepts is central to my overall argument in this chapter, and it points to an important difficulty in Rehfeld’s account: while in certain circumstances a selection agent does have the power to anoint individuals with one kind of status—the other legislators might put the banker on the payroll, give her a desk and a title, etc.—they do not have the power to

⁴⁹ Searle, *The Construction of Social Reality*, 32-3. My emphasis.

determine concepts. They are in a position analogous to the selection committee for an orchestra that chooses an individual with no interest in music and who has never played an instrument to lead the string section: first chair violin she may be, but a *musician* she is not. We might yet countenance the claim that there is no one “covering concept” of representation that will satisfactorily account for the wide variability of the phenomena of representation and that instead there are many concepts of representation.⁵⁰ It would seem strange, however, were there not some shared content—some family resemblance—across these concepts, as I take it there would be if we choose to countenance differing concepts of “money” or “musician.” I am arguing that in the case of political representation obligatory relations between representatives and those represented constitute some of this core content.

As a second case of mistaken belief, suppose that a group of subjects forming a remote constituency is simply uninformed. Dwelling in rural stretches of a large country with little infrastructure, they have not heard of the recent political shifts in their country and believe that the premier who was impeached a year earlier is still in power and hence their legitimate representative. It would be strange to consider the impeached premier still a representative based on the beliefs of a constituency, if she is no longer engaged in the activity of representing them and no longer formally recognized as a representative. Note that in this instance the defender of a general account of political representation like Rehfeld’s should come to the same conclusion: the formal institutions with the power to elect or appoint the premier constitute the selection agent whose recognition is sufficient for her to be a representative, so impeachment implies an end to this recognition tantamount to a withdrawal of status. Members of the constituency (the audience) are indeed wrong about who their representative is, but it is not *their* beliefs that

⁵⁰ Rehfeld, Andrew. "The Concepts of Representation." *American Political Science Review* 105.03 (2011): 631-41.

matter, as the selection agent (those with powers of impeachment) is distinct from the constituency.

Disagreement arises because a general account takes the fact of official withdrawal of representational status to be doing all the work, while in a normative account the cessation of the activity of representing—understood to include advocating for the interests of constituents—is also relevant. Put differently, the formal and substantive dimensions of political representation are conceptualized as independent of one another in a general account like that of Rehfeld. The mechanisms and procedures that place a person in office, for example, are one thing, the interests of those within the domain of that office are something else. Normatively viewed, certain roles are inextricably associated with the interests of those with whom they are related as a function of occupying those roles. The point, again, is not that a thin description could not be given—the water-averse son of a wealthy resort owner might be given the position of lifeguard—but that there are reasons for thinking that the substantive aspects of the role are significantly constitutive of it.⁵¹

In principle, if rarely in practice, a representative might remain a representative in a normative account, even if impeached or otherwise removed from office by the relevant institutional powers, as interest advocacy is partially constitutive on this view. I take the previously mentioned example where a democratically elected leader is deposed by a military coup to be one such case.⁵² More frequently, an individual recognized by such institutions can yet fail to qualify as a representative based on her (inadequate or misguided) activity—as I

⁵¹ Lifeguards are an intriguing case for considering tacitly understood obligations. Having signed no contracts and taken no oaths they are frequently left to guard the lives of children whose parents leave them in the lifeguard's care.

⁵² Interest advocacy is necessary—as the primary way of fulfilling a representative's obligation to constituents—but not sufficient to make one a political representative on this account. The previously mentioned problems with a celebrity who claims to represent offers one explanation of why this is so. Further, a case can be imagined where an individual accidentally promotes the interests of a group. It seems clear we would not want to call her their representative.

argued to be the case with regard to the disoriented banker, and, *a fortiori*, the dead person. At this point, it might seem appropriate to wonder what really turns on whether an individual qualifies as a representative or not. As I explain next, the nature of the relationship between representative and constituency is entirely different in a general account such as Rehfeld's—again understood here as a wide account wherein recognition is sufficient—from a normative account. It follows that the attribution of the title of political representative in these differing theoretical approaches has profoundly different implications for both peoples and nations affected by representational activity.

Recall as a point of agreement with Rehfeld that the requirement of authorization—understood in one sense—by those being represented is too strong a condition: strict, i.e., explicit, individual authorization is not necessary, as it is possible for me to be represented in many scenarios where this is absent.⁵³ Nor is authorization sufficient, both on my account, because I may authorize an inappropriate entity (an impeached—and thus inactive—premier, or a long dead tribal ancestor, for example),⁵⁴ and on Rehfeld's account, because the selection agent that confers the status of representative need not be the constituency (the “selection agent” being the body, should there be any, that can give such authorization).

A difficulty here is that there are two relevant senses of “authorization” that, if run together, confuse matters. The sense just appealed to refers to explicit authorization, which can be brought about only via certain kinds of procedures and my active participation in them. In addition to the reasons given above for thinking this understanding of authorization is too strong

⁵³ Again, depending upon how authorization is taken, persons not of legal age to vote, those oblivious to politics who did not vote, and minority voters whose candidate or proposal did not win the day might be seen in this light. Appeal to democratic procedures, of course, can obviate at least some of these difficulties, though I maintain such procedures would not be sufficient without the substantive elements for which I am arguing also being in place.

⁵⁴ The trouble with the dead as political representatives on this account is specifically that they are (I take it) not able to uphold the obligation of actively advocating for the interests of those they represent. Specifying the “qualified set” from which representatives might be chosen is guided by such considerations but is by no means trivial.

a condition, note that it arguably rules out the possibility of familiar democratic procedures like majority voting. For all the well-known difficulties of such procedures, the dominant (and, I believe, correct) view is that in many familiar contexts they approximate the conditions for legitimate representation—perhaps with other qualifications in place—as nearly as possible. Those whose candidate of choice lost the election would necessarily lack representation if authorization in this explicit sense were required, but this seems mistaken.⁵⁵

A second sense of authorization removes the requirement of explicitness but still “...involves recognizing that representatives have no original or autonomous power or right to make decisions for those whom they represent.”⁵⁶ As representatives do not inhabit their roles by divine right, many of their activities in those roles require justification by other means—the null hypothesis being that competent adults ought never to have decisions made for them, unless compelling reasons for doing so are given.⁵⁷ As Gould continues, “...their very nature as representatives requires that they be authorized in some way to act in this capacity.”⁵⁸ Understood in this sense, authorization is required after all. But note that this remains consistent with the characterization above: I might be represented without knowing it, ruling out the possibility that I explicitly authorized a representative to serve my case, but only if the representative in question is justified in acting on my behalf. If this justification is not garnered by (explicit) authorization from me, it might still be had by conforming to the moral requirements of the role in question and meeting relevant obligations and duties.

Part of what is at issue here is the difficult relation between individual constituents and those aspects of political representation that are necessarily aggregative. A constitutionally

⁵⁵ I develop these considerations further shortly.

⁵⁶ Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, 224.

⁵⁷ This point will be expanded upon and argued for in Chapter 4.

⁵⁸ *Ibid.*

provided structure and the democratic procedures it specifies authorize representation of the aggregate (i.e., a constituency) in the paradigm case. Because of the need for aggregation, democratic theory typically does not and could not require individual, explicit authorization of representatives. As I elaborate below, however, when these structures are unavailable or fall significantly short of the ideal case, there may be reason to believe that some individuals are insufficiently regarded by them. In such a case, even if one accepts majoritarianism, there may be reason to doubt that the structures and procedures authorize representation *for those individuals*. I propose that upholding obligations and duties pertaining to representatives obviates this difficulty. By focusing upon these moral demands and hence a more personal aspect of the relation between a constituent and her representative, the representative might better realize what is owed to individuals, in addition to what is owed to the aggregate. Oversimplifying, of course it is important that the person for whom I did not vote, but who nonetheless won the election did so through proper democratic procedures. My greater individual consolation derives not from these procedures, however, but from the belief that the elected representative will appropriately advocate for my interests, as her new role obliges her to do. It is this belief, rather than a belief that the majority chose correctly, that suggests she is still authorized to act on my behalf.

A staunch advocate of the mandate conception of political representation—one theoretically inclined to the far mandate-end of the mandate-independence spectrum—might be dubious about my use of “authorization” here, equating it (its non-explicit sense) as I do to the kind of justification incumbent upon political representatives. But note that the ideal of explicit authorization is often not to be had. Even adamant mandate theorists acknowledge occasions of appropriate trusteeship on the part of political representatives, if only because of the extreme impracticality of alternative arrangements. More frequently, it is a commonplace of political

theory that, in addition to matters of practicality, the relevant knowledge base and wherewithal possessed by a political representative justify their making certain decisions on behalf of their constituents, including, occasionally, those that overrule the expressed wishes of a constituency.

From the point that authorization is required for representation, then, conjoined with the acknowledgment of circumstances where explicit authorization is lacking or simply unavailable, it follows that such authorization can derive from elsewhere. My suggestion is that in some cases such authorization can be realized when representatives shoulder relevant obligations and duties and perform them to some reasonable threshold, understanding themselves to act on the behalf of those they represent. It will rightly be worried that this explanation invokes something like indirect or tacit authorization; democratic procedures are imperfect, but they offer some support for the notion that representatives are authorized to act on the behalf of constituents. Absent these procedures, the above-discussed “celebrity problem” recurs, leading us to ask who gives them such authorization.

On the other hand, however, it is unlikely that the common person views herself as having authorized a set of constitutionally enshrined procedures and whatever outcome they produce. She is instead likely to believe, in the best case, that her political representative is authorized to act on her behalf because the representative has the right sorts of regard for her interests. If this is so, even within the context of democratic procedures, cases of trusteeship and cases where one’s preferred candidate is not elected countenance one kind of tacit authorization. My view, then, is there are special cases where authorization can obtain in the absence of these procedures.

Before moving onward, a word about the relation between substance and (democratic) procedure is in order. Democratic theorists will worry that I have already followed Rehfeld too

far down a dark path in attempting to provide an account of representation that is equally as broad—or nearly so—as his, while at the same time being substantively normative and abandoning all consideration of procedures along the way. A distinction should thus be made between democratic and non-democratic representation, with the former being a narrower category than the latter. My main separation from Rehfeld, to briefly reiterate, is that he achieves a very wide definition of political representation only at the cost of countenancing minimal normative features—in the context of either democratic or non-democratic representation. I instead argue that even in a non-democratic context, obligations and duties obtain if representation obtains.⁵⁹

Despite my focus upon establishing this lower boundary, nothing stated thus far should be taken to diminish the normative contribution to political representation made by a constitutional structure enshrining democratic procedures. Even noting the preceding concerns, elected officials in this context have, at the very least, a greater claim to legitimately represent citizens who do not vote for them, for example. This is because, for all its difficulties, majority democratic voting instantiates fairness in a way that no other system appears able to do, as soon as it is acknowledged that any process of aggregation requires compromise. Further, the deliberative aspect enabled by democratic procedures refines the interests of constituents, including the interests of those for whom the vote did not turn out as they would have liked. I defend these claims and take up deeper questions regarding majoritarianism, specifically, and challenges associated with it in the following chapter. Here it will suffice to say that while I have so far been at pains to show there is a role for robust normative analysis even when the beneficial

⁵⁹ The quality of performance of these obligations and duties are, again, another matter. I emphasize that I am not arguing for the biconditional relation between representation and obligations here. Obligations and duties are necessary to political representation, in the sense that the former obtain whenever the latter exists. That obligations and duties obtain is not sufficient for political representation without other conditions met.

additions of democratic procedures are largely absent, the benefits conferred by these procedures are hardly to be ignored or underestimated; future chapters both rely upon and elaborate these benefits. Further, there is reason to think that even removed from a context of democratic procedures, the relevant obligations and duties are in some ways parasitic upon the way these notions are framed in a democratic context. How else might the “interests of a constituency” be framed in any detail—beyond avoiding merciless exploitation, for example—if not by one kind or another of appeal to democratic theory? I will argue, however, that part of what gives democratic authorization the authority it has is the moral relation it establishes between represented and representative. I thus argue that the importance of a representative’s obligations and duties remains undiminished in democratic contexts.

A challenge for Rehfeld’s account considering the foregoing is that with no clear and necessary role for the interests of constituents whatsoever, and with no appeal to the obligations of political representatives, and in the absence of any procedural requirements, no constraints upon the activity of an ostensible representative remain. This absence of constraints is in large part why, in such a general account of political representation, representation can obtain despite a radical disconnect between those (supposedly) represented and their (supposed) representative. If a formal venue treats the brutal dictator or his emissary as a representative of a given nation, then representative he is. By contrast, in a normative account of political representation, the conceptual connection between those represented and their representative is maintained—even in the absence of (explicit) authorization, and even in the absence of formal recognition—because of obligations owed the former by the latter. A distinction between “formal” and “substantive” dimensions of political representation is thus not as easily made out as suggested by a general

account: it is a formal aspect of political representation that representatives are enmeshed in substantive (obligatory) relations with those represented.⁶⁰

The problem with conceiving of the dead or severely delusional as political representatives, according to my account, should also now be clear. It is not because they fail to advocate for constituent interests to a sufficient degree, but because they are not the sorts of entities capable of regarding such interests at all. If the role of political representative is partially constituted by its relation to the interests of constituents, claiming such an entity to be a political representative amounts to a category mistake.⁶¹ This leaves open a wide range of what we have reason to think counts as political representation, as there is no doubt some vagueness surrounding the category, but also, and importantly, there are cases in which political representation could not obtain.

Thus, in the above example of a rural population cut off from the realities of political representation in their country, we might with good reason worry about *how and to what extent* the interests of these people can be known and hence regarded and for related reasons the degree to which they are represented. Before I address these concerns, however, the point is that there is a minimalist sense in which political representation obtains if the interests of constituents—even

⁶⁰ Rehfeld writes: “The acknowledgment that representation will always admit degree—that we can say John was a bad representative relative to some goal and using some normative standard—is a separate matter from specifying the particular goal or standard that he will have to uphold. These standards are not part of the formal concept of representation, any more than ‘going really fast’ is part of the formal concept of ‘automobile’ ” (Ibid., 18. Emphasis original). Leaving aside precisely how we are to take “formal concepts,” it is part of a very widely shared concept of “automobile” that it does not travel across the surface of water of varying depths, powered by suspended squares of canvas catching the wind. It can be debated whether advocating for the interests of constituents with regard to the conceptual content of “political representation” is more like “going really fast” or “not being a sailboat” with regard to the conceptual content of “automobile,” but merely giving an example of a poor candidate for the content of a concept does not show that there is no conceptual content.

⁶¹ Perhaps there is an abstract sense in which the symbol of Lincoln, for example, serves the interests of an American constituency and their upholding of certain ideals, and thus might be claimed to ‘represent’ them in this way. My inclusion of minimal relevant activity in the criteria of the role of political representative is intended to rule out such a case as counting as *political* representation, but it is noteworthy that this abstract explanation would seem more tenable to me than leaving it merely that Lincoln is a political representative of some constituency because a selection agent has recognized him as such.

little known or ill defined—figure into the reasons for acting of those tasked with representing them. The understanding is minimalist but more robust than a general account, for it prefigures obligations and regard for the interests of constituents as constitutive of political representation, even if many details remain in the working out of how interests are eventually individuated and characterized. The account given so far is thus intended merely as a preliminary step away from political representation understood as entirely separable from interests and obligations.

As I will explain in chapters 2 and 3, the precise nature of the obligations that representatives owe to their constituents is complex and requires careful elaboration. Here I leave it that these obligations are best seen as composite and as a hybrid of obligations and duties as traditionally conceived. The occupation of certain roles entails a lesser species of promissory obligation but does not limit—and indeed amplifies—general duties that do not apply to a particular set of persons in the way that promissory relations are typically taken to be.

It will be noted that I have thus far said almost nothing about the interests of constituents, how these are to be conceptualized, or the nature of the relationship a political representative bears them. A more detailed analysis of interests will emerge in the following chapters through an examination of participation, deliberation, impartiality, and partial obligations, but the following considerations are relevant here. Capable theorists have dismissed interests as a useful description of the content of political representation for at least two reasons. First, the notion of “interests” is ambiguous. Do they refer to what a constituency wants, to what would count as justifiable claims made by a constituency, to what would result in greater pleasure for a constituency, or to something else?⁶² Second, there is a problem “...identifying who is and

⁶² Dovi, Suzanne Lynn. *The Good Representative: Suzanne Dovi*. Malden, MA: Wiley-Blackwell, 2012, 69. See Barry, Brian M. *Political Argument*. London: Harvester Wheatsheaf, 1990.

should be represented by a particular representative.”⁶³ Both sets of criteria—how interests are framed, and what constituency or constituencies belong to a given representative—set up possible conflicts. In the first case, what constituents want might conflict with what will result in their greatest happiness, for example; in the second case, allegiance owed to community or party interest might conflict with allegiance owed to national interest.⁶⁴

Two brief points can be made in response to these indictments of interests framed as the content of political representation. The first is that the kinds of difficulties mentioned above and suggested by Brian Barry⁶⁵ and reiterated by Suzanne Dovi recur not only elsewhere in politics but in life generally. The process of wrestling with conflicting directives given by untutored desires, a goal of long-term welfare, and an aspiration for (some form of) moral rectitude is surely central to human endeavors. The point is that the presence of such conflict does not place “interests” in any worse stead than many other concepts related to the goals and welfare of persons. Dovi is partially right to complain that interests offer little straightforward objective criteria by which to evaluate representatives.⁶⁶ According to the account being developed here, however, this is evidence for the demanding nature of political representation, not for the claim that interests are not relevant to its evaluation. Interests, especially of a large pluralist collective, are dizzyingly complex and frustratingly protean. Still, as I shall argue next, it does not follow that interests are inaccessible altogether, or that there is little hope in framing interests in a meaningful way, as an account like Dovi’s suggests.

Cases where representatives have failed miserably to promote the interests of constituents can be pointed to with some confidence, an observation that blunts arguments to the effect that

⁶³ Dovi, *Ibid.*, 70.

⁶⁴ Dovi, *Ibid.*, 70.

⁶⁵ Barry, *Political Argument*. London: Harvester.

⁶⁶ Dovi, Suzanne Lynn. *The Good Representative: Suzanne Dovi*. Malden, MA: Wiley-Blackwell, 2012, 70-1.

interests can offer no guidance for evaluating representation. Examples of such failure are enhanced when there is also a democratic mandate for change that would almost certainly promote constituent interests. The lack of gun law reform in the US in spite of broad public support for such measures stands as a case in point. Indeed, this particular case might reasonably be thought to illustrate that what a constituency wants, what would be a justifiable claim, and what would promote their happiness can sometimes harmonize. Even if one grants the ambiguity of interests Barry points to, then, the differing interpretations will not necessarily conflict.

Rather than describing interests as ambiguous, however, I suggest that they are manifold. The wants, justifiable claims, and bids to promote happiness, *inter alia*, of a constituency are as easily described as distinct categories of interests, rather than differing interpretations of an ambiguous term. To be sure, such interests can conflict; constituents want to live large carbon-footprint lifestyles, but will ultimately be happier with a livable environment for themselves and their children. When such conflicts arise, it falls to political representatives to prioritize interests and to advocate for whichever is then deemed most important on the basis of their mandate from constituents, their judgment, and all available wisdom. The task described is difficult, but nothing considered here suggests that interests are somehow incoherent, or that they are not a reasonable candidate for the content of political representation. I thus take it that specifying interests is both possible and important.

The second point to be made defending the role of interests is one that Hanna Pitkin has explicitly addressed in ways that, 50 years on, still seems clear and reasonable: it is true that there will be conflicts among what she calls initial-interest-claims, which should not be ignored. But working out the tensions among these conflicting claims, while acknowledging the necessity of compromise, is emblematic of politics at every level. In Pitkin's words, "Politics entails the

reconciliation of conflicting claims, each usually with some justice on its side; the harmony of final-objective-interests must be *created*.”⁶⁷ I take up the subject of conflicting interests with regard to domestic and international concerns, and the possibility of creating solutions to these conflicts in more detail in chapter 3.

2. THE ROLE OF INSTITUTIONS

The institutional contexts within which political representation typically occurs are integral to it, and one aspect of obligation pertaining to political representatives substantially derives from the existence of such institutions. While I have argued that theoretical space should be available for political representation to occur without this structure, institutionally realized political representation stands as the paradigm. In what follows I will argue that this paradigmatic quality justifies the expectations constituents tend to have with regard to the performance of those occupying roles within political institutions. The character and sophistication of political institutions vary widely, but a minimal framework will typically include the represented, the representative(s), and a body that designates the representative(s)—dubbed the selection agent in the general account above. The familiarity of such a minimal framework, the relative stability of a notion of such frameworks, and the sorts of expectations frequently associated with them are all relevant to a normative understanding of political representation. There is a strong case to be made for obligations that in part derive from the justified expectations of those represented—and these expectations, in turn, being justified by the defined roles and particular sorts of (sometimes tacit) agreements, including promises understood in a certain way.

⁶⁷ Pitkin, *The Concept of Representation*, 218. Emphasis original.

Analyses of obligations tend to treat conventionalist approaches⁶⁸—those appealing to systems of rules and practices for their grounding—and expectationist approaches⁶⁹—those appealing to engendered expectations for their grounding—as distinct or even opposed to one another. In the domain of political representation, both components are present and bear a complex interrelationship. This is because the kinds of justified expectations citizens have of their political representative are (often) partially consequent to the existence of structured political institutions embodying rule-governed practices. While there is much to an expectationist account of obligations beyond the scope of my arguments here, I consider below what is likely the principal expectationist case as a source of obligations.

The expectationist theory of T.M. Scanlon, while not related directly to political representation by him, is highly suggestive. He considers promissory obligations to be “[O]ne special case of a wider category of duties and obligations regarding the expectations that we lead others to form about what we intend to do. These duties are in turn a special case of more general duties not to lie or to mislead people in other ways.”⁷⁰ To break a promise on this account is to engage in a special kind of deception, viz. to deny someone access to knowledge by one’s actions. Because a (credible) promise made provides the one given a promise with action-guiding knowledge about the future, to break the promise undermines his or her agency.⁷¹ In what follows, I argue that political representatives very often have a species of such promissory obligations.

⁶⁸ As perhaps best exemplified by Rawls: Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap of Harvard UP, 1971.

⁶⁹ Scanlon, T.M., *What We Owe to Each Other*. Cambridge, MA: Belknap of Harvard UP, 1998, is a seminal example.

⁷⁰ Scanlon, *Ibid.*, 295.

⁷¹ *Ibid.*

Perhaps the most direct and familiar way obligations are incurred by representatives is through oaths of office. If oaths are interpreted as a species of promises, and so long as the oath is made voluntarily,⁷² the moral demands outlined by Scanlon above should obtain for political representatives who have given them.⁷³ Importantly, however, while to take an oath is sufficient to impose the relevant obligations and duties, doing so is not necessary for these moral demands to obtain. To make this case, I will argue that particular roles within defined practices impose obligations upon those who voluntarily inhabit them. Many instances of political representation can be viewed as part of a practice, with roles, rules, and relevant expectations attached to them.

A first step in this argument is to characterize a practice in the relevant sense, and to show that political representation fits this description. The establishment of a practice—baseball or law, for example—creates the possibility of particular acts or moves that are not possible in the absence of the practice. As Rawls observed, one cannot “strike out” absent the conventions of baseball or be “found in contempt” in the absence of structured legal practice. In this sense “...the rules of practices are logically prior to the particular cases.”⁷⁴ Democratic representation in particular fits this mold, because it creates the possibility of formal authorization that could not obtain in its absence, as previously discussed.

⁷² A useful contrast can be drawn here with political obligation as traditionally understood. While any notion of voluntary action is complex, the circumstances of occupying a representative role differ significantly from the circumstances of other (mere) citizens and the dubious freedoms required for their genuine consent. See Simmons, A. John. *Justification and Legitimacy: Essays on Rights and Obligations*. Cambridge, UK: Cambridge UP, 2001; Pateman, Carole. *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*. Chichester: Wiley, 1979.

⁷³ It is, of course, far from trivial how even explicit promises generate obligations. I take the broad literature with its various approaches to justifying promissory obligations as evidence that they align with some of our deepest and most widely shared moral intuitions and rely upon this as a point of departure, lacking space to further explore these issues. See Scanlon, T.M., 1990, “Promises and Practices”, *Philosophy and Public Affairs*, 19(3): 199–226; Raz, Joseph, 1977, “Promises and Obligations”, in P.M.S. Hacker and Joseph Raz (eds.), *Law, Morality and Society: Essays in Honor of H.L.A. Hart*, Oxford: Clarendon press, pp. 210–228. For a thorough survey, see Vitek, William. *Promising*. Philadelphia: Temple UP, 1993.

⁷⁴ John Rawls, “Two Concepts of Rules,” *Philosophical Review* 64 (1955): 3-22. My explanation of roles and practices owes a significant debt to Applbaum, Arthur Isak. *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*. Princeton, NJ: Princeton UP, 1999, esp. 82-109.

Now, although I have argued that, in special cases, political representation can take place outside a structured (democratic) practice, the establishment of a practice also creates the possibility of roles that could not exist in its absence, so that there could be no lawyers absent a system of law, or senators absent a larger political structure, for example. Roles, in turn, can be understood as "...positions with some degree of regularity and durability, and where there are collective expectations, however informal or contested, about the content of the position's duties, values, and virtues."⁷⁵ Two significant consequences emerge from the existence of roles and practices thus characterized. The first, already noted, is that the expectations of a role are largely determined by the practice. As Rawls argues, the batter in a game of baseball who sincerely demands a fourth strike is no longer playing baseball, given that what counts as baseball and a batter's role within it are (largely) settled. I have suggested and offer more evidence below for the claim that, there are analogous parameters for what should be counted as political representation, though they will inevitably be looser. The second consequence of a practice and roles thus understood is a kind of predictability that serves as a basis for reasonable expectations. Keeping to the sports analogy, the pitcher develops a carefully considered strategy based on the assumption of three strikes resulting in an out. Were it in the power of the batter to alter this rule and demand a fourth strike, the pitcher's capacity for such strategizing would be eliminated, or at the very least require major reformulation.⁷⁶

If one accepts the above descriptions, when one becomes a political representative in the paradigm case, it is reasonable to suppose that she occupies a particular role within a practice. In

⁷⁵ Applbaum, Arthur Isak. *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*. Princeton, NJ: Princeton UP, 1999, 47.

⁷⁶ The same would be true for base-runners, particularly in the circumstances of trying to steal a base; for fielders, given that the likelihood of being "walked" as opposed to struck out has statistically increased; for coaches instructing both batters and pitchers in the context of the changed odds; for scouts seeking a slightly modified skill-set in promising players; and so on. The point is that the number of expectations held and their import in institutional practices are very great indeed.

this case, however, her decisions and the predictability (or unpredictability) of her actions have profound effects for the welfare of those she represents. Further, and for reasons already alluded to, among the expectations constituents are justified in having is that their interests will be advocated for by whoever occupies the role of political representative. To clarify, constituents are not (all) fools, and will be aware of the possibility of self-serving or simply ineffectual political representatives. That such shortcomings are widely taken to be grounds for complaint, however, suggests that presupposed standards for representatives are a commonplace—a theme I return to in the second chapter.

Recalling Searle's argument that institutional facts endure in virtue of their ongoing collective acceptance,⁷⁷ the relatively wide consensus that representatives ought to competently advocate for the interests of those they represent counts as evidence that they have such an obligation. To make this claim less abstract, consider again the role of a lifeguard at a public swimming pool. Having received no oaths or contracts from the lifeguard, millions of parents leave their children in a lifeguard's care. This act is only explicable because of a widely shared belief that the person wearing a red shirt poolside will fulfill the obligations of her role. Considering what a violation of this tacit agreement would amount to—suppose the lifeguard got drunk and fell asleep, for example—is also instructive. A would-be representative, aware that specific obligations obtain for the role she contemplates inhabiting, will be typically be quite familiar with the sorts of social expectations that will be upon her in this position. She might in turn be thought to enter into a tacit agreement—making something like a promise—to those she will represent by voluntarily taking on the role. The suggestion being made is that, within certain

⁷⁷ See Applbaum, *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*, 87.

parameters, political representation often has a promissory character as a consequence of collective acceptance that it does.⁷⁸

At last we return to Gaddafi's minion, Al-Hajjaji, and can ask what to make of Rehfeld's claim that she counts as a representative of Libya based upon her recognition by the United Nations. According to the account given above, if she were indeed a representative, it would not be because, or not only because, she is so recognized by a selection agent, but because she occupies a role within a rule-governed practice, to which are attached particular obligations, at least some of which are related to reasonable expectations. As an aside, the extent to which Al-Hajjaji occupies her role voluntarily might be doubted—her reasons for acting as she does are undoubtedly complex, and it is easy to imagine many of her decisions being made under duress—and thus the degree to which she can reasonably be expected to uphold relevant obligations would likely be lessened.

The fact that Al-Hajjaji stands in a chamber before UN council members suggest that her action is what it is only within the context of a practice. A question this raises, however, is of which practice is she a part? If part of the Gaddafi regime, and if roles are defined strictly by the practices that generate them, it might be thought that she meets relevant expectations—namely as a Gaddafi apologist. If, however, she is instead viewed as part of a larger practice encompassing the UN, a very different set of expectations would apply—namely those concerned with promoting the human rights of the Libyan people. In any case the point is moot, because although specific roles are determined by particular practices, the obligations and duties of political representatives are not. According to the account here, any instance of political

⁷⁸ This argument, again, should not be construed as utopian, or as suggesting that promises being fulfilled is an apt description of political representation. Giving reasons for thinking that something like a promissory context obtains is, of course, very different for claiming that promise keeping is the typical outcome in such a context. Defending an account of parental obligation is an entirely different project from a descriptive account of observable parenting.

representation entails an obligation to advocate for the interests of those represented, based upon a widely shared understanding of the concept of representation. Moreover the political mood of the oppressed offers evidence for this interpretation. The revolutionary discontent of the Libyan people under the Gaddafi regime makes it clear that they have much the same—alas, largely aspirational—expectations of their representatives and leaders as the inhabitants of flourishing democracies have of theirs.

Al-Hajjaji's obligations to the Libyan people obtain, however badly she has maimed them, partially as a consequence of their justified expectations attached to the role she occupies. This role cannot be fully characterized only with respect to the Libyan regime, however, but also must encompass political representation as practiced (and conceptualized) more broadly. Although I will not argue the point here, the popular movements known as the Arab Spring can be seen as evidence for these widely shared expectations of political representatives. Obviously enough, the absence of any democratic procedures placing Al-Hajjaji in her role further impugns her legitimacy as a representative. My emphasis here has been upon her dubious relation to the Libyan people and the failure to uphold relevant duties and obligations, but it should be clear that the fulfilling of these duties and obligations would be greatly facilitated with the addition of democratic procedures. Further, that the lack of popular democratic support for the Gaddafi regime and the lack of popular involvement in selecting operatives like Al-Hajjaji suggest that her mere taking on of (or being placed in) such a role counts as violation of the interests of the Libyan people.

3. THE ROLES OF REPRESENTATIVES

A principal and worthwhile aim for Rehfeld is to distinguish the question of whether one is or is not a representative from the question of whether one represents poorly or well—questions he treats as “formal” and “substantive,” respectively. His method for doing so, however, generates an untenably wide category of representation, as we have seen. These questions can be kept distinct in an alternative framework that narrows the category and better respects widely held intuitions. In this alternative conception, being a political representative is, paradigmatically, to occupy a certain type of practice-defined role, incurring particular sorts of obligations as a consequence of being in the role, and engaging in activity informed by these obligations to some minimal degree. Being a good political representative is, *inter alia*, to significantly uphold such obligations, while being a poor political representative is to fail to do so. In this case, one might be a political representative, whether good or bad, or fail to be a political representative, without or in spite of being recognized to be so respectively.⁷⁹ Being situated within a context where obligations are understood to obtain is partially constitutive of acting as a political representative.

With this structural apparatus now in place, I will defend the claim that to be a political representative with no regard for the interests of those represented would be akin to asking for a fourth strike: the defiance of reasonable expectations based on a shared understanding of rule-governed practice flouts certain obligations attached to the role of representative. Note that one can still be a bad representative without flouting such conventions; one can have an abysmal batting average but still be playing the game of baseball. But decide you only need touch two bases in order to score a run, and you have begun to do something else than play baseball. While

⁷⁹ The point is again merely that recognition isn't sufficient to make or unmake a political representative. An example of the first case would be a case of mistaken identity, where an actual political representative is mistaken as an imposter. An example of the second case would be the previously discussed banker who the legislators erroneously take to be one of their own—i.e. an imposter being mistaken for an actual political representative.

refusing to play baseball according to the rules would be annoying during an official game, there are no obvious moral implications for doing so. The next task, then, is to analyze the moral value manifested in political representation and to give an account of its obligations and the justification for them.

When acting as a representative is understood as inhabiting a practice-defined role, the reasonable expectations of those affected by the performance of the role emerge with renewed importance. When, in turn, the nature of these expectations is examined closely, there are compelling reasons to see them as a source of normative gravity. As Charles Larmore has argued, the reliability of such expectations is required for a range of other activities,⁸⁰ and their trustworthiness thus has a direct effect upon human agency. Additionally, drawing upon Scanlon's explanation of promissory obligations discussed above, the promissory basis from which these expectations derive imbues them with this normativity. This point is familiar but crucial. To inhabit certain roles tasks one with novel moral obligations. Perhaps the most familiar case is the role of parent, but a great many other social roles imply duties and obligations of varying character and magnitude.⁸¹

The reasons such obligations are taken to obtain are various and complex. The case of parental obligation is often treated as paradigmatic given very widely shared beliefs and cultural attitudes regarding the duties parents have to their children (despite wide disagreement on the ground and content of such duties). If less universally and more problematically, political leaders are also generally taken to have (at the very least fiduciary) obligations to those over whom they wield power. Little can be directly inferred from the very different case of parenting—with its

⁸⁰ See Larmore, Charles E. *Patterns of Moral Complexity*. Cambridge: Cambridge UP, 1987: "...we might even say that one of the *moral* demands we make of government is that it act predictably...to a greater predictability in government corresponds a greater freedom of the other spheres of social life" (41, emphasis original).

⁸¹ See, e.g., Goodin, Robert E. "What Is So Special about Our Fellow Countrymen?" *Ethics* 98.4 (1988): 663-86.

justified paternalistic character—to the case of political representation. But what commonality they do have should offer evidence that roles very often entail duties and obligations that would not exist if one did not inhabit a certain role.⁸² In the case of political representation, these duties and obligations are often specified within a practice-defined role in way that justifies constituents believing that they will be upheld.

III. Obligations Attached to Roles

The notion advocated here that the role of representative carries with it certain moral obligations is to be distinguished from a strong form of what Applbaum defines as *role realism*—the view that there are natural roles akin to natural law, implying that such roles conceptually entail their moral dimensions.⁸³ Accepting role realism might imply, for example, that political representatives advocate for the interests of constituents by definition—as a logical entailment of their being representatives—without any reference socially constructed or institutional facts. This cannot be a satisfactory account of political representation, because what counts as political representation is partially constituted by collective understanding, as I have already argued.

Applbaum argues the related point that practices do not make those operating within them immune to evaluation by external moral standards. If this were not the case, Adolf Eichmann, for example, could only be evaluated according to the standards internal the practice within which he operated as an efficient bureaucrat, and moral evaluation could not go beyond this. The point is that moral permissions are not minted by the existence of practices—the lawyer arguing the innocence of a client she feels certain is guilty has not magically become honest or

⁸² There are complications with the idea of “inhabiting” roles and what constitutes doing so knowingly and voluntarily. I leave these difficulties aside for another occasion.

⁸³ Applbaum, *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*.

been exonerated for dishonesty by virtue of the practice of law, for example⁸⁴—or at the very least such permissions will always be defeasible in the face of overriding moral principles. Political representatives are permitted—indeed, authorized, in the sense discussed above—to make decisions for others that not just anyone can make. They cannot, however, use the special powers of their role to side-step more general moral principles.

John Simmons has argued, in a distinct but related way, against the *normative independence thesis*—the idea that “...local practices and institutions can impose genuine moral obligations simply by virtue of being in force, simply by virtue of the social fact that people occupy (by choice or not) roles or stations, with associated role obligations, within these schemes.”⁸⁵ In any such apparent scenario, it is rather the case that external principles either require or condemn the action in question. Genuine moral obligations obtain for Simmons only if they are either the result of voluntary agreement or if “...performing [non-voluntary] role obligations will be the way some of our external moral duties can be most fully discharged.”⁸⁶

While I focus neither on the permissions Applbaum wishes to curtail nor on the obligations of citizens Simmons believes to require external justification, both their views harmonize with the account of political representation offered here. In the paradigmatic case, representatives occupy their roles in ways that are sufficiently voluntary and thus participate in contractualist and—in some instances—promissory arrangements. Further, and for distinct reasons that will require greater fleshing out, while the permissions attained by political representatives are constrained by more general principles, frequently the external moral duties belonging to political representatives can be “most fully discharged” by fulfilling the understood

⁸⁴ I take up the subject of representation in an adversarial law court in chapter 3.

⁸⁵ Simmons, A. John. “Associative Political Obligations,” in *Justification and Legitimacy: Essays on Rights and Obligations*. Cambridge, UK: Cambridge UP, 2001, 88.

⁸⁶ Simmons, “Justifications and Institutional Roles,” in *ibid.*, 101.

obligations of their roles. That is, political representatives just are respecting certain general moral principles when they sufficiently perform the obligations of their roles.

How then do practiced-defined roles in the context of political representation become tasked with moral obligations? The gradual formation of expectations on the part of those affected by the performance of the role—constituents, paradigmatically—are surely relevant, but failure to meet such obligations cannot merely be the failure to meet expectations. The hockey goalie having a bad day and thereby not living up to the expectations of teammates and spectators has committed no obvious moral transgression. On the other hand, we are—rightly—scandalized when we learn that the hockey player in question has “thrown” the game, for example by deliberately letting the opposing team score as she has clandestinely agreed to do for a handsome sum, in spite of competitive athletes not taking oaths. What this rather simplistic analogy suggests—accurately, in my view—is that expectations relating to practice-defined roles are often justified on the grounds of tacit agreements. Political representatives will not always get matters right, and it would be unreasonable to expect them to do so, given both their susceptibility to errors of judgment and the complexity of interest advocacy, as discussed above. Members of a constituency are, however, justified in the expectation that their representatives will genuinely aim to promote their welfare. The obligations of political office are in part consequent to a tacit agreement made with those they represent to authentically look out for the interests of the represented.⁸⁷ This leaves open a host of questions such as the nature of the tacit agreement made and how to characterize the interests of a constituency. It is enough for the

⁸⁷ Various oaths of office sometimes make these agreements explicit. No such oath could exhaustively cover all the possible ways in which the relevant obligation might be manifested, however, and again, at the risk of wide analogizing, parents generally do not take oaths but have obligations nonetheless; practicing doctors who have forgone the Hippocratic Oath are reasonably seen as tasked with certain sorts of obligations just the same.

moment, however, if I have shown that representatives, having entered into tacit agreements, have obligations to uphold them.

Before concluding this chapter, one more clarification is in order. The temptation to conflate the achievement of developed democratic processes with regard for the interest of those represented—to which Rehfeld seems to succumb—should be resisted.⁸⁸ Fair and effective electoral procedures that yield accountability and authorization require many contingent variables to be in place and at their best are fraught with well-known difficulties. A demonstrable regard for the interests of those represented, on the other hand, requires far fewer prerequisites in terms of social structure, as the example of NGOs was intended to illustrate. One can therefore concur with Rehfeld when he finds dubious (what he takes to be) the common identification of political representation with democratic legitimacy, while still holding—contrary to Rehfeld—that concern for the interests of those represented is integral to any satisfactory account.

To voluntarily accept a representative role with no intention of pursuing the interests of those one is representing is to violate a trust of a certain kind, not because representation logically entails interest advocacy but because of widespread long-standing expectations that political representatives will so advocate.⁸⁹ It might be worried that reliance upon social expectations and an obligation to uphold these will lead to trouble; a populace that has come to expect ruthless exploitation has not thereby created an obligation for that nation's leader to maintain the status quo. Although such a populace might be justified in expecting the worst, however, they rarely accept their treatment as justifiable, believing they have a right to expect

⁸⁸ He frames his guiding question: “What could ‘political representation’ be if it does not necessarily depend on notions of accountability, authorization, and ‘acting for another’s interests?’”

⁸⁹ It is not incidental that “promissory representation” is generally taken to be the classical form of political obligation. See Mansbridge, Jane. “Rethinking Representation.” *The American Political Science Review* 97.4 (2003): 515-28, esp. 525.

better. This is to say, they have an expectation of what political representation ought to be. An intuitive reason for this is the existence of a widely shared concept of political representation that includes an obligation to protect and advocate for the interests of constituents. Moreover, as I will discuss in chapter 4, expectations held by constituents, like mandates given by them, can only inform the obligations of their political representatives within certain constraints—preeminently such expectations and mandates cannot ground an obligation to override human rights.

CHAPTER 2:

The Roles of Deliberation and Participation in Political Representation

I. Introduction

The preceding chapter focused upon arguments for political representation being irreducibly normative. The basic claim was that political representatives have duties and obligations bound up with the interests of those they represent. While I argued that a spare but coherent understanding of political representation can be given even in the absence of democratic procedures, normativity remains because an essential criterion for representation is the right kinds of regard for interests of those represented. Such an account is limited, however, by the sorts of interests that can be safely assumed to be held by all or nearly all individuals. To move beyond these fundamental interests in the context of political representation requires mechanisms for the development, refinement, and aggregation of interests, along with more effective means for their articulation and ways of conveying these interests to representatives. In this chapter I thus argue that the obligations of political representatives are intimately related to democratic procedure and more specifically to its participatory and deliberative dimensions. This is because the interests for which representatives have an obligation to advocate are best understood and realized through such processes.

Various strains of political theory have either limited the role of political representation to keeping the peace between competing factions or gone further to characterize representation as inimical to participation. Both of these interpretations should be resisted, in part for reasons relating to the obligations of political representatives. Because political representation entails the kinds of obligations on the part of representatives argued for in chapter 1, several leading

theories can be criticized for insufficiently regarding the interests of individuals represented, on the one hand, or for undervaluing the capacity of representation to develop and, where possible, to synthesize these interests, on the other hand. While the threat of domination by representative structures and those in positions of power mark important concerns, political representation has the capacity to enable greater participation and generate a deliberative space within which the interests of both individuals and groups can be further developed and articulated. Although recent work in political (and more specifically democratic) theory has ably defended these advantages, the role that political representatives ought to have in working for their realization and the reasons compelling them to do so have received little attention. Analyzing the obligations borne by political representatives to advocate for the interests of those represented demonstrates that these representatives should be committed to fostering participation and deliberation. It further suggests that representatives are obligated to sufficiently attend to both individualist and communal dimensions of these interests.

II. Minimalist Political Representation

Theoretical accounts that limit or discount entirely the role and value of political representation tend to fall in two broad camps. The first of these, epitomized by the pluralism of Schumpeter and (early) Dahl, argue for a limited role of political representation based upon their understanding of the instrumental role such representation in fact plays in the world. These putatively descriptive accounts characterize representation as of little use beyond mediating struggles for power between competing interest groups and political elites.⁹⁰ Importantly, and as critics have noted, although these accounts claim to be descriptive, and thus to make no appeals

⁹⁰ See Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, 8-9.

to normativity, their elaboration and redefinition of democracy and representation in purely instrumental terms has the effect of reifying their account and insinuating that there is no better alternative.⁹¹

The second camp differs from pluralist theory by defending individual interests as paramount, but takes political representation to be inimical to these interests in varying degrees. This category is both larger and more motley, including within its ranks characters as diverse as Rousseau and (early) Robert Nozick. For the former, representation was taken as an affront to autonomy.⁹² The threat of undue influence and domination led him to revile both the direct democracy of Athens—which was quite imperfect in its directness⁹³—and contemporary forms of representative democracy, because any mediating of individual judgment was to be deplored; any form of delegation entailed a problematic surrender of judgment.⁹⁴ For the Nozick of *Anarchy, State, and Utopia* what is noteworthy is the absence of any detailed discussion of political representation. The main tasks Nozick sets for himself are to justify the minimal state (and denigrate anything more than this) and to argue against political obligation as argued for in Rawls and Hart. It might have been supposed, however, that his examination of utopias would would make reference to a ranking of more and less desirable forms of political representation. Instead Nozick is committed to the view that there is no clear way of deciding between competing visions of better and worse political arrangements: because not all goods can be simultaneously realized, trade-offs will be necessary, and these will always be controversial.⁹⁵

⁹¹ Ibid.; See also Macpherson, C. B. *The Life and times of Liberal Democracy*. Oxford: Oxford UP, 1977.

⁹² Rousseau, Jean-Jacques, and Donald A. Cress. *On the Social Contract ; Discourse on the Origin of Inequality ; Discourse on Political Economy*. Indianapolis: Hackett Pub., 1983.

⁹³ See Urbinati, Nadia. "Representation as Advocacy: A Study of Democratic Deliberation." *Political Theory* 28.6 (2000): 764; 768.

⁹⁴ Ibid. On the "surrender of judgment," see Flathman, Richard E. *The Practice of Political Authority: Authority and the Authoritative*. Chicago: U of Chicago, 1980.

⁹⁵ Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic, 1974, 312-13.

Even utopian considerations therefore lead to the maximal individual freedom he takes to be manifested by the night watchman, a government limited to maintaining a monopoly of force. It is thus not clear what, if any, role political representation plays in his brand of libertarianism.

III. Difficulties with Minimalist Political Representation

From the perspective defended here, both camps—the one conceptualizing representation as largely limited to mediating between factions, and which thus has limited regard for individual interests, and the other prioritizing individual interests but construing these as inimical to political representation—have underestimated the valuable work political representation does and its potential to do more. This is true at least in part because both camps rely upon understandings of political representation that lack sufficient appreciation of its normative dimensions.

1. THE LIMITING OF INDIVIDUAL INTERESTS

A preliminary difficulty for pluralist or other theories that characterize political representation only in instrumental terms is that politics frequently is the subject of normative evaluation, a fact that is perhaps most easily explained by political representation being thought—correctly—to be bound up with autonomy. Because political representatives make decisions on behalf of their constituents, the degree to which the autonomy of constituents is preserved depends upon the quality and character of representatives' decisions.⁹⁶ This explains in part why the existence of political structures brings in its train a host of questions and judgments regarding the character

⁹⁶ I discuss autonomy further in the context of balancing delegate/trustee dimensions of representation below. Also instructive in this regard are McPherson's arguments, discussed in chapter 3, to the end that insufficient representative authority when violence is resorted to compromises the autonomy of those on whose behalf the violence is committed. See McPherson, "Is Terrorism Distinctively Wrong?" 524-46.

and functionality of those structures and how they relate to the interests of citizens, many of which instrumental accounts like the above-described pluralism lack the resources to explain. As Urbinati has argued, in every expression of disappointment with political representatives, "...we implicitly allude to some ideal of representation."⁹⁷ This suggests that the assumption of (mere) instrumentality of political representation is unwarranted, given the normative stakes citizens have in it and, when this is recognized, their related intellectual and emotional investment in politics.

Descriptively framed pluralist theory also leaves a significant range of possibilities out of account, proceeding, without argument, as though political arrangements could not be different from the status quo. Put differently, descriptive accounts in particular should be sensitive to the fact that there are widely varying opinions regarding political structures and either give some explanation for this fact or justify their treating it as irrelevant. Moreover, the existence across time and space of a range of more and less liberal democracies (to say nothing of other forms of government) and associated practices of representation conflict with the notion that political arrangements and their mechanics must be as they are or have been.

More central to my argument is the fact that within pluralist theory political representatives either tend to be pawns of powerful interest groups or for the most part end up being the elites controlling power themselves. It is not that representation fails to perform an important function within these theories: the mediation it provides between competing interests promotes social stability and provides a venue for expressions of various political points of view that otherwise would not be heard. However, because pluralism, from that of Madison in the *Federalist* to the theories of (early) Dahl and Schumpeter, conceptualizes the interests of

⁹⁷ Urbinati, "Representation as Advocacy: A Study of Democratic Deliberation," 759.

individuals as expressions of group membership, the individual variation within these voting blocs is insufficiently regarded, and the individual views that are expressed have limited traction in the political process. As Carol Gould has argued, relegating the interests of individuals to group membership undervalues both individual uniqueness and the relational dynamics between individuals at the sub-group level.⁹⁸ For Gould, the shortcomings of pluralism are also ontological: while in some sense signaling an improvement over abstract individualism by including the importance of groups in political arrangements, pluralism continues to treat individuals as self-interested rational decision-makers, abstracting them from constitutive social relations and failing to acknowledge internal variation.⁹⁹

My own criticism of pluralism centers upon the minimalist role it gives to political representation and what is required of it, but it takes Gould's ontology to be a powerful framework for understanding the interests which I argue political representatives are obligated to pursue. Despite the aim of pluralism to protect the freedom of the individual from the power of the state, it fails to provide individuals with the sorts of robust representation required for the advocacy of individual interests. As a first point, it is desirable for constituents to be represented in a sufficiently nuanced way that is at odds with voting blocs. The negative freedom integral to pluralism provides some assurance against interference in individual affairs but can offer little to the individual by way of working for change that would address individual concerns. Reasons for the inclusion of individuals within particular groups are also problematic: any attempt to construct such categories on the basis of shared ideology, ethnic background, or geographical

⁹⁸ Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, 98-9.

⁹⁹ *Ibid.*, 98-100.

distribution runs roughshod over internal variation and importantly offers little capacity for dissent or the internal criticism of one's "group."¹⁰⁰

Pluralism also leaves the obligations of political representatives underspecified more generally, rendering their position somewhat paradoxical. Within such a system, individual political representatives—assuming they have some form of obligation to citizens—would seem to be tasked with pursuing the interests of constituents while knowing that the larger, and potentially conflicting, objective of this representation is to achieve balance between competing factions. This has two curious consequences. The first is that the purpose of political representation is ultimately social stability, rather than genuinely aiming to secure policy change that benefits one's constituents. Political representatives in this scenario are effectively reduced to mechanisms within a kind of "invisible hand" arrangement wherein the social good their activity is meant to realize is distinct from the goals they pursue on behalf of their constituency. An awareness of these matters would make a commitment to fulfill the obligations of a political representative as I have explained them disingenuous: while constituents are justified in the expectation that representatives advocate for their interests, pluralism suggests that they will often act on the basis of ulterior motives. A loss of constituents' autonomy is again threatened in this scenario because the decisions being made on their behalf by their political representatives only regard them obliquely.

Moreover, in the circumstance that a political representative becomes aware that her advocacy of her constituents' interests will not, for whatever reason, promote social stability—a scenario that in principle must surely be possible—which goal is she to choose? Note that this difficulty is importantly different from the classic tension between delegate and trustee aspects of

¹⁰⁰ Relevant individuation of sub-groups is also problematic: should strongly liberal Austin, home to the University of Texas, be included in "the Southern vote" or "the Liberal vote"? Examples could easily be multiplied.

political representation, as there the challenge is confined to deciding whether the expressed interests of a constituency or the considered judgment of the representative will best achieve the constituency's interests, all things considered. In the case at hand, by contrast, the representative would *ex hypothesi* be choosing whether to pursue constituent interests at all or whether instead to act so as to promote social stability.¹⁰¹ The ontology gestured toward above, in conjunction with an appeal to human rights, may have the resources to resolve this difficulty: thoroughgoing protections for individual human rights might sufficiently include political dimensions that would ensure that individual interests were not left out of account in the political process. The inclusion of a human right to robust political representation, of the sort that properly acknowledged the autonomy of individual constituents, could serve this function. Without the inclusion of such an appeal to human rights, the limited regard for individual interest enshrined in pluralist theory remains problematic. Individuals can all too easily be ignored or worse by the machinations of political structures that do not actively take care to include and advocate for them.

These worries are deepened by versions of pluralism that take themselves to be descriptive and hence value-neutral. The political representative that views the status quo as inevitable could often only partly claim to be advocating for the interests of her constituents because the machinery of democracy conceived in this way is unlikely to produce change sought by individuals not fortunate enough to be included within the most powerful interest groups. The point is not merely the likely futility of pursuing the interests of members in an underdog group;

¹⁰¹ Social stability is itself a widely shared interest, *ceteris paribus*, but this overlap is contingent: social stability can at times be achieved by the gross violation of individuals and their rights. In chapter 4 I take up Buchanan's related arguments for prioritizing justice over peace in the international domain. See Buchanan, Allen E. *Justice, Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford: Oxford UP, 2004, Chapter 2.

rather, within this theoretical structure, advocacy for individuals is complicated and sometimes undermined by the pursuit of social stability. Seeking political stability in a way that tends to promote the interests of citizens might succeed in achieving them as an ancillary good, but for reasons already suggested, when the goals of political stability and advocacy of constituent interests come apart, the former is prioritized in the pluralist framework.

An objection at this point might be that, given that the role of political representatives in pluralist theory is minimized and perhaps even paradoxical as described, what these observations demonstrate is that a more active and robust form of political representation in fact has no place. If this is so, the obligations of representatives I am at pains to emphasize are at best overblown, and at worst their elaboration is misguided.

There are three responses to such an objection. First, as previously mentioned, the elaboration of pluralist theories, even while claiming to be descriptive, has the effect of presenting them to be without alternative. However, only on a narrowly historically circumscribed analysis could such a perspective that claims to describe “the way things are” be countenanced. The easy observation that at various times and in various places the interests of individuals have been better and worse served by the political structures that they inhabited is enough to impugn accounts that imply alternative and better arrangements are unavailable.

Second, pluralist theory denies to constituents within one group the benefit of pursuing shared interests with members of another group because such interests are assumed to be internally univocal and perpetually at odds with the interests of all those external to the group. Particularly in our contemporary world of recognized global threats that no particular group or individual state is prepared to confront on its own, disregarding such shared interests and their

import is a grave error.¹⁰² Third, as I shortly explain in greater detail, the benefits of political representation are sorely underappreciated in pluralist accounts and still more in political theories that see representation as inimical to individual interests. Before arguing for this point, I examine one well-known example of a theory that is deeply critical of representation.

2. THE ELIMINATION OF REPRESENTATION

The second anti-representation camp is constituted by various theoretical approaches that explicitly condemn representation or characterize it as opposing participation and hence individual interests. Much has been written about Rousseau's denigration of representation. For my purposes, the following considerations are germane. First, Rousseau's disdain for representation is enabled by (what he takes to be) his demonstration that it is not necessary. Rousseau's creation of a general will attempts to solve political philosophy's great puzzle of preserving individual autonomy while giving a place to governance and the rule of law by presupposing a shared conception of the common good that is in turn manifested into law. The resultant legal obligations are thus (in a sense) self-imposed, and citizens remain free agents, as they willingly submit to laws the content of which they themselves have chosen and willed. In stark contrast to pluralist theory, where the primary function of political representation is mediating competing interests, the absence of competing interests removes the need for representation altogether.

It is far from incidental that Rousseau envisioned these political arrangements as applicable to small bucolic communities where non-representative direct democracy might have been a practical possibility. Even in circumstances such as these, however, a "shared conception

¹⁰² See Christiano, Thomas. *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, CO: Westview, 1996, 74, for a similar, if narrower diagnosis of this problem.

of the common good” was not thought to emerge merely from common circumstances and a shared way of life but as a consequence of rational thought available to all. It is this feature of Rousseau’s account that makes the mediating forces of representation—and the space for deliberation that it provides—hindrances rather than assets. The threat of influence and the specter of one individual will coming to be dominated by another not only compromises individual autonomous judgment but also risks undermining the generality (and individually arrived at rationality) of the general will.

The importance of political representation is thus magnified when doubt is cast upon rationality as a clear and sufficient guide to governance, available to all—the linchpin of Rousseau’s general will. As Urbinati expresses the point, “. . . representative democracy is a living confutation of a rationalist vision of politics.”¹⁰³ It is worth emphasizing that the normative justification for political representation derives significantly from the paramount importance of deliberation and the individual regard it allows in the absence of a shared vision of the common good or a unitary vision of politics based on rationalism. As a practical matter representation also serves the important function of aggregating opinion, though in principle this function might be achieved by other means.¹⁰⁴

Political ideas are frequently contested, and appeals to rationality do little to settle disagreements that arise (the results of rational analysis themselves being frequently contested). It is for this reason that representation, as a central feature of democratic institutions, is necessary

¹⁰³ Urbinati, "Representation as Advocacy: A Study of Democratic Deliberation," 765.

¹⁰⁴ It bears contemplating that with the current capacity of technology to transcend geography there is no real obstacle to holding a version of direct democratic vote among many millions of people. The logistics would, of course, be tremendous, but in principle doing so is merely an extension of corporate board members abroad voting on a motion in real-time via Skype or similar technology: advertisements for Cloud communication boast making “450 million people present” at a soccer (futbol) match, with the capacity for real-time voting on player of the game. The possibility of this scenario adds weight to the task of demonstrating its undesirability in classic form, but is also suggestive of future possibilities that could in principle augment participation and legitimacy.

“...to provide fair procedures for adjudicating disputes about public policy when citizens’ interests, values, and perspectives conflict.”¹⁰⁵ Moreover, as Urbinati has argued, political representation creates conditions in which political decision-making is beneficially mediated by time, space, and speech.¹⁰⁶ Removed from the immediacy and presence of direct democracy, citizens are provided with time and solitude to consider options in a calm, collected manner, without the many possible forms of interference and potential for domination in the circumstances of a direct democratic vote.

More importantly still, democratic political representation and the voting procedures it typically enshrines allow constituents to deliberate with one another in a way that is impossible in direct democracy. When used to their fullest potential, these political processes allow for the formation of venues where all ideas, both good and bad, can be heard and scrutinized. In turn, the process of ideas being shared, challenged, refined, or abandoned, produces a more competent and knowledgeable citizenry, as argued for at length by J.S. Mill.¹⁰⁷ It is in this sense that political representation increases, rather than decreases, participation relative to direct democracy.

The direct democracy of ancient Athens, by contrast, routinely gave undue influence to orators in practice, regardless of the physical presence of voters. In direct democracy as modified by Rousseau, citizens practiced studied silence in the assumption of like-mindedness among

¹⁰⁵ Dovi, Suzanne Lynn. *The Good Representative: Suzanne Dovi*. Malden, MA: Wiley-Blackwell, 2012, 8. See Christiano, Thomas. *The Rule of the Many: Fundamental Issues in Democratic Theory*. Boulder, CO: Westview, 1996.

¹⁰⁶ Urbinati, “Representation as Advocacy: A Study of Democratic Deliberation,” 768. See Plotke, David. “Representation Is Democracy.” *Constellations* 4.1 (1997): 27.

¹⁰⁷ Mill, John Stuart. *On Liberty, And, Considerations on Representative Government*. Ed. Ronald Buchanan McCallum. Oxford: B. Blackwell, 1946. As I argue below, the (ideal) processes described in the free marketplace of ideas is integral to the development of constituents’ interests.

themselves, remaining isolated from one another in their political contemplations.¹⁰⁸ Noting these shortcomings, later liberal democratic theorists have continued to argue that, contrary to all elitist/authoritarian governing arrangements, political participation is to be promoted to as great a degree as possible.¹⁰⁹ Further, it has become commonplace among political theorists writing within the last two decades that representation has the capacity—perhaps in adjusted and improved form—to foster, rather than restrict, participation.¹¹⁰ Plotke’s clarification—“...the opposite of representation is not participation: the opposite of representation is exclusion. And the opposite of participation is abstention”¹¹¹—summarizes this trend.

The capacity to foster greater participation is, of course, altogether different from its realization. The forgoing is intended to support the theoretical advantages of more robust democratic structures over direct democracy, but manifesting these benefits in a practical way presents its own set of difficulties. The absence of a politically engaged culture and related low voter turn-out are significant factors that are beyond the scope of my arguments here. These challenges are closely related, however, to radical inequality, power imbalances, and the perception that one is ineffectual in the political process, all of which I take up below or in subsequent chapters. The problem of domination, in which political structures evolve into repositories of power and in turn impose their will upon constituencies, is touched upon below, and discussed further in chapter 4. For a number of theorists domination is a salient concern

¹⁰⁸ Urbinati, “Representation as Advocacy: A Study of Democratic Deliberation,” 758-65; 768.

¹⁰⁹ See, e.g., Macpherson, C. B. *The Life and times of Liberal Democracy*. Oxford: Oxford UP, 1977, 98ff; Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, Chapters 8 and 9.

¹¹⁰ A sampling includes: Mansbridge, Jane. “Rethinking Representation.” *The American Political Science Review* 97.4 (2003): 515-28; Plotke, “Representation Is Democracy,” 19-34; Urbinati, “Representation as Advocacy: A Study of Democratic Deliberation,” 758-86; Young, Iris Marion. “Deferring Group Representation.” *Ethnicity and Group Rights*. Ed. Will Kymlicka and Ian Shapiro. New York: New York UP, 1997, esp. 352.

¹¹¹ Plotke, David. “Representation Is Democracy.” *Constellations* 4.1 (1997): 24.

because, contrary to Plotke's formulation above, representation becomes a means of exclusion rather than inclusion.

The extent to which political representation itself is desirable, then, seems to be controversial only if representation imposes vertical rather than horizontal power relations, through the creation and perpetuation of an elite class, for example, or by empowering trusteeship over mandate adherence in unwarranted ways.¹¹² To the extent that increased political participation and more robust deliberation are crucial for the development and expression of citizens' interests, those tasked with advocating for these interests should in turn be tasked with advocating for these processes and their integrity. Legitimate political representation, then, entails significant obligations to foster a culture of political awareness and participation. This requirement derives both from the importance of the development of interests and from a need to guard against representative structures coming to threaten domination.

Representation taken this way, in line with the thinking of a number of democratic theorists, is thus the conceptual ally to social arrangements, such as increasingly democratic workplaces, that are conducive to participation, and it is contrary to socio-economic circumstances, like those of gross inequality, demonstrably inimical to it. That lower-level participation allows for the development, elaboration and articulation of interests, which in turn significantly inform and constitute the content of robust political representation, establishes a strong link between participation and representation. Lower-level democratic activity can also be empirically shown to instill greater understanding of and interest in politics more generally. Political representation, that is, can be strengthened and made more robust through the highly

¹¹² See Pateman, Carole. *Participation and Democratic Theory*. Cambridge: Cambridge UP, 1970.

ramified participation of constituents beyond periodic democratic elections.¹¹³ Further, political representation is both enabled by and derives value from the “mutual influence” of deliberative practice, which has rightly been characterized as partially constitutive of functioning democracy.¹¹⁴

Before moving on to consider a robust account of representation in some detail, it is worth observing how representation as conceived of in my account relates to the democratic procedure of majority rule and some of the concerns it raises. Interpreted one way, the voter whose chosen candidate loses an election might also be thought to no longer have her individual interests represented. Some theorists, like Mill, advocate for proportional representation in part to obviate this conclusion by making it the case that minority views are still given voice throughout the political process. With or without proportional representation, however, theorists rarely hold that those in a democratic minority are without political representation. Many careful arguments have been made both defending and criticizing majority-rule decisions, with some—though by no means complete—consensus on two points: first, that despite its inherent difficulties and especially the challenges associated with putting majority decisions into effect in the context of democratic representation, it often remains the best available option for collective decision making.¹¹⁵ Second, there may nonetheless be cases in which majoritarianism is superseded by some better alternative for contextual reasons, and there need be nothing paradoxical or undemocratic about this.¹¹⁶

¹¹³ Pateman, *Ibid.*; Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*; Macpherson, C. B. *The Life and times of Liberal Democracy*. Oxford: Oxford UP, 1977.

¹¹⁴ See Anderson, Elizabeth. "The Epistemology of Democracy." *Episteme: A Journal of Social Epistemology* 3.1 (2006): 8-22.

¹¹⁵ See Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*.

¹¹⁶ See Dahl, Robert A. *Democracy and Its Critics*. New Haven: Yale UP, 1989, esp. chapters 10 & 11.

Citizens, however, and particularly those within a winner-take-all system and without much grounding in political theory, might be forgiven for still thinking this paradoxical: if a central part of political legitimacy is to be characterized in terms of robust consultative procedures, understood here as circumstances in which constituents are able to freely choose and influence their representatives, it is not obvious how one whose chosen candidate lost can still be said to have attained legitimate political representation *for her*. Nor is it clear that, even under circumstances of voluntarism, when one agreed to abide by the outcome of popular elections, she would stand in the same relation to the representative that others chose, but she did not. Finally it does not seem unreasonable to think that this structural difference directly threatens the justification for the given representative to hold the power that she does over those who did not voluntarily submit to the representative in question.

One way of obviating these difficulties is to acknowledge that the sorts of obligations I have been pressing for obtain between the elected representative and all constituents, whether or not they voted for her. To do so is ameliorative because even the voter who did not get her way can, *ex hypothesi*, rest assured that whoever is chosen as representative will advocate for her interests. This normative assumption should be available to constituents and function in a parallel fashion to constitutional protections, assuring citizens of crucial aspects of representation in spite of eccentric and fluctuating leadership. Such assurances to constituents are paramount given the asymmetrical power relationship they occupy in relation to their political representatives. To put this point another way, democratic procedures allow the constituent a (varying) degree of influence in the choice of her representatives, but she is not free to have no political representation at all, even if her candidate of choice does not come to be in power. Representatives, for their part, are entirely free in their choice to have constituents (that is, to

become political representatives). This asymmetry is in part what justifies an asymmetrical—or perhaps even one-sided—obligation, namely that which obtains for the representative with regard to their constituents.

IV. Robust Representation, Constrained Participation

An alternative account that develops a robust role for political representation is offered by Thomas Christiano.¹¹⁷ While there are many merits to his seminal account, I focus here on his confining citizen participation to particular stages of the political process. Christiano argues for a division of political labor, which he sees as necessitated by “...the intellectual labor that politics demands.”¹¹⁸ An important upshot of this account is that only ultimate aims should be determined by citizens because the means or compromises by which these aims are pursued problematically overburdens individual citizens. Further, this overburdening emerges merely from assuming that citizens are limited in their capacities.¹¹⁹

Because it is important to refute this conclusion, for reasons that should become clear—namely, that deliberation about the means employed in reaching agreed upon aims should not fall to citizens—Christiano’s argument merits explication. His initial premise is the priority of aims to means. Because aims are central to an individual’s life plan, and the means or strategies for achieving these aims are subservient to them, a chooser of means employed is subservient to the chooser of aims. Because a theory of democratic citizenship demands equality among citizens, it cannot countenance subservient roles for some, so the choice of aims held by all citizens is a necessary condition for democratic citizenship. Further, the choice of aims is also sufficient for

¹¹⁷ Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory*, 123ff.

¹¹⁸ *Ibid.*, 123.

¹¹⁹ *Ibid.*, 124.

this model of citizenship, because, so long as the aims are not altered, "...it is not clear why citizens should be concerned with means or strategies."¹²⁰

Christiano's analogies to buttress this claim include a word-processing program, which, faithfully renders our thoughts on the page by circuitry most of us cannot fathom, and the human physical body, which in general loyally puts into action our mental commands by a process most of us typically do not care or need to understand. He concludes, "When members of the government or other political institutions do their best to realize the aims citizens choose without attempting to insert their own aims or interests, citizens have no ground for complaint."¹²¹ Additionally, the narrow expertise required for determining means is simply unavailable to a majority of the citizenry unless they abandon other life projects in order to achieve such expertise.

As a first response, the argument regarding the priority of aims to means is sound only if deciding aims (the dominant role) is reserved for some individuals and deciding means (the subservient role) is left to others. In this case, subservient and dominant relations would be introduced, but this is easily avoided by allowing all constituents choice of both aims and means. Christiano's point that, in a democratic society, all must have equal influence upon the choice of aims, offers no reason for preventing them from also having influence over means. More importantly, contrary to its intended effect, this argument suggests a number of serious concerns with taking the means employed or compromises to be made, as well as room to deliberate about them, out of the hands of citizens.¹²² Christiano insists that unequal access to knowledge makes placing the means in the hands of citizens a recipe for greater political inequality: the better

¹²⁰ Ibid., 175.

¹²¹ Ibid., 176.

¹²² See, e.g., Richardson, Henry S. *Democratic Autonomy: Public Reasoning about the Ends of Policy*. New York: Oxford UP, 2002, regarding concerns with an over-empowered bureaucracy.

educated and socially connected will then be in a position to dominate the less fortunately positioned.¹²³ But this is strange argument: it claims that the unequal circumstances of citizens would be exacerbated if citizens are empowered to deliberate about the means of political action. It is more intuitive to argue that background conditions of inequality are problematic and should be addressed, for there are independent reasons making it desirable to place the determination of political means—to an extent that still respects division of labor—within the hands of citizens.

Christiano anticipates this line of objection but rejects it on the basis that particular kinds of inequality, and especially unequal access to relevant knowledge, are inevitable even in significantly egalitarian circumstances. What this response fails to appreciate is that extending deliberation to include means, rather than only aims, is the primary mechanism by which the knowledge disparities with which Christiano is concerned can be mediated. Discouraging or disallowing citizens to participate in the selection of means has the undesirable effect of ensuring that they will remain ill equipped to contribute at this stage—and indeed any stage—of the political process. As I discuss further below, it is a commonplace in both our everyday reasoning and in political calculation to reform our initial aims when we acquire a greater appreciation for the means necessary to achieve them.

While Christiano is surely right that various forms of technical expertise need not and could not be comprehended by a large swath of a citizenry, it is not only a reasonable but a crucial requirement of expert bodies and politicians acting on the behalf of citizens to articulate their motivation for policy decisions in a way that can be understood by those citizens. The common person does not share an understanding of economics possessed by the likes of Paul Krugman and Joseph Stiglitz, but this has not stopped them from introducing summaries of

¹²³ Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory*, 177-8.

their ideas into the public space for deliberation. The same can be said for arguments intended for public consumption offered by biologist and conservationist David Suzuki, and public political debates held by Noam Chomsky and Alan Dershowitz, among a great many others. That the more approachable arguments of such scholars are not more widely known, understood, and deliberated in the democracy of the United States is not the result solely of inequalities in access to knowledge but rather of an inadequate education system and of a related cultural undervaluing of such deliberation. It is a small step from these observations to parallel arguments that give a greater role to public reason in the political process:

This ideal [of public reason] is realized, or satisfied, whenever judges, legislators, chief executives, and other government officials, as well as candidates for public office, act from and follow public reason and *explain to other citizens their reasons* for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable.¹²⁴

It is particularly important to include among the obligations of political representatives the task of sharing their reasoning on those occasions when they act as trustee and override the expressed desires of a constituency. Whether such explanation should include explicit reference to the representative's "political conception of justice they regard as the most reasonable" will perhaps vary by circumstance, but it does offer a way of justifying instances of political decision-making that are at variance—or appear to be at variance—with the popular will.

The subject of trusteeship points to a second difficulty for Christiano's argument, which is that there appears to be no principled way to differentiate between means and aims, despite his reliance upon the contrary. Christiano attempts to do so by defining the "aims of society" as the

¹²⁴ Rawls, John. *The Law of Peoples ; With, The Idea of Public Reason Revisited*. Cambridge, MA: Harvard UP, 1999, 135: Emphasis added.

“...aspects of society that are chosen for their own sake.”¹²⁵ His own example illustrates the difficulty in this approach, however. We are told that citizens may wish for certain rights, such as a right to privacy, to be protected in the course of policy being carried out, and when “...such restrictions on government activity are desirable in themselves, these are among the basic aims of those citizens.”¹²⁶ This is a promising direction as it provides some parameters within which decision-making ought to remain within the purview of a citizenry, but what is missing is an explanation of what it means for things to be “chosen for their own sake,” or “desirable in themselves.” Rights have an intuitive appeal as belonging in this category, but other cases are less clear. A reasonable citizenry might not wish the aim of open-ended economic growth to be pursued by means that degrade the environment beyond a certain threshold. Is this concern out of their jurisdiction? Or is there another distinct aim regarding an un-degraded environment? Consider another case. An enlightened citizenry wants to strengthen their nation’s social safety net by the means of increased tax revenues. Can they debate and potentially vote upon how and where taxes should be implemented? If so, taxation policy would have to be framed as an aim of society. A dilemma seems to emerge: either citizens should concern themselves with the means by which aims are pursued after all, or every issue the citizenry is justified taking an active interest in will have to be re-described as an “aim,” opening the floodgates to unlimited—and at times conflicting—aims.

Because it is not clear what counts as aims as opposed to means, it is not clear what constraints are to be observed in pursuing socially selected aims. Besides this, as Christiano’s argument stands, the propensity for “dirty hands” is greatly increased, as citizens are encouraged not to ask how things get done. Many controversial decisions would in turn pass without

¹²⁵ Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory*, 170.

¹²⁶ Ibid.

scrutiny. This is because each individual objectionable act in which politicians might engage *en route* to pursuing socially determined aims cannot easily be re-described as “aims” or be prohibited by other “aims” of society. If, on the other hand, these acts are understood in their traditional way as “means,” they remain outside the purview of citizens as a consequence. Related concerns are particularly worrisome with regard to foreign policy, as the means employed by many nations in pursuing aims of national interest have been very objectionable indeed. Allowing citizens to choose only “...how much risk they wish to submit to in foreign relations”¹²⁷ renders them vulnerable to grave moral hazards with regard to the means that might be employed in their name—a concern I take up below and in following chapters. One strategy for addressing these difficulties, again, might be a more careful elaboration of both civil and human rights and the explicit defining of the “aims” of society as constrained by these rights and perhaps other central values explained and defended. Without this, however, it is difficult to sustain the means/aims distinction as employed by Christiano: a citizenry might have the “aim” that a government pursues its interests by means that are effective, morally appropriate, far-sighted, and so on, but such generalities do little to advance our understanding of the relation between citizens and their political representatives.

It would be unfair and inaccurate to equate Christiano’s analogy, wherein “...citizens are in the position of passengers on a ship, whereas the government is in the position of the captain,”¹²⁸ and wherein being given the destination by the passengers the government does the navigating and enforcement of safety rules, with Schumpeter’s (essentially Burkean) position, wherein citizens “...must understand that once they have elected an individual, political action is

¹²⁷ Ibid., 170.

¹²⁸ Ibid.

his business and not theirs.”¹²⁹ In the latter case, even specifying the aims of society is taken out of the hands of the citizenry.¹³⁰ Christiano’s account still cedes too much, however. By disallowing participation in the selection of means, he fails to acknowledge that deliberation about means can alter and even produce new aims. His ship analogy, then, is a poor one. The discursive nature of vibrant democracy makes it the case that the choice of aims is subject to continual revision; the notion of a “destination” connotes a misleading finality. It is thus desirable, within certain limits, for participation and deliberation to permeate all aspects of political life, and it is an obligation of political representatives to encourage these processes by which the interests of a constituency can be developed and refined. To be sure, there are limits to the contributions a citizenry will be able to make in judging the appropriateness of means, particular those that are technical, employed in the service of a particular aim, just as there are limits to what might be expected of individual political representatives with regard to making the deliberative process more robust. What should be guarded against, however, is any area of policymaking being in principle off limits to public scrutiny and deliberation, and, in parallel, the notion that political representation can proceed unencumbered when such areas are countenanced.¹³¹

This last point bears directly upon the often rehearsed tension between mandate and independence, or—equivalently, for my purposes—between the delegate and trustee dimensions of political representatives. Although I offer little that is novel in this regard and consider some concrete instances further along, a few comments are in order here. First, and obviously enough,

¹²⁹ Schumpeter, Joseph A. *Capitalism, Socialism, and Democracy*. New York: Harper, 1950, 295.

¹³⁰ For discussion of the conservative management of political power see Robin, Corey. *The Reactionary Mind: Conservatism from Edmund Burke to Sarah Palin*. New York: Oxford UP, 2011.

¹³¹ I argue a parallel point in chapter 4—against critics of the notion—with regard to the structure of the United Nations and calls from General Assembly members for more deliberation as a feature of proceedings there.

aspects of each are needed and appropriate. As I have argued, the official with no regard whatsoever for the expressed desires of her constituency, and thus inattentive to the best *prima facie* evidence of their interests, should either be thought a poor representative indeed or at the limit no representative at all. Equally clearly, the representative cannot at every moment in her role simultaneously internalize and act upon the expressed desires of her constituents and, at the limit, merely repeat the cacophony of words that express these desires to the representative body within which she functions. The mere acts of interpretation, consolidation, and articulation of these desires require independence. Moreover, there will be instances where greater political and legal knowledge empower the representative to pursue the interests of her constituents more effectively than by heeding their expressed desires “to the letter.”

In the preceding, with reference to Christiano’s work, I have argued for greater participation and greater public deliberation. It is worth noting, however, that I have not argued for the balance to be struck more on the side of delegate rather than trustee. The appropriate degree of political participation and the appropriate balance to be struck regarding the delegate/trustee tension are logically distinct. Increased political participation and deliberation can, and in my view should, preserve space for representatives to act independently in appropriate circumstances. The point of a greater role for citizens in the political process is not to dissolve the role of representatives functioning as trustees but to give it coherence and to provide reasons for some occasions, but not others, to fall within their independent jurisdiction. Participation and deliberation can (ideally) refine the interests of constituents and develop their political capacities, including their capacity to articulate their interests and concerns to representatives. In turn, political representatives would know their constituencies better, and could make more enlightened determinations regarding what is important to them, when their

priorities are or are not consistent, or when they seem out of character and are likely the result of being swayed by demagogues. With this increased knowledge political representatives could more ably negotiate the difficult balance between heeding mandates and making decisions independently. Another welcome consequence of more deliberation, already mentioned above, would be increased political competence of an electorate, and this might in turn justify an expanded domain over which mandates given by the people would appropriately hold sway. Even with significant progress in this direction, however, the representative as trustee will remain essential as a disinterested arbiter between citizens without a shared conception of the good life.

V. Deliberation in the Context of Political Violence

The foregoing examples have all presupposed developed political structures, whether denying or radically limiting the role of political representation within them (as with Rousseau and in turn the libertarians), largely relegating representation to a role of mediation (as with Schumpeter and Dahl), or developing a robust role for political representation but limiting the role of participation within it (as with Christiano). It is also instructive, however, to consider circumstances of very limited political structure and the role representation plays (or fails to play) there.¹³² In what follows, I focus specifically upon representation in the context of substate political violence, as this special case brings a number of salient issues concerning participation and deliberation, and the role they play in authorizing acts to light. The representative status of actors—the degree to which they can be reasonably thought to act on some group’s behalf—has been appealed to as a criterion for justifying (or failing to justify) their resort to the use of force.

¹³² The example of NGOs briefly discussed in chapter 1 is also relevant in this regard.

Considerations along these lines thus bear upon the nature of obligations those in representative roles have and suggest limits upon the sorts of actions that can reasonably be thought to be done in the name of those ostensibly represented.

Scholars of just war theory and political violence more generally have long been at pains to provide criteria for permissible and impermissible uses of force, and within this practice a great deal has been written with the intent of adequately defining terrorism and differentiating it from the “collateral damage” of conventional war.¹³³ An account relevant to my subject here makes a moral distinction between terrorism and collateral damage based upon the role representation plays in each. According to this account, individuals or groups cannot justifiably engage in political violence if they lack “representative authority” to justify their actions. Representative authority describes “...adequate license for acting on the behalf of a people through their approval.”¹³⁴ Representative authority does not require state membership and manifests a kind of moral authority derived from the fact that contemplated actions have been scrutinized and condoned (within some threshold) by a “people” on behalf of whom these actions are to be carried out. McPherson ultimately argues that states will typically have a clear advantage in this regard, given their more robust political structures and, ideally, democratic procedures manifested through these structures. His larger point, however, is that representative authority, and not state structures themselves, are doing the justificatory work.

This argument is buttressed by the observation that a number of non-state actors engaging in political violence do as a matter of fact claim to be acting on the behalf of a (dubiously) large group of people: The “People’s Will” envisioned and described themselves as liberators of all

¹³³ See, e.g., Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic, 2015.

¹³⁴ McPherson, Lionel K. "Is Terrorism Distinctively Wrong?" *Ethics* 117.3 (2007): 541.

Russian people from the tyranny of Alexander;¹³⁵ al-Qaeda and ISIS operatives frequently take credit (accurately or otherwise) for violent acts that they claimed to have performed on behalf of “all Muslims”; Anders Behring Breivik, the lone gunman responsible for over 90 deaths in Norway in July, 2011, claimed, at intervals, to be acting for “Norway” and “to save Europe from a Muslim takeover.”¹³⁶ Thus terrorists not acting as members of a state often appeal to a notion of representative authority themselves in order to justify their actions. It does not follow from this, of course, that even if they possessed the relevant representative authority, it would actually justify the particular acts in question without further criteria—such as that of just cause, preeminently—being met. Rather, representative authority is, in this account, a necessary though not sufficient condition for political violence being justified. McPherson thus makes representative authority morally relevant to an analysis of terrorism. That the autonomy of a people is significantly bound up with its will being carried out by actors who claim to act on their behalf—to represent them—suggests that there is a moral difference between violence undertaken by a group that possesses RA and other groups or individuals who do not.

While I do not evaluate this provocative line of argument in any depth here, it is important to see that for it to succeed, McPherson would need to make a compelling case not only that terrorists lack RA but also that state (or other) actors possess it, specifically with regard to their use of force. Indeed, only very specific, special kinds of states could in principal have RA in this way, namely those with substantial democratic control of their armed forces.

McPherson expresses his awareness of this worry and offers a partial response as follows:

¹³⁵ See Matthew Carr, *The Infernal Machine: A History of Terrorism*, The New Press, New York, NY (2006): “Though they claimed to express the will of the population as a whole, their use of violence was a form of political warfare by a minority acting *on behalf of* an absent majority” (15, emphasis original).

¹³⁶ *The Guardian*: <http://www.guardian.co.uk/world/2011/jul/25/anders-behring-breivik-terror-cells?intcmp=239>, accessed 12/30/2015.

In the ideal scenario, a democratic state functions with a considerable degree of control by its people and transparency regarding political processes. This provides no guarantee that political decisions will be substantively just. Nor am I suggesting that the ideal scenario of decision making in democratic states is closely approximated in real-world scenarios. There are no official referenda about decisions to go to war, let alone about how a war is fought, and political leaders can shape public opinion through selective dissemination of information and appeals to national interest that have a chilling effect on public debate. Yet political representatives in a democracy are under pressure from their constituents to justify going to war and to maintain support for a war that is already under way. Reasonable institutional procedures can provide checks and balances on the exercise of political power, presumably with a tendency to yield political decisions that are not egregiously unjust.¹³⁷

The argument to the effect that *in principle* robust democratic arrangements could manifest RA in a way unlikely to be available to small groups acting on their own, and that this is a significant indictment of violence used by these groups, is well-taken: “Political violence by non-state actors is objectionable when they employ it on their own initiative, so that their political goals, their violent methods, and, ultimately, their claim to rightful use of force do not go through any process of relevant public review and endorsement.”¹³⁸ Whether such “public review and endorsement” would be sufficient to make collateral damage caused in the course of conventional war less bad than deaths caused by terrorism is a further question I do not pursue here.¹³⁹

The relevant questions are *whether* political representatives in a democracy are sufficiently “under pressure from their constituents to justify going to war” and, non-equivalently, *whether* “their claim to rightful use of force...” goes through a sufficient “process of relevant public review and endorsement”—a stronger claim. For this to be the case, a

¹³⁷ McPherson, "Is Terrorism Distinctively Wrong?" 541.

¹³⁸ *Ibid.*, 542.

¹³⁹ While the absence of RA is certainly a moral strike against terrorists, it might be thought that so-called first world militaries have a greater burden of responsibility given their capacities. It is also noteworthy that the ability to garner RA is highly contingent, so that its absence might be the result of a lack of infrastructure and organization rather than a consequence that the cause being fought for would not be broadly supported.

moderately well-informed, politically engaged electorate is required. To authentically possess representative authority with respect to the use of force, the decision to resort to violence could only emerge through thoroughgoing deliberation—overcoming the “chilling effect on public debate” produced by nationalistic sentiment so often present in the political atmosphere surrounding conflict—among the citizens on behalf of whom violence will be enacted. Indeed, it is difficult to specify the sorts of knowledge and wherewithal an electorate should be thought to have in order for them to be capable of consenting to the performance of political violence in their name. This is precisely what is required for their autonomy to be sufficiently regarded by political actors, however.

It is noteworthy in this regard that the assumption of dubiously strong representative authority has been enlisted by those attempting to justify violence *against* those having representative authority. In his “Letter to the American People,” Osama Bin Laden argues that US claims to being a free democracy wherein policy is determined by the people impugns the innocence of civilians—and therefore their right not to be targeted—who support and finance strikes in Afghanistan and, by Israeli proxy, Palestine.¹⁴⁰ While there are several other problems with this inference—proportionality is left entirely out of account,¹⁴¹ and al-Qaeda profoundly lacks just the sort of representative authority under discussion, so even if it were the case that targeting (culpable) civilians could be justified, al Qaeda would not be justified in targeting them—it also seems clear that the people’s control over the resort to war does not approach the threshold that would be required for them to become liable to attack. The question of when, if ever, unarmed civilians could be sufficiently culpable to be targeted is beyond the scope of my arguments here. The takeaway for my purposes is instead that careful consideration of the resort

¹⁴⁰ <http://www.theguardian.com/world/2002/nov/24/theobserver>. Accessed 1/1/16.

¹⁴¹ See McMahan, Jeff. *Killing in War*. Oxford: Clarendon, 2009, 232-4.

to political violence puts into sharp relief the frequent absence of representative authority necessary to justify its use, not only by non-state actors but also by states, if typically to a lesser degree.

In the contemplation of resorting to force, political representatives once again have to strike the challenging balance between delegation and trusteeship, and in the contemplation of political violence striking such a balance occurs within the context of some of the greatest moral hazards human beings can face. In this context, the previously expressed concerns regarding the treatment of societal aims but not means as within the jurisdiction of the citizenry re-emerge with renewed urgency. For even supposing that it were perfectly clear what sorts of foreign policy resulted in greater national security, leaving only the specification of national security as an aim of society and deeming the means by which this goal is pursued to be outside the realm appropriate to deliberation could not be justified. To do so would without argument either frame the interests of citizens as narrowly nationalistic or assume that citizens are not competent to contribute to such decision-making.¹⁴² I return later to the specific challenges relating to acts of violence and other elements of foreign policy committed “in the name of” a constituency in chapter 4. Here it will suffice to observe that considering the history of political violence that has failed to sufficiently regard and consult the constituency on whose behalf it was purportedly committed, representative authority is best viewed as a seldom reached ideal. As a generalization regarding political violence and other significant aspects of foreign policy, it remains the case that participation and deliberation are least present and effective where they are needed most.

¹⁴² These points are readily applicable to the current global refugee crisis resulting from the Syrian conflict (and others). The determination of how many refugees the United States has been willing to accept (woefully few) and what other sorts of assistance the United States is willing to offer are high-level political and military decisions with profound consequences for citizens (to say nothing of the refugees) and about which they have scarce influence. See Ignatieff, Michael. “The Refugees and the New War,” *The New York Review of Books*, Dec. 15, 2015, <http://www.nybooks.com/articles/2015/12/17/refugees-and-new-war/> accessed 2/16/2016.

The intersection of democratic theory and foreign affairs raises a difficult set of questions for political representatives. In this chapter I have emphasized the importance of citizen participation and deliberation and concluded by emphasizing their role as a check upon representative trusteeship in this domain. I have further suggested, in a preliminary way, how human rights should inform and constrain foreign policy, whether this policy arises primarily by mandate or by trusteeship—a topic that I take up in more depth in the final chapter. What has thus far been left out of account is the relation that political representatives bear toward those whom they do not represent but whose lives are significantly affected by the acts and decisions of their representatives. It is to this complex set of ideas I turn next in chapter 3.

CHAPTER 3:

Obligations and Duties, Partial and Impartial

I. Introduction

Political representatives have specific obligations to those they represent, but are also constrained in unique ways by general or “impartial” duties, some of which are enhanced as a consequence of the roles they occupy. Distinguishing the basis of partial obligations from the grounding of impartial duties offers insight into the normative dimensions of political representation. Importantly, however, the partial and impartial demands upon political representatives bear a complex relation to one another. In what follows I argue that the power and influence of political representatives heighten what is demanded of them by general duties. Further, while partiality to constituents can be variously justified, in the context of political representation it can only be justified by simultaneously undertaking a (general) duty to uphold (and not to undermine) frameworks that are required for representation to function. Justified partiality thus requires respect for the higher order impartiality needed for political representation to endure—a kind of consistency argument—and the promotion of representational forms that are efficacious—a pragmatic argument.

These additional constraints and demands are further implications of arguments made in chapter 1: Because of the promissory relation introduced by the representative/represented dynamic and the relation of interests to this dynamic, appropriate regard for the interests of the represented is partially constitutive of political representation. I argue, however, that these interests are not authentically regarded if their pursuit entails compromising the interests of others beyond a certain threshold. This follows from the relation between general duties and

interests, an argument for which can be sketched as follows. General duties, as traditionally conceived, obtain for all persons and are owed to all persons. They thus form an important part of a baseline morality. It is beyond the scope of my arguments here to defend an account of this baseline morality, but I take it that the acceptance of certain basic moral principles is a preferable alternative—though perhaps not the only one—to moral skepticism. I will also assume, but will not argue here, that the acknowledgment of moral principles itself generates a kind of moral motivation. This may sound like a conceptual jump in abstraction, but I suspect something like it is required for most understandings of morality. If one attributes moral gravity to a principle of promise-keeping, for example, this would seem to provide a *prima facie* reason to not to break promises.

If I have reasons to uphold general duties, then, and if having reasons to do or to want certain things is a reasonable way of framing interests, performing my general duties is among my interests. As general duties encompass, at a minimum, the preservation of life, dignity, and the basic welfare of others—concerns within almost any account of human rights—it follows that all persons have an interest in the well-being of others. Political representatives are thus required to regard the interests of non-constituents for two reasons: first, because of the general duties belonging to political representatives that they themselves owe to all persons; second, because an obligation to advocate for the interests of constituents encompasses a commitment to the interests of non-constituents through the general duties of constituents. These claims have implications for local, national, and international governmental structures with regard to the sorts of actions in which political representatives can justifiably engage.

Before proceeding, a clarification regarding terminology is in order.¹⁴³ Following traditional usage, I take “general duties”—treated here as equivalent to “natural duties”—to be those that one has toward any human being whatever, regardless of place or circumstance, and “special duties” to obtain in contexts where we have reason to believe something more or different from these general duties hold—the cases of family and country have often been treated as paradigmatic, though I characterize such special duties as contingent and ultimately defeasible. “Obligation” as used here, unlike either general or special duties, requires some activity on the part of the holder of obligations. Paradigmatically, voluntary contracts, promises (or “covenants”), and perhaps certain tacit agreements are the ground for such obligations. As I have argued in chapter 1, however, obligations can sometimes arise as a consequence of voluntarily inhabiting a role with justifiable expectations of performance attached to it, particularly if the expectations are of such a nature to justify the implication of tacit agreement and thereby introduce a promissory context.

In these particular cases, the relation between duties, which obtain regardless of one’s choosing them, and obligations, requiring a degree of voluntarism, will often be complex, as entering into obligatory contexts might change the relation in which one stands to duties. Because the activities of those in positions of power have a greater than normal effect on the lives of others, the obligatory context they inhabit (as a consequence of voluntarily taking on that role) often magnifies their general duties: a head of state has obligations to her citizens but is also in a highly charged position with regard to upholding or failing to uphold her general duties, given the extent to which the lives of non-citizens are also affected by her decisions. Political representatives who are not also commanders-in-chief of armed forces, for example, typically

¹⁴³ The following account roughly follows that of Rawls: Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap of Harvard UP, 1971, 98-9.

possess (degrees of) the relevant sorts of power nonetheless, as their activities in the role of representative influence not only the chances of constituents' interests being realized, but also the integrity of representational practices and, if less directly, the welfare of those whom they do not represent but are affected by policy decisions nonetheless.¹⁴⁴

II. The Distinctness of Obligations and Duties for Political Representatives

It has often been thought that there is a tension between universalist and particularist moral demands. The so-called special duties of particularism are often thought to require justification because they appear *prima facie* at odds with the general duties of universalism familiar in different forms from both utilitarian and Kantian traditions.¹⁴⁵ Whether understood as exceptions to general duties or somehow as derivative of them, the acknowledgment of particularist obligations and special duties call for explanation and need to be situated within a moral framework.¹⁴⁶ Political representatives are faced with this tension in unique ways. In addition to the obligations they have to those they represent directly, certain special and general duties obtain for them in especially salient and elevated ways.

¹⁴⁴The driver of a vehicle is responsible not only for the safety of her passengers but also for the safety of other drivers on the road at that time. Indeed, many roles we occupy task us with responsibilities, obligations, and duties of varying weight. The role of political representative is a special case.

¹⁴⁵ See Goodin, "What Is So Special about Our Fellow Countrymen?" 664-5. I will say little here about utilitarianism, Kantianism, or other major strands of moral theory, and their invocation here should not, of course, suggest that these are unproblematic or are to be accepted wholesale. Only in chapter 4, in my appeal to human rights theory, do I offer some preliminary comments regarding moral systems and, in turn, potentially fertile moral principles. Here I simply assume, without argument, that there are general and special duties in the way other theorists rely upon the presupposition of "external moral principles," and I take it that these can be fruitfully analyzed as features of an account defined, ultimately, by contrast to moral skepticism. Even if the use of the terms "obligations" and "duties" are objected to on the ground that they are out of step with contemporary moral psychology, a case paralleling my account of partial and impartial regard could be made in the language of "in groups" and "out groups," though I do not pursue such a task here. In any case, theorists who take such a line often appeal ultimately to long-existing moral traditions and to utilitarianism in particular. See Greene, Joshua David. *Moral Tribes. Emotion, Reason, and the Gap between Us and Them*. New York: Penguin, 2013.

¹⁴⁶ For a useful account of some prominent interpretations of this tension, see Almond, Brenda. "Reasonable Partiality in Professional Relationships." *Ethical Theory and Moral Practice* 8.1/2, Papers Presented at a Conference on Reasonable Partiality, (Amsterdam, October 2003) (2005): 155-68. JSTOR. Web. 05 Mar. 2015.

With these distinctions and arguments in hand, I further argue that there is a kind of limited normative continuity from legal (substate) representation to domestic representation and then to representation in the international domain. My aim in doing so is to stoke the intuition that the representation of persons has impartiality, understood in a certain way, as a built-in constraint grounded by general duties. Impartiality is not, of course, the only relevant constraint, and there are other moral dimensions to representation,¹⁴⁷ Nonetheless, I argue that if partiality on the part of political representatives is to be justified, a simultaneous regard for the impartiality of the relevant procedures and frameworks is an important and frequently underappreciated constraint, the recognition of which would signal an advance in our political concepts. If I am correct, political representatives have a *prima facie* obligation to respect—and refrain from actions that would undermine—representation generally, or structures that are necessary for representation. I then offer preliminary arguments showing that the promotion of democratic norms is among the principal obligations of political representation, as the upholding of these norms is required for representation to be efficacious.

I begin with a sketch of representation in three distinct circumstances by way of introducing the consistency argument.

1. THREE CASES

Though it is correct to say that the prosecutor in a US domestic legal trial is in one sense rightly partial to a plaintiff, and a defense attorney is rightly partial to a defendant, the practice of a trial taken as a whole is meant to realize impartiality, perhaps in this context equivalent to a kind of fairness: That is, the legal process within which both attorneys operate is intended to be impartial

¹⁴⁷ Chapter 4 explores the relationship between political representation and human rights theory.

between defendant and plaintiff, so that argumentation and the evaluation of evidence as opposed to mere inclination decide the day. The representational obligations of both attorneys include acting in a partial way in the sense of withholding their own judgments about guilt or innocence (or perhaps making positive assumptions about their clients) and serving the interests of their respective clients to the best of their abilities, but all with the background assumption of an overarching impartiality manifested in the legal system.

To be sure, it is generally not taken to be the responsibility of individual lawyers to ensure the fairness of the legal system; equally clearly, however, lawyers and others involved in the legal process are required to abide by parameters so as not to compromise the integrity of the system. It is in part for this reason that—again, within the US legal court system—if failures of due process can be demonstrated, the case might be thrown out; it is also for this reason that, if the defense attorney learns that the jury is made up of the client’s “cousins” or has been paid off, etc., she should feel hesitant to participate.¹⁴⁸ My claim is that the partiality the defense attorney affords her client requires justification that cannot simply be conferred by “doing her job.”¹⁴⁹ When she is justified in affording her client partiality, that justification must be grounded in and constrained by the fairness of the legal practice. If the relevant procedures are insufficiently

¹⁴⁸ Some uphold the justified partiality of a lawyer in circumstances where she is defending one she “knows” to be guilty, but I take a central feature of the adversarial US trial process to be the acknowledgment of individual fallibility. Jury decisions are meant to embody impartiality/fairness more reliably than individual beliefs of attorneys regarding guilt or innocence. See Almond, “Reasonable Partiality in Professional Relationships,” *Ibid.*, 164; See Estlund’s “Jury Analogy” in his *Democratic Authority: A Philosophical Framework*. Princeton, NJ: Princeton UP, 2008, for a balanced review of “the wisdom of numbers” and its pitfalls. If the defense attorney actually (believes she) witnessed her client commit the crime for which he is on trial in broad daylight—if she deems the innocence of her client to be something that she is incapable of defending—it seems the correct course of action would rather be for her to recuse herself.

¹⁴⁹ See Applbaum, “Are Lawyers Liars?” in *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*.

impartial overall, the justification for her partiality in representing her client is significantly undermined.¹⁵⁰

Though not often framed in these terms, the point is not intended to be controversial. Consider the well-known show trials of supposed “capitalists” by those colluding with Joseph Stalin after his meteoric rise to power. When there was anyone occupying the role of advocate for the accused, they were often woefully inconsequential or, more commonly, were happy to be ineffectual in defending the subject of Stalin’s ire.¹⁵¹ An intuitive reason for not taking the outcomes of such proceedings seriously—and for labeling them “show trials”—is that those on trial for their lives were not being represented. The deliberate absence of impartiality in these trials should be seen as undermining the (justification for) partiality of the prosecution, in addition to impugning the disingenuous advocacy of those responsible for defense.

In a related way, the International Criminal Court has been criticized for manifesting biases that track the preoccupations of the UN Security Council (which in turn is well known for disproportionately tracking the interests of its most powerful member states), thus potentially drawing the legitimacy of the International Criminal Court into question. Legitimate international justice, the thought goes, requires independence from political will.¹⁵² While representation as it occurs in the International Criminal Court differs substantially from that of a US domestic trial setting, the relevant difficulty is the same: failures of impartiality undermine the legitimacy of the decision-making apparatus involved and the legitimacy of particular decisions handed down by it—and in the case of the International Criminal Court, additionally

¹⁵⁰ It does not follow from this, of course, that a given lawyer or representative understands or acknowledges these obligations; indeed, a substantial conclusion of my argument is that in circumstances of representation there are often little-recognized obligations that nonetheless obtain.

¹⁵¹ See Judt, Tony, “The Coming Cold War,” in *Postwar: A History of Europe since 1945*. New York: Penguin, 2005.

¹⁵² Aloisi, Rosa, “A Tale of Two Institutions: The United Nations Security Council and the International Criminal Court,” *International Criminal Law Review*, vol. 13:1, 2103, 147-68.

the legitimacy of decisions resulting in some but not other cases being brought before it.¹⁵³ The wider point, beyond domestic or international criminal trials, is that when the impartiality of the relevant representative structures is insufficiently regarded, this impugns representation within these structures and draws into question decisions made there.

Aspects of domestic political representation, for all its many and important differences from (domestic or international) legal contexts, can be conceptualized as sharing certain normative features. A representative or representative body is justifiably partial to a given constituency and has certain fiduciary obligations to it (and must be so and must have such obligations to uphold its mandate and be sufficiently responsive to those represented). The justification for such partiality, however, should again be seen as grounded in overarching impartiality being realized in the governing structures as a whole. Consciously pursuing (some of) the interests of one's constituency in a way that undermines the overall framework where the interests of anyone at all can be represented and pursued flouts a principal obligation of representatives.

The actions of several senators faced with difficult choices after the passage of Franklin Delano Roosevelt's "New Deal" legislation illustrate the normative stakes I have in mind here. Given his own tremendous popularity, and a wide Democratic majority in both the Senate and the House of Representatives, Roosevelt attempted to further press his advantage by restructuring the Supreme Court in his favor, particularly as there were seated justices who had opposed New Deal legislation. Initially, support was garnered in familiar ways—Senator Logan of Kentucky, who was dubious about the restructuring, was mollified with guarantees for well-

¹⁵³ Ibid. I discuss these issues further in chapter 4.

funded flood control projects demanded by constituents in his home state—but as deliberation went on for weeks, the mood shifted.¹⁵⁴

A growing number of senators “...began to believe that the issue was too big for them to be influenced by customary political considerations.”¹⁵⁵ Despite being keenly aware of Executive control over sugar bills—hence over significant interests in his sugar beet state of Wyoming—Senator Mahoney came to express his opposition to the restructuring “...no matter what the political cost.”¹⁵⁶ The notion of “customary political considerations” here can be variously interpreted, but clearly a number of senators risked their political careers, with little hope of any immediate favorable outcome for themselves, in order to uphold the values they accorded to the balance of power manifested in the Constitution. To have done otherwise—to have accepted the offered benefits for one’s constituency in these circumstances—would have been to fall short of a political representative’s duty to promote the integrity of representation generally. It is worth noting again that the moral requirement being pointed to has obligatory features, as it is consequent to the voluntary inhabiting of the role of political representative, but the moral requirement also contains elements of duty, given that misconduct here would threaten the opportunity of even those that the representative does not directly represent, as well as the viability of the structure of representation as a whole.

Perhaps the senator from Wyoming in this example is to be credited with enough foresight to work for the balance of power on consequentialist grounds, believing that the ultimate welfare (interest) of his constituency is made most secure in this way. If so there perhaps would no longer be a conflict between pursuing the interests of his constituency and

¹⁵⁴ Robert A. Caro, *The Years of Lyndon Johnson: Master of the Senate (v.3)*. Knopf: New York, 2002. 56-65.

¹⁵⁵ *Ibid.*, 61.

¹⁵⁶ *Ibid.*, 61.

respecting the wider representational structures within which he is an actor. Note, however, that this would very likely have required going against the stated desires of his constituency, who might simply prefer to receive the injection of federal funds. Such a case illustrates one way in which a mandate from a constituency might conflict with the justified independent judgment of a representative. The domain of judgment of representatives will thus—as is well known—often involve balancing difficult considerations of mandate and independence (or equivalently, for my purposes, acting as delegate and acting as trustee). To this extent, there is merit in the notion that the representative owes not only his “industry” but also his considered judgment to a constituency, and that sacrificing it entirely to popular opinion would not be to serve them.¹⁵⁷

The case being considered thus suggests that one parameter of the obligation of the representative is to accommodate the mandate given by one’s constituency only to the extent that it does not threaten the integrity of the framework required for representation to exist and flourish. Particular representational frameworks are not sacrosanct, however; the absence (and undesirability) of a Burkean “natural aristocracy” implies that at a certain threshold any such requirement to uphold representative frameworks is defeasible.¹⁵⁸ Though I say little about justified revolution or legitimate secession, the mere existence of a representational framework—particularly one that does not in fact provide sufficient representation—cannot on its own ground an obligation to uphold it.¹⁵⁹

It remains conceivable, however, that duty must at times override obligation, particularly when upholding obligations to constituents imperils the human rights of non-constituents. The

¹⁵⁷ Burke, Edmund. “Speech to the Electors of Bristol,” in *The Works of the Right Honourable Edmund Burke*. 6 vols. London: Henry G. Bohn, 1854—56: 1:446--48

¹⁵⁸ Burke, Edmund. *Reflections on the Revolution in France: 1968*. Ed. Charles Posner. Harmondsworth: Penguin, 1970.

¹⁵⁹ See Buchanan, Allen E. *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford: Oxford UP, 2004.

tension between the demands of constituents and non-constituents might be dissolved, in principle, by simply stipulating that the interests of others are equivalent to constituent interests. In this case, a political representative's obligations to citizens could not come into conflict with her duties to non-citizens. Such an approach, however, leaves no room for the prioritization of citizens' interests over the interests of distant others, and would overburden citizens, framing too many of their interests as other-regarding to an unreasonable degree. Although I have argued that the fundamental interests—here understood as human rights—of all persons figure among the interest of any constituency because of their general duties, it does not follow from this that conflicts between the interests of constituents and non-constituents cannot arise. Nor does it follow that political representatives have moral demands of equal weight imposed by their obligations to constituents and duties to non-constituents. Respect for human rights thus serves as the threshold beyond which the interests of a constituency that do compete with the interests of non-citizens cannot be pursued without injustice.

It is noteworthy, however, that examples of inadequate regard for the interests of non-citizens—those outside a political representative's constituency—that fall well short of a human rights violation might still be both morally depraved and understood as poor political representation when general duties are taken into consideration. A politician or a candidate running for major office who denigrates entire cultures with his comments does his constituency (or potential constituency) a great disservice by unnecessarily fomenting hostility.¹⁶⁰ So while human rights set crucial limits to political representation, they signal an outer limit in the criteria for evaluating the activity of political representatives. I return to the challenging task of

¹⁶⁰ Widely circulated comments of Donald Trump during his candidacy for the US presidency regarding Muslims and Mexicans arguably undermines—invites new threats to—the security of those he is running for the right to represent and certainly paints this constituency in a poor light.

analyzing obligations and duties specifically regarding human rights in chapter 4. Here it will suffice to observe that the trusteeship required of a political representative includes the right kind and magnitude of regard for the harms that her actions will visit upon non-constituents, as well as the related moral hazards her actions will visit upon her constituency. This is most obvious in cases such as “unjust wars” being waged “in the name” of a people,¹⁶¹ but it is also true of less dramatic and in many ways more insidious cases as well.

One implication of the forgoing is that if a senator were to make political bargains that benefitted her constituency but excluded others from being represented, or damaged existing representative structures, she would have failed to uphold her political duty even if her actions were “selfless” in the relevant sense. Acting on behalf of one’s constituency and advocating for their (immediate) interests might fulfill one obligation belonging to the political representative, whether it brings her great unpopularity or cements her political career. However, the representative in question might simultaneously fail the duty to appropriately promote and not to undermine representation more generally. Such examples are highly specific in many of their details, but they harmonize with the view that the justification for partiality toward constituents is threatened by the higher order failure to act impartially.

Representation in the domain of international relations, despite its very different structure, is amenable to a parallel analysis regarding its normative features. Representatives of a given state or other political entity are justified in their being partial to national interests to the extent that their actions are constrained by, *inter alia*, overarching impartiality realized at the level of the procedures in which they participate. Should the state’s representative realize, for example, that international trade policy being considered, while beneficial to her country, was to

¹⁶¹ See Beerbohm, Eric Anthony. *In Our Name: The Ethics of Democracy*. Princeton, NJ: Princeton UP, 2012.

be pushed through while suppressing the votes (or the equivalent) of the countries that it would affect most, she should be dubious about the role she plays in securing its passage. The representative of the state would be wrong to pursue national interests in a manner that excluded the possibility of similar pursuit by (the representatives of) other nation-states.

The delegate/trustee tension reemerges at the international level with greater force, for at least two distinct reasons: first, the likely disparity of relevant knowledge between representatives and those they represent is very high—higher even than that internal to a large nation-state, and several orders of magnitude higher than the disparities between a local dairyman’s union and their chosen representative. The range and complexity of global issues with which representatives in the international domain must contend suggest that if they are remotely competent, their relevant knowledge base will far outstrip that of average citizens from a given nation-state. Second, while there is plenty of entrenched partisanship within many nations (the contemporary United States being exemplary in this regard), the divisions between nation-states are often deeper, in many cases (though by no means all) are older, and have to a much greater extent been historically condoned and enshrined. The disdain with which early Greeks referred to *hoi barbaroi* has long since been cast as politically incorrect but analogous nationalistic sentiment continues to abound, sometimes appearing under the banner of “Realism.” Those responsible for international policymaking thus face challenges of cultural difference and historical antagonisms significantly greater than anything encountered in domestic contexts. Far from weakening the general duties of such representatives, however, their enhanced trusteeship should instead be seen as intensifying such duties.

There is, then, *prima facie* motivation for the balance to be struck with greater weight on trusteeship in this context. This recognition and consequent affording of power also, however,

introduce familiar worries of domination:¹⁶² greater power in the hands of political representatives—and less in the hands of those they represent—not only offers the potential of greater damage being inflicted in terms of detrimental policy decisions being made, but threatens to leave the interests of constituents behind.

Two points can be made in response to these concerns. First, as I have already argued, a substantial trustee role for representatives does not entail limiting participation or public deliberation. Because deliberation provides the opportunity to better understand when trusteeship is appropriate and when it is not, the precise extent to which a representative goes beyond her mandate and the justification for this might be more readily comprehended when adequate deliberation occurs. Political representatives are also obliged, as I have argued, to explain the motivation for policy decisions, particularly when these decisions substantially depart from the mandate representatives are given by their constituencies. A more politically engaged citizenry does not entirely obviate problems associated with trusteeship, but can provide important checks upon its use and extent.

Second, trusteeship in foreign policy as in domestic policy is better seen as an extension of a mandate rather than its counterpoint. Because the central obligation of political representatives is to pursue the interests of constituents whether acting principally as delegate or trustee—in most circumstances, of course, their activities will be a composite of these—appropriate occasions for increased trusteeship emerge when their mandate offers little to go on, is cacophonous and difficult to interpret, or is at odds with constraints set by human rights. In short, while I have suggested that political activity in the international domain occasions a greater role for trusteeship, it would be misguided to infer from this that political representatives'

¹⁶² See Pettit, Philip. *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon, 1997, further discussed below.

obligations to their constituents are somehow lessened in these circumstances. Taken generally, of course, this point is central to my overall argument: the power wielded by political representatives imposes burdens upon them, including duties and obligations, in unique ways. The foregoing considerations further suggest that—for contingent reasons—political representatives in the international domain bear the burden of these moral demands especially keenly, given the profound consequences of unjust or simply bad policy decisions at this level.

For good reason, it is often the *effects* of such inequitable or otherwise detrimental policymaking in the international domain that receive attention. Thomas Pogge's well-known indictment of the WTO for enshrining inequalities at the international level remains a compelling case.¹⁶³ A subtler point is that deliberate exclusion of other state or substate representatives from the processes of representation and consequent policymaking may render those very processes conceptually akin to the above-mentioned "show trials." As I have argued above, show trials are best seen as not constituting legal proceedings at all but as mere simulacra of legal proceedings, in part because there is no legal representation taking place. In parallel fashion, international policymaking procedures that exclude—in sufficient numbers and to a sufficient degree—those whose interests are explicitly understood to be influenced by the proceedings in question may not meet a threshold needed to count as political representation at all. More typically, those satisfying the conceptual requirements to be considered political representatives can be criticized for construing the interests of those they represent too narrowly by focusing upon their (partial) obligations and insufficiently regarding their (impartial) duties to outsiders and the representative structures essential to them.

¹⁶³ Pogge, Thomas. *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*. Cambridge: Polity, 2002. Discussed further below.

The examples given above of representation in a US court of law, within domestic governance, and in foreign affairs contain important disanalogies. Most glaring, perhaps, is the extent to which a courtroom trial constitutes genuinely adversarial circumstances, while it is typical to ascribe common national interests to different constituencies within particular nations. Oversimplifying, the defense attorney might see her task solely as preventing her client from being charged with a crime. A member of the US House of Representatives, however, while given a mandate by a constituency that might compete with other mandates given to other representatives by other constituencies, would be badly remiss in thinking that winning such competitions was the ultimate purpose of his activity. Further, in meting out punishments for trespasses of law, a criminal court's concern for retribution, deterrence, reform, or some composite of these might seem far removed from the representative's task of influencing national policy—and, *a fortiori*, international policy—more broadly.

These differences should not be minimized, but the examples of the “thrown” jury in the legal context, the “bought” passage of a bill in the context of domestic representation, and forcibly imposed policy in the international arena are intended to imply that at a quite general level they share one crucial feature: In each case the representative fails to uphold the impartiality required for the legitimate functioning of the wider structural apparatus within which she is operating. Although the nature of obligations the representative owes to her client or constituent varies significantly across the three cases, a duty to act so as to preserve the integrity of representation is held in common. My intent is thus not to model the political upon the legal, but to show that both can offer insight into our understanding of representation and its normative dimensions.

The extent to which international relations are intrinsically adversarial or should be viewed as such is, of course, a question of much debate, and one that will become central to my inquiry here. In suggesting that representation at the international level does share important normative features with domestic representation, I offer something of a promissory note to show that certain characteristics of international relations that are treated as adversarial cannot be normatively supported as such. Duties and obligations associated with representation set limits to adversarial conduct in the international domain just as they do in the domestic domain. Arguments to this end must be postponed until my discussion of human rights in chapter 4. At present, I will further examine partiality in one of its most pervasive guises and argue for specific constraints that general duties impose upon it.

III. Patriotism: a Special Case of Special Duties?

It might be thought that the discussion thus far has failed to take account of a special duty belonging to domestic political representatives, and one that rightly inclines them to be more partial to their constituents than I have suggested. If it could be shown that a strong form of patriotic duty obtains for political representatives, this might offer independent justification for shifting the balance of emphasis more in the direction of national interest. Arguments to this end would not necessarily negate concern for non-citizens and might still preserve a lesser requirement to maintain or even enhance the impartiality of overarching representative structures. They would, however, offer distinct reasons for prioritizing the interests of citizens over those of non-citizens. To explore this possibility, I begin with a brief analysis of patriotism generally and in turn analyze how it applies to political representatives.

1. PATRIOTISM WEAK & STRONG

The normatively rich notion of patriotism illustrates the contentiousness of purported obligations and duties: certain universalists have singled out patriotism as indicative of grave misunderstanding or worse,¹⁶⁴ while others with particularist commitments—and communitarians in particular—have argued for it to rank highly in the order of virtues.¹⁶⁵ I understand patriotism to include an asymmetrical commitment or set of commitments to the people and institutions of one’s “fatherland.” Clearly a great deal more could be included in even a provisional definition,¹⁶⁶ but for the present this narrow characterization suits my purposes of considering patriotism as a candidate instance of justified partiality.

Alasdair MacIntyre nicely summarizes certain difficulties for both patriotic and cosmopolitan positions.¹⁶⁷ A central—and well-known—difficulty for patriotism is to be had in justifying the above-mentioned asymmetry. It is a nontrivial task to justify greater regard for or commitment to one’s countrypersons once all the relevant contingencies are acknowledged. The contingent nature of political boundaries, who happens to reside within them at a given time, and the extent to which one does or does not benefit as a consequence of being so located make these facts problematic grounds for affording one’s countryman special treatment. The best strategies for providing such grounding appeal to particular relations between citizens and between citizens and their representatives.

¹⁶⁴ See Tolstoy, 1894, “On Patriotism,” in Tolstoy, Leo, David Stephens trans. *Government Is Violence: Essays on Anarchism and Pacifism*. London: Phoenix, 1990, where he links patriotism to the “subordination of the will,” familiar from later challenges to political obligation. See Flathman, Richard E. *The Practice of Political Authority: Authority and the Authoritative*. Chicago: U of Chicago, 1980; Pateman, Carole. *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*. Chichester: Wiley, 1979; Simmons, A. John. *Moral Principles and Political Obligations*. Princeton, NJ: Princeton UP, 1979.

¹⁶⁵ MacIntyre, Alasdair C. *After Virtue: A Study in Moral Theory*. Notre Dame, IN: U of Notre Dame, 1984.

¹⁶⁶ See Nathanson, Stephen. *Patriotism, Morality, and Peace*. Lanham, MD: Rowman & Littlefield, 1993.

¹⁶⁷ MacIntyre, *After Virtue: A Study in Moral Theory*.

On one reading of (early) Rawls, we might think that aspects of patriotism are included within the justification of political obligation, as classically understood. Since on Rawls's account a duty to obey the law, while grounded in the benefits one has received and expects to continue to receive, is ultimately owed to one's fellow citizens, there is, after all, a kind of special obligation owed to countrypersons that is not owed to outsiders.¹⁶⁸ While this strategy, if successful, would obviate many of the just-mentioned problems of contingency, other well-known difficulties remain. The most important of these challenges can be summarized as problems of voluntarism: the sorts of freedom of choice and the kind of consent needed to ground a duty to obey the law are notoriously difficult to demonstrate.¹⁶⁹ Rawls would later, of course, more carefully argue that there are further conditions upon such obligations, including at a minimum that any law one is obligated to obey must be publicly known and, at least in principle, be justifiable on the basis of public reason.¹⁷⁰

MacIntyre, however, offers no such justifications for patriotism, going so far as to say that it has no rational basis given that whatever duties we have to other human beings we have them, *ceteris paribus*, to all in the same measure. While some are tempted to claim shared origins as an exception to other things being equal, making this case turns out to be difficult. Particularly in the context of contemporary heterogeneous societies, there is both tremendous internal diversity and often significant insularity between diverse groups within a given society.

¹⁶⁸ Rawls, John. "Legal Obligation and the Duty of Fair Play," *Law and Philosophy*, ed. S. Hook: New York: New York University Press, 1964. See Simmons, A. John. "The Principle of Fair Play." *Essays on Rights and Obligations Justification and Legitimacy* (2000): 1-26.

¹⁶⁹ These and other familiar challenges to so-called Fair Play arguments are pursued in Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic, 1974; Pateman, Carole. *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*. Chichester: Wiley, 1979; Simmons, A. John. *Moral Principles and Political Obligations*. Princeton, NJ: Princeton UP, 1979; Simmons, A. John. *Justification and Legitimacy: Essays on Rights and Obligations*. Cambridge, UK: Cambridge UP, 2001.

¹⁷⁰ Rawls, John. *The Law of Peoples; With, The Idea of Public Reason Revisited*. Cambridge, MA: Harvard UP, 1999.

The requisite ethnic and cultural commonalities needed for such an argument are lacking. Indeed, their absence in pluralist societies serves as one motivation for just the sort of “fair play” arguments formulated by Rawls. Given the well-known difficulties with fair play arguments as a ground for a duty to obey the law,¹⁷¹ however, we should not expect them to fare much better as a basis for patriotism that includes an exclusionary component within it.

What then of the cosmopolitan point of view specifically as a counterpoint to patriotism? For MacIntyre, a cosmopolitan view is the only rational position in terms of moral theory, as it is demanded by consistency. He argues, however, that there are reasons to consider the merits of irrationality in this particular regard. His position appears to be in part motivated by his observation that liberal states within which aspirations to universalism are most common have nonetheless required defense by standing armies, populated by individuals possessing unquestioned patriotism, at all times—a fact that is meant to give us pause before eschewing a patriotic stance on the basis of its irrationality.¹⁷² I say little of this odd conclusion here, other than that there seems nothing in principle inconsistent about arriving at moral conclusions that challenge the political and cultural circumstances in which they were arrived at. Quite the contrary, to the extent education has had anything to do with moral progress, just such mechanisms have undoubtedly been at work. More to the point, the “irrationality” of patriotism as here employed rests upon an account of rationality understood as acknowledgment of available reasons. That is, if there were reasons to afford strangers at a distance the same moral consideration as intimates nearby, and these reasons were ignored, this would constitute irrationality. MacIntyre acknowledges there to be such reasons and thus has little ground left from which to justify patriotism.

¹⁷¹ See Simmons, *Justification and Legitimacy*, and Pateman, *The Problem of Political Obligation*.

¹⁷² MacIntyre, *After Virtue: A Study in Moral Theory*.

A more nuanced and useful consideration of patriotism is to be had in Robert Goodin, who focuses on the observation that frequently one's countrypersons are held to a higher, rather than lower, standard than non-nationals, and that compatriots can receive more, rather than less, severe treatment as a consequence of violating these standards.¹⁷³ This interesting result is ultimately explained in terms of a special relation being understood to hold between compatriots. By way of analogy, my holding a door open for a stranger is perhaps best thought of as supererogatory—whatever the stranger's view of the matter might be—while my holding the door open for my mother falls somewhere much closer to a (manifestation of a) special duty. The stranger who fails to hold the door for my mother might receive a glance askance, but my failing to do so would result in much more severe (and deserved) chastisement.

A difficulty here is that the foregoing analogy gets much of its intuitive force from an assumption of something like a conventional mother-child relationship, in which many of the obligations typically taken to belong to a mother have been upheld.¹⁷⁴ At the limit, when such a person has been “no mother at all,” it might well be argued that the relationship scarcely exists, at least in requisite form, in which case the relevant duties will be substantially lessened. The relevant questions to be asked, it seems, will once again turn on the sense of “mother” being used. I take it that in cases of surrogacy and, *a fortiori*, egg donation—i.e., cases in which one might be a mother in a strictly biological sense only, perhaps never meeting the child—any obligations or duties obtaining over and above general duties will be minimal.

¹⁷³ Goodin, "What Is So Special about Our Fellow Countrymen?" 663-86.

¹⁷⁴ The following discussion borrows significantly, with my own twists upon it, from Simmons, "The Obligations of Citizens." *Justification and Legitimacy: Essays on Rights and Obligations*, 43-64, esp. 52-55. My use of “obligation,” as opposed to duty, is deliberate in this context, based on the notion that parenthood is at least to some significant extent voluntary. This is an oversimplification and a generalization to which there will be exceptions, but it points to a distinction to which Goodin does not pay close enough attention, as I elaborate below.

In the context of patriotism, this suggests that the relation between countrypersons is required, in a certain form and up to a certain threshold, for the special duties they purportedly owe one another to obtain. As Hume long ago pithily illustrated with regard to the governing structure one finds oneself under, it will not do claim that citizens of a particular state enter into relations with compatriots voluntarily, though of course sometimes they may; the absence of alternatives to merely having particular compatriots mirrors that of Hume's man taken aboard a ship while sleeping, and, once at sea, being told he is free to leave if he likes.¹⁷⁵

For contrast, we might consider the case of the police officer and the duties and obligations that belong to her. At least as far as administering the law is concerned, the officer is indeed obliged to treat all equally. Reading a person his or her rights as they are being taken into custody is required of the officer regardless of whether the perpetrator is congenial and accommodating or insulting and vulgar, up to some particular threshold, and whatever the officer's feelings about the individual; whether she knows and likes, does not know, or knows and actively dislikes the perpetrator, this obligation remains. These considerations remind us that the relation the officer has to the person being taken into custody has no bearing on her obligations, as these are consequent to her (again, voluntarily) inhabiting an obligation-bearing role, nor to her general duties with regard to other individuals, as their generality makes renders them owed to all equally.

The challenge for explicating and justifying patriotism among citizens thus becomes apparent, as the various familiar grounds for obligations, special duties, and general duties do not neatly apply: Obligation is lacking because agreements or promises were not voluntarily entered

¹⁷⁵ Hume, David. *Essays, Moral, Political, and Literary*. Ed. Eugene F. Miller. Indianapolis: Liberty Classics, 1987.

into nor were roles to which such obligations are attached voluntarily assumed.¹⁷⁶ The kind of substantially reciprocal relations grounding special duties (as I have explained them) do not necessarily obtain, and general duties are owed to non-nationals in the same degree as they are to one's compatriots.¹⁷⁷ This interpretation leaves intact, of course, the possibility of robust patriotic sentiment based on shared geography, a sense of community, shared aspirations as a function of existing under the same political system, and the like. Any further linkages between these factors and patriotic duties or obligations, however, remain problematic.

The issue can be framed differently: two possible accounts of patriotism might be considered. In its weaker form, patriotism constitutes a shared sentiment and fits a description of when the carrying out of one's particular obligations and more general moral duties aligns with this sentiment in a thoroughgoing way. A stronger form—the one likely associated with the intuitive notion of “patriotic duty” and which would be required for the kinds of justified partiality considered in this chapter—treats patriotic duty as something above and beyond both these particular obligations and more general moral duties. As it is not clear what else could play this further grounding role, only the weaker version, which treats patriotic duties as derivative of other prior duties, can be maintained. By way of analogy, there is wide agreement that there is typically a moral requirement to obey the law, but this requirement is—arguably—best seen as obtaining not because the law has been dictated by legitimate authority or because it constitutes an authoritative command one is obliged to obey,¹⁷⁸ but because of more general moral principles. That is, in such cases there is an all-things-considered moral justification to act in

¹⁷⁶ As acknowledged by Hart; See Hart, H. L. A. "Are There Any Natural Rights?" *The Philosophical Review* 64.2 (1955): 175-91.

¹⁷⁷ See Richardson, Henry S. "Estlund's Promising Account of Democratic Authority." *Ethics* 121.2 (2011): 301-34, esp. 333-4 regarding the so-called 'particularity problem.'

¹⁷⁸ See Pateman, *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*.

accordance with law, as in the given context such action constitutes the best way of rendering one's duties to general moral principles.¹⁷⁹

Further, for it to be the case that legitimate political authority obtains, there must be at least one instance—the set cannot be empty—where one's moral duties are overridden by one's obligation to obey. As John Simmons has persuasively argued, authority cannot merely command one to act according to general moral principles and at the same time offer independent reasons for acting.¹⁸⁰ Authority framed this way would be redundant since one already has reasons to heed general moral principles in its absence. A parallel point can be made with regard to patriotism. For it to be the case that (strong) patriotic duty obtains, there must be at least one instance—the set cannot be empty—where patriotism requires other than what is already morally required. Patriotism cannot merely require one to act according to general moral principles and at the same time offer independent reasons for acting.

To be clear, according to the above explanation one will still most often have an obligation to obey the law and to follow the dictates that come from positions of authority. The point is that the source of this obligation derives not from authority *per se*, but from the fact that acting in accordance with the law will very often be the best way to uphold general moral principles. Again the parallel holds for patriotism: There will likely often be an obligation to act in patriotic ways, by supporting one's countrypersons and working to improve one's political system, for example. Any obligation to do so, however, derives not from patriotism *per se*, but from the fact that in the context of one's social and political circumstances, general moral principles are best upheld in this way.

¹⁷⁹ Simmons, A. John. "Associative Political Obligations." *Justification and Legitimacy: Essays on Rights and Obligations*, 65-92, esp. 88ff.

¹⁸⁰ *Ibid.*

It is well beyond the scope of my arguments here to fully assess the notion legitimate political authority or to engage with rigorous attempts to justify it.¹⁸¹ With regard to strong patriotic duty, however, the typical candidate notions meant to justify it cannot offer the support they are invoked to provide. In the absence of justification for the belief that strong patriotism can offer independent reasons for acting over and above reasons given by general moral principles, only the weak understanding of patriotism can be countenanced. As I shall argue next, the unavailability of patriotism as a justification for partiality limits the degree to which political representatives can privilege the interests of constituents over those of outsiders.

IV. Some Thresholds for Justified Partiality

Now a defining characteristic of political representatives, as I have explicated them and the normative dimensions of their role, is that they hold such positions voluntarily—understood in a commonsense way. Were this not the case, the promissory relation they bear their constituents would be undermined, with the result that obligations to these constituents would be significantly compromised.¹⁸² Further, in the preceding arguments I have pointed specifically to problems of voluntarism and suggested that, given its typical absence in the context of a state within which one finds herself a citizen there is limited ground for special obligation or duty. It might be thought, then, that unlike other citizens, political representatives have a certain kind of patriotic duty after all, as they have voluntarily entered into these relations that are necessarily particular in their political and cultural settings. Further, it might be worried that the invocation of

¹⁸¹ An impressive example is to be had in Estlund, David M. *Democratic Authority: A Philosophical Framework*. Princeton, NJ: Princeton UP, 2008.

¹⁸² Broadly speaking, of course, this is just to agree with Hart's argument that a kind of basic freedom is required for all promises and contracts to be valid; see Hart, H. L. A. "Are There Any Natural Rights?" *The Philosophical Review* 64.2 (1955): 175-91.

promissory relations has as a direct consequence a narrowing of concern on the part of political representatives to the interests of only those citizens they are understood to directly represent.

These concerns are largely illusory, however, for the following reasons. First, if the foregoing account of patriotism is granted, constituents are only justified in supporting its weaker non-exclusionary form. Because citizens are not justified in advocating strong patriotism, those representing these citizens cannot be required to advocate for it, justice being a constraint upon citizen mandates. Even in the context of strong nationalist sentiment, where something like strong patriotism is embraced, the “People...[have]...given to their Governors no power to do an unjust thing...for they never had such a Power in themselves.”¹⁸³ Locke, of course, had more concrete cases of “unjust things”—in particular, the prosecution of unjust wars—in mind. As an unjustified disposition, however, and one likely to have precisely the sorts of unjust consequences with which Locke was concerned, strong patriotism can appropriately be consigned to this category.

Second, as previously mentioned and as I further elaborate in the next chapter, the narrow understanding of interests typically associated with strong patriotism cannot be supported. Too much is ceded to game theory and to (certain forms of) contractualism when citizens, conceived as self-interested rational actors, are treated as necessarily in opposition to the interests of non-citizens, factors to be calculated in a zero-sum game. Not only are examples of widely shared interests demonstrable—minimally, the shared interest in a relatively stable, just, and peaceful global order, and a planet with environmental conditions conducive to long healthy lives—but also citizens of a given state have substantial interests in being perceived abroad as willing collaborators in pursuing these goals, in not having injustices committed in their names, and in

¹⁸³ Locke, John. *Two Treatises of Government*. Ed. Peter Laslett. London: Cambridge U.P., 1967, section 179, 388.

openness to enriching encounters with peoples beyond their political borders, to name a few. When interests are analyzed in this way, the distinction between partial and impartial considerations must be drawn less sharply. Far from being in unavoidable conflict, requirements for respecting impartiality that are enhanced for those acting as political representatives will at times overlap with the (partial) obligations political representatives have to their constituents.

To be sure, tension between pursuing the interests of constituents, even construing these interests broadly, and regarding the interests of outsiders will persist for the near term: The competitive nature of global capitalism, *inter alia*, instantiates such tensions at quite a fundamental level. Related and deeper concerns regarding inequality, both domestic and global, (although I cannot treat them in any depth here) are germane. As C.B. Macpherson has argued critically responding to Rawls, even a small degree of inequality can often enshrine hierarchical power relations that are detrimental to all conceptions of authentically shared governance.¹⁸⁴

While working ardently for greater global equality is a task with which it would be unreasonable to burden individual political representatives, they are constrained by consistency to act in ways that do not undermine opportunities for representation generally.

Putting this last point in this way might make the requirement sound both vague and grandiose. Two profound failures to uphold this directive—one domestic and one international example—illustrate that it need not be so, however. The United States Supreme Court ruling in *Citizens United vs. The Federal Election Commission* of September 9, 2012 effectively gave corporations the status of persons and consequently empowered them to make unlimited campaign contributions to political candidates (through “super PACS”). Writing for the dissent, Justice Stevens concluded,

¹⁸⁴ Macpherson, C. B. *The Life and times of Liberal Democracy*. Oxford: Oxford UP, 1977.

At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

A bright spot amidst this darkness is that at the time of this writing, 180 sitting members of Congress support a constitutional amendment overturning the ruling.¹⁸⁵ It is they, on the basis of the foregoing analysis, who with respect to this specific case are engaging their obligations as political representatives. Such a position is virtually required for those in representative roles tasked, as I have argued they are, with preserving the representative capacity of the system in which they function.

The well-known work of Thomas Pogge illustrates the relevance of these issues at the global scale. An important argument in his *World Poverty and Human Rights* aims at deriving a duty to bring about the restructuring of economic institutions, given their systematic contribution to and reinforcement of radical economic inequality on a global scale. Central to his argument is the claim that real-world harm is being done to the poor by the current global institutional structure, and this fact implicates those who uphold and participate in this structure, imposing a negative duty upon them (us) to desist.¹⁸⁶

While much has been written questioning the purportedly “negative” character of this duty,¹⁸⁷ a more practical and urgent criticism can be made regarding on whom such a duty falls. As Carol Gould argues, affluent individuals and powerful corporations in various nations are

¹⁸⁵ <http://united4thepeople.org/state-and-local-support-2/>

¹⁸⁶ Pogge, Thomas. *World Poverty and Human Rights*, (Cambridge, UK and Malden, MA, Polity Press, 2002).

¹⁸⁷ See, e.g., Gilabert, Pablo “The Duty to Eradicate Global Poverty: Positive or Negative?” *Ethical Theory and Moral Practice* 7 (2004): 542. See also Rowan Cruft, “Human Rights and Positive Duties,” *Ethics and International Affairs* 19:1 (2005): 29–37.

responsible for a vastly disproportionate share of the harms resulting from radical economic disparity, implying that it is an unreasonable generalization to hold “Western nations,” as does Pogge, accountable for these harms. Gould writes, “While he is right to be critical of the WTO, his focus on state actors leads to an overly narrow diagnosis of the problems with globalization and the concomitant responsibility to rectify its impacts in developing countries.”¹⁸⁸

Conditions allowing for and perpetuating severe poverty are perpetrated by large multinational corporations, financial institutions with vast resources, and political actors who enable them far more than by average individuals, and hence these prominent actors bear the brunt of the responsibility for ceasing these practices and making restitutions.¹⁸⁹ These observations emphasize that the circumstances of those on the losing side of increasing inequality—both domestically within the United States and internationally—significantly derive from specific political arrangements. The disturbing process of money infecting the political process at all levels continues to render the economically downtrodden politically marginalized, and the responsibility for reversing this trend must be seen as significantly lying with political representatives.

In summary, the central aim of this chapter has been to further explore the nature of obligations and duties belonging to political representatives, specifically with reference to what is owed to both constituents and non-constituents. I argued that, while political representatives have obligations to those they represent directly, the performance of these obligations does not occur “in a vacuum.” Representatives are the bearers of general duties themselves, and are thus responsible for the ways in which their actions and decisions affect non-constituents. More

¹⁸⁸ Carol C. Gould, “Coercion, Care, and Corporations: Omissions and Commissions in Thomas Pogge's Political Philosophy,” *Journal of Global Ethics* 3:3 (2007): 389.

¹⁸⁹ Gould, “Coercion, Care, and Corporations,” 389.

importantly, representatives have obligations to constituents, who are also the bearers of general duties; these constituents are not represented well if decisions made in their name conflict with their general duties. For these and other reasons, taking normative dimensions of political representation seriously often requires thinking globally. I next take up challenging questions regarding domestic representation in the international system, and argue for a circumspect increase in global governance.

CHAPTER 4:

Representation in the International Domain

I. Introduction

The role that political representation should play in the international domain courts controversy for a number of reasons. Preeminently, an analysis of representation in the context of interstate relations broaches long-standing debates over the status of states and the degree of their ongoing importance relative to the influence of multiplying international organizations (IOs) and in the face of accelerating globalization. It also forefronts a much discussed and related tension between sovereignty and sufficient regard for human rights and ultimately raises challenging questions about the role citizens should or should not have in international governance. While each of these subjects is vast, I focus here upon the obligations political representatives have to those who they represent in these contexts. A central theme of this chapter is that because political representatives are obligated to pursue the interests of citizens, the difficult task of interpreting these interests in increasingly globalized circumstances also substantially falls to these representatives. Even domestic political representatives cannot fulfill their obligations in the same degree of isolation that they once could, because the interests of their constituents are increasingly affected by global forces from world economic trends and climate change to forms of political violence on a global scale.¹⁹⁰ Furthermore, they cannot fulfill their (general) duties as it once was (and continues, in some quarters, to be) believed they could with little regard for outsiders by essentially denying that they have such duties.

¹⁹⁰ See Held, Virginia. "Morality, Care, and International Law." *Ethics & Global Politics* 4.3 (2011): 173-94.

The notion of legitimate political representation will also be analyzed and redefined *en route*: Although it has become a commonplace in the philosophy of international law to view the legitimacy of the international system as a function of the legitimacy of state actors within this system, I argue that the regard state actors—and their relevant representatives in particular—have for non-citizens or “outsiders” in the international system affects both their domestic and international legitimacy. This reciprocal, rather than bottom-up, account, in which justice is substantially constitutive of legitimacy, undermines a complete separation between how a government regards its constituents and how it interfaces with non-citizens, treating both sets of activities as relevant to the legitimacy of its political institutions.

It will be important for what follows to bear in mind the distinction between descriptive and prescriptive concerns in mind will be important for what follows. There is one sense in which the practical considerations of international politics might be thought ancillary to the main thrust of my arguments here. To take the example of sovereignty, the question of whether it is desirable to “move beyond” state sovereignty¹⁹¹ or instead to strengthen and more ably defend state sovereignty is to be answered in the context of this project by first and foremost choosing whichever better facilitates the advocacy of the interests of constituents, robustly construed, and thereby permits political representatives to fulfill the obligations to those they represent. If sufficient data were available or if the relevant counterfactuals were known, the answer to such a question might be better addressed only through quantitative analysis aimed at demonstrating which model better promotes interests. What such an approach would lack—or would have to presuppose—however, is an account of interests that appreciates the complexity of relations

¹⁹¹ Some take it that this move away from state sovereignty as traditionally conceived has already occurred, though it seems an open question whether these purported theoretical shifts regarding sovereignty have been mirrored in the political world. I discuss differing interpretations of sovereignty below.

between individual citizens, their governments, and rest of the world. Indeed, I make the case that tendency has been to erroneously assume definitions for such variables, to the detriment of our understanding and the meeting of moral demands.

II. Representation and Self-Determination

Long-standing debates regarding self-determination, human rights, and intervention can be usefully analyzed in terms of the account of political representation being developed here. While it might be thought that any theory significantly invested in the import of representation is bound to favor self-determination and, subsequently, sovereignty, even at the cost of tolerating (within some threshold) human rights violations, this need not follow on my account. As Carol Gould has shown, a right to self-determination can accrue only to the members of a state, not to the state itself, since the very values a right to self-determination is meant to uphold would be undermined in a tyrannical or autocratic state that was in some sense self-determining. Further, because the strong consent of members typically relied upon in arguments for state self-determination is implausible, the locus of a right to self-determination must be the individual people themselves.¹⁹² Here as elsewhere, the relevant political institutions are a necessary condition for the realization of a right—in this case to self-determination—but the presence of these political institutions should not be mistaken as sufficient for these rights.

A parallel argument can be made regarding political representation. I have argued in preceding chapters that the moral gravity of political representation results, ultimately, from its accountability to persons. Political representatives have the obligations they do as a consequence of relations with constituents they have voluntarily entered into. Such obligations are owed

¹⁹² Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, 311ff.

primarily to individuals, who are justified in believing that their interests are being pursued by their representatives. This account does not rule out notions of group interests and correlated obligations held by political representatives to pursue these. Rather, group interests, even if they can be characterized distinctly, derive their moral weight from the interests of individuals within them. In the case that the interests of a group were pursued in a way that undermined rather than furthered the interests of individual group members, representation would have failed its central task. Because the value of a representative state derives from the value of individuals and the recognition representation affords them, it is this latter relation that has moral priority. These observations do little to settle specific scenarios in which, for example, humanitarian intervention is being contemplated or other complex questions of foreign relations are concerned, but suggest that considerations of political representation bolster individual regard and in turn harmonize with the protection of fundamental human rights.

The impartial duties of political representatives argued for here point toward a similar conclusion. As I have argued previously, failures to uphold impartiality at one level can undermine the justification for partiality. Given the absence of the kind and extent of consent historically appealed to in order to ground legitimacy, political legitimacy is best seen as substantially—though not entirely—constituted by sufficient regard for the interests of a relevant constituency. A would-be (domestic) representative body that fails to be impartial among the constituents it is meant to represent might fail this sufficiency criterion, since some interests are simply ignored, and since artificially reducing the scope of those represented or prioritizing the interests of some constituents over others will compromise the interests of those not picked out for special treatment. It would follow, then, that when a governing body violates impartiality beyond a certain threshold, it loses a degree of its legitimacy. In severe cases this might

constitute grounds for justifiable secession of internal groups.¹⁹³ At the limit, when such failures of impartiality can be shown to violate citizens' human rights, it might justify intervention, though the form such intervention can justifiably take and the appropriate limits are crucial considerations.¹⁹⁴

While the normative dimensions of political representation are not reducible to regard for human rights, a robust conception of political representation and human rights theory should be seen as mutually supportive. Briefly, human rights figure into the obligations and duties of political representatives in at least the following way. In the previously invoked premise articulated in early form by Locke—"People...[have]...given to their Governors no power to do an unjust thing...for they never had such a Power in themselves,"¹⁹⁵—the mandate political representatives can be given by their constituents is constrained by justice. For Buchanan, if the "core of justice" substantially consists in regarding and promoting human rights,¹⁹⁶ it follows that human rights constrain the activities of political representatives.

Because occasions of appropriate trusteeship on the part of political representatives are best seen as a guided elaboration of their mandate rather than as a set of actions entirely independent from or—*a fortiori*—in opposition to their mandate from constituents, the trustee is similarly constrained by human rights. Expressing this point only in terms of constraints, however, might suggest that human rights impose only "negative duties" upon political representatives to avoid their violation. Enough has been said impugning the distinction between

¹⁹³ See Buchanan, Allen E. *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford: Oxford UP, 2004, Chapter 8.

¹⁹⁴ Taken up below.

¹⁹⁵ Locke, John. *Two Treatises of Government*. Ed. Peter Laslett. London: Cambridge U.P., 1967, section 179, 388.

¹⁹⁶ Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*, Chapter 2, esp. 81.

so-called negative and positive duties.¹⁹⁷ It should be clear in any case that making “pursuing the interests of citizens” constitutive of political representation, as I have argued that it must be, requires a broad range of activities that go beyond avoiding harms, and human rights will be counted among the interests of citizens on almost any account of either “human rights” or “interests.” It follows that political representatives are directly tasked with realizing the human rights of their constituents and, given their duties of impartiality, are indirectly tasked with doing the same for outsiders.

There is a further point connecting self-determination and the obligations and duties of representatives more directly. To build on previous suggestions, self-determination presupposes a form of partiality on the part of nascent political representatives that is justified only so long as overarching impartiality is respected. At a certain threshold, violation of this impartiality either internally (insufficiently attending to the individual interests within the group) or with regard to inter-state relations (in the case, for example, where the coming-into-being of one state was accomplished through aggression against or unjustifiable diminution of another) places limits upon the right to self-determination. A parallel analysis applies to the sovereignty of states, in that its value, while profound, is ultimately subservient to the rights and welfare of individuals within states. In this regard one need not take a position on whether self-determination and sovereignty are of instrumental value, given the benefits they offer to citizens,¹⁹⁸ or are intrinsically valuable, in the sense that they are required for self-governing autonomous peoples. In either case, it is with reference to individuals (and their interests) that their value is ultimately grounded. The role to be played by sovereignty nevertheless remains a central issue in

¹⁹⁷ See e.g. Rawls, *A Theory of Justice*, 98.

¹⁹⁸ See Margalit, Avishai, and Joseph Raz. "National Self-Determination." *The Journal of Philosophy* 87.9 (1990): 439-61.

contemporary international relations, and has profound effects upon the fulfilment of obligations and duties held by political representatives. It is thus worth analyzing its relation to political representation in some detail.

III. Sovereignty, Humanitarian Intervention, and Reasonable Limits

Inasmuch as political representatives are tasked with the protection and promotion of human rights, as argued for above, they are directly concerned with sovereignty and the ways in which it either contributes to or undermines the promotion of these rights. In what follows I provide a brief overview of the historical and political backdrop to the formation of sovereign states. I argue that the seeds were sown within this process for many of the shortcomings of political representation as it is currently practiced. In particular, reasons for the insufficient regard representatives frequently have for those outside their constituency can be traced from Westphalia through to the formation of the United Nations. I further argue that this understanding is crucial to formulating the ways in which political representation can be improved.

While there are many points of entry into the subject of sovereignty, one particularly relevant to political representation is an analysis of the reach and power of international organizations—particularly those focused on the global advocacy of human rights—and their complex relations to states. The United Nations, as the world’s preeminent IO, illustrates the inherent tensions in such relationships, as sovereignty has been a frequent obstacle to its goals. Thomas Weiss has diagnosed the United Nations as being significantly mired in an anachronistic Westphalian conception of sovereignty.¹⁹⁹ The achievement of significant sovereignty in this

¹⁹⁹ Weiss, Thomas G. *What's Wrong with the United Nations and How to Fix It*. Cambridge: Polity, 2009.

earlier context—particularly as a palliative to the violence of the Thirty Years’ War—limited aggression and created a degree of stability, providing an early context for self-determination, but at the cost of enshrining hermetic political borders and generating a tailor-made obstacle to later international cooperation, in particular to the cooperation necessary for monitoring and appropriately responding to violations of human rights.

Two pitfalls to the nearly four-centuries-old conception of Westphalian sovereignty are well known: First, the kind and magnitude of troubles being encountered today do not seem likely to be solved unilaterally or even multilaterally without sophisticated mechanisms for global coordination and regulation. Second, much of the injustice in the modern world occurs within states rather than between them—whether as a consequence of tyrannical rule or unchecked internal strife—and Westphalian sovereignty leaves all such injustice comfortably insulated from redress. The very notion of “redress,” of course, invites questions about who or what sort of body might legitimately take up this task, as defenders of sovereignty are quick to point out. One task going forward—though one beyond the scope of what can be fully addressed here—is thus to determine what sort of legitimacy can be realized by an institution like the United Nations in principle and to distinguish these theoretical questions from those of current applicability. As I will argue below, the short shrift powerful nations have given the United Nations in its contemporary form, thus limiting the likelihood of its realizing greater legitimacy and thereby its capacity to further human rights, is an indictment of the political representatives responsible in those nations.

Less frequently commented upon in this connection is the fact that the achievement of greater state sovereignty allowed and likely perpetuated the categorizing of persons into superior and inferior groups. Westphalia was a *détente* between powerful leaders, clarifying laws and

edicts to which citizens in their respective nations were subject, but also making the authority over these citizens more absolute, and enshrining whatever internal biases and injustices existed internally in respective states. As Allan Buchanan has argued, peace can come—and can be preserved—at too high a price, if such peace is maintained by allowing egregious injustice.²⁰⁰ Whatever might be said regarding the historical circumstances of Westphalia and the tradeoffs made in the interest of establishing peace in this context, the subsequent centuries have on numerous occasions offered the prospect of international stability only at the cost of severe injustice.

The example of slavery—rampant and growing in popularity at the time of the Westphalian treaties, and more recently the subject of universal moratorium (though, of course, by no means an entirely effective one)—is illustrative. The inappropriateness of the Westphalian conception of international relations to the contemporary world is highlighted by how comfortably the ownership of human beings harmonized with that framework, allowing as it did for the assumption of inferior peoples and conceptual space for *hoi barbaroi*. The less-than-fully-human designation of many persons at the time lent a certain credence to absolute and insular sovereignty, as even the mistreatment of citizens by a particular government could be attributed to nothing more than misidentification. As subhuman denizens were owed little to nothing, inadvertently brutalizing a full-fledged human being might make one guilty of nothing more than getting the “facts” wrong with regard to the category of individual concerned.

It has been argued that contemporary ethnic violence continues to be justified in terms of subhuman categorization, so that the main difficulty faced is not a failure to recognize human

²⁰⁰ Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*, esp. Chapter 1.

rights but a failure (or unwillingness) to ascribe humanity to all persons.²⁰¹ Arguments to this end are buttressed by contemporary examples of political violence, and notably—a central point of Rorty’s—not only by the circumstances of peoples remote or alien to “us,” as entrenched inequalities and assumptions of inferiority continue to pervade developed nations. Further, similar sentiments informed the establishment of institutions typically thought to combat just such ranking of human beings. Even as the United Nations was being formed and, three years later, as the seminal Universal Declaration of Human Rights (UDHR) was being formulated, significant actuaries in the process took self-determination to be both a right and an admirable goal to pursue—but for European countries, not for the peoples of Africa or Asia. These, it was held, would require the benevolent guidance of their colonizers to endure and prosper, in the view of some for the foreseeable future.²⁰² As the British foreign labor secretary expressed the sentiment still widespread in 1951, the independence of the colonies in Africa would be analogous to “...giving a child of ten a latch-key, and bank account, and a shotgun.”²⁰³

One clear implication of these facts is that the obligations and duties of political representatives are badly distorted when assumptions of inferior and superior human beings are countenanced. As the attitude of the labor secretary illustrates, presupposing the existence of sub-humans limits the kinds of interests members of this inferior category can have. Those inhabiting representative roles in these circumstances can claim to fulfill their obligation to represent the interests of constituents simply by denying that these constituents have any interests beyond those deemed appropriate by their representatives. This characterization stands

²⁰¹ See Rorty, Richard. “Human Rights, Rationality, and Sentimentality,” in *Truth and Progress: Philosophical Papers Volume 3*. Cambridge: Cambridge UP, 1998.

²⁰² Mazower, Mark. *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*. Princeton ; Oxford: Princeton UP, 2013.

²⁰³ Qtd. in Judt, Tony. *Postwar: A History of Europe since 1945*. New York: Penguin, 2005, 280.

as a rather superficial description of the politics of colonialism, of course; the relevant point to my arguments here is that limiting the attribution of certain interests to particular groups of persons achieves similar results to refusing to advocate for those persons (even if the motive for the former were benevolent, and the latter vindictive). Given the continued pervasiveness of assumed justification for the ranking of peoples, the sentimental education prescribed by Rorty seems an urgent need for political representatives and their constituents.²⁰⁴ In any case, a more thorough recognition of these problems and the role representatives should have in addressing them would count as progress.

The context in which the United Nations was formed, then, included not only a backdrop of historical colonialism perpetrated by founding members, but the clear intention held by some of the Charter's principle architects to enshrine colonialism as a civilizing force in the world. These facts suggest that at the time when the Universal Declaration of Human Rights (UDHR) was declared, powerful voices continued to qualify, whether explicitly or otherwise, the very universality of these rights, or to understand such rights as applying in unequal ways. Crucially, these acts and discriminatory attitudes were paired with *increased* sovereignty, as specified in the United Nations Charter. Russian representatives in particular only became signatories to the UDHR under pressure and because the Charter language guaranteed matters within their political borders would be left in Russian hands—to the peril of many Eastern Europeans within these borders at the conclusion of the war.²⁰⁵

These historical observations show that sovereignty as traditionally enshrined dramatically inhibits the capacity of political representatives to engage their duty to promote human rights. Most conspicuously, the ability to influence the treatment of people abroad is

²⁰⁴ Rorty, "Human Rights, Rationality, and Sentimentality."

²⁰⁵ Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*.

made largely unavailable to them in circumstances of strict sovereignty. This fact also has repercussions for the constituents of the political representative in question, however. The prospect of their general duties to outsiders being realized is clearly curtailed, given that a principal conduit for their doing so is typically their representative, who is now impotent in this regard. More than this, the value ascribed to general duties and the care for distant others they require are bound to diminish in the absence of a culture where this value is supported and acted upon. In turn, it should be expected that the mandate representatives are given by their constituents will increasingly treat the interests of distant others as less of a priority in circumstances of strict sovereignty.

In part for these reasons, the long-held interpretation of sovereignty that prohibits interference in a state's affairs—even in the face of human rights violations being committed—and sets limits to cooperative engagement with the international community has been challenged on a number of fronts. There is a growing body of work now calling for appropriately redefined sovereignty. Several of these new definitions integrate the notion of responsibility for those within the state—characterized as “the Responsibility to Protect,” or “R2P,” as enshrined by UN doctrine in 2005²⁰⁶—over which a leader or leaders are sovereign, moving beyond the classical formulation of merely protecting citizens from external threats. Much has been written for and against R2P specifically, with some touting it as “the most important shift in our conception of sovereignty since the Treaty of Westphalia in 1648,”²⁰⁷ with others describing it as a debacle, and with more cautious observers noting that its application remains vexed, for example as a “dead letter” with regard to the current Syrian conflict.²⁰⁸

²⁰⁶ See Weiss, *What's Wrong with the United Nations and How to Fix It*, 135-50.

²⁰⁷ Slaughter, Anne-Marie, 2006 Levine lecture at Fordham University.

²⁰⁸ Christiansen, Drew, *The National Catholic Review*, Aug 28, 2013.

A subtlety frequently lost in both positive and negative characterizations of R2P is a radical shift from its original form. The world summit version of the resolution passed by the General Assembly had substantial democratic backing and, given its requirement for consensus to be applied, was a sincere attempt to manifest neutrality in its application. As modified by the Evans commission a short time later, however, R2P came to include a (dubious) time-limit clause, imposing a duration that, if surpassed without a formal decision rendered, empowered interested states to apply R2P with largely undefined jurisdiction.

On the one hand, then, these facts illustrate that genuine attempts at more democratic and equitable application of human rights norms are being made—and that there is significant will to improve representation as it occurs in global governance. Crucially, R2P came into being through endorsement by all 193 member states of the United Nations, thus indicating a rare degree of collaboration and consensus between representatives at the international level. R2P effectively says that the human rights of all persons are concerns of the international community. While primarily aimed at prevention, R2P provides for intervention as a last resort in the circumstance that a country's leaders have shown themselves unable to represent the fundamental interests of their citizens. At least in its original conception, then, features of R2P approximate a number of the virtues of good political representation, as I have framed these. On the other hand, however, the later modification of R2P with minimal input from the representatives of member states shows that the international apparatus for both more representative global governance and human rights promotion remains prone to being commandeered by established world powers.

Both advocates and critics of sovereignty have reasonable concerns. The weakening of sovereignty by, for example, promoting universal human rights risks domination by imposing

what some will claim are not, in fact, universal norms. In this regard circumstances of weakened sovereignty conjoined with an imposed human rights agenda might threaten the autonomy of a people, as they are now obliged to heed standards they did not choose for themselves. More generally, any diminution of sovereignty extends the reach of global hegemons, and more specifically the United States, and likely with predictable results: those in positions to do so will extend and solidify their power, secure their access to ever-greater resources, and, to complete the realist prediction, those in less powerful positions will endure what they must.²⁰⁹

Strengthening (classical) sovereignty in contrast risks enshrining whatever inequalities and injustices exist within states (or peoples) for the indefinite future, as I have argued. More generally, sovereignty might be thought to facilitate, rather than to interrupt and to discourage the sorts of long-standing hierarchical distributions of power and entrenched discriminatory practices within states as well as between them. Global elites, cooperative dictators included, are empowered to maintain the status quo and indeed to do as they like within their own political borders so long as they play their part in international markets and other aspects of the global system.

On balance, for all the difficulties of doing so, there a number of distinct advantages to adopting and developing nascent conceptions of sovereignty that do not treat it as absolute. A salient point is that the project of widening of the category of humans and better regarding the human rights of all requires facing historical shortcomings and working for change moving forward—change that appears less likely to be realized in circumstances of isolated states than through international mechanisms. One reason for this, as recent global events continue to demonstrate, is that persons in positions of national political power evidently continue to

²⁰⁹ See Thucydides. *The Peloponnesian War*. Trans. Steven Lattimore. Indianapolis: Hackett Pub., 1998.

disregard or under-regard the interests of outsiders. As I have already suggested, mandates allowing or even encouraging political representatives to be isolationist and unconcerned with the interests of others abroad should be unsurprising when the concerns of sovereignty receive more emphasis than the interests of persons. While the factors involved are too extensive and complex to be analyzed in any depth here, the example of the US handling of the Syrian Refugee crisis, for example, and specifically its unwillingness to accommodate even a fraction of the refugees many other nations accepted, has been a great disservice to Americans and Europeans, to say nothing of the refugees themselves.²¹⁰

Moreover, historical evidence suggests that entrenched modes of exclusion have often changed only when this change was imposed. Within the United States, southern states did not voluntarily shift their position regarding slavery prior to the civil war. The end of apartheid in South Africa did not come about because of a change of heart on the part of those responsible for apartheid. These observations are not meant to undermine the value of important grassroots movements in these and similar cases that were catalysts for change but to remind us that movements toward greater justice have always met with resistance and that, frequently, great political power was required to consolidate such change. It should be unsurprising if the prospect of a more just international system similarly meets with resistance and similarly requires imposed changes. For all its unsavory history, a body like the United Nations, in improved form, remains the only kind of entity with the institutional capacity to effect such change.

There is, of course, a great deal of work to be done in improving the respectability of the United Nations, not only in terms of increasing the implementation and effectiveness of desirable resolutions and of avoiding those that are disastrously misguided (the state-level sanctions

²¹⁰ See Ignatieff, Michael. "The Refugees and the New War." *The New York Review of Books* 62.20 (2015): 8-12.

imposed upon Iraq prior to the US invasion being a case in point), but also in terms of continuing to make its operation much more democratic. As is frequently noted, the tremendous power entrenched in the Security Council threatens the representative status of the institution as whole. This is a particularly profound problem according the account of political representation developed here, because those occupying roles in institutions of global governance have not just indirect general duties of impartiality, but direct obligations to advocate for the interests of the global citizenry. When these interests are regarded unequally because of structural biases, the inequalities enshrined by classical sovereignty are re-instantiated at the level of global governance.

While these are large and legitimate concerns, it is an exaggeration to suggest that UN resolutions neatly track national interests of the United States or other powerful nations, even while undue influence remains problematic.²¹¹ It is a noteworthy example of entrenched power being contested by increasingly democratic procedures that the establishment of the International Criminal Court went ahead with overwhelming support from representatives of the member states despite resistance from the five permanent members of the UN Security Council. Further, the trajectory of greater inclusion in the UN General Assembly, and the demonstrable effects this has had,²¹² whatever structural problems remain in the Security Council, justify a degree of optimism.

When and if interference in external sovereignty becomes appropriate, however, and what form it should take in such cases, are naturally extremely complex and weighty matters. The use of military intervention, while advocated by a number of cosmopolitan theorists with

²¹¹ Weiss, *What's Wrong with the United Nations and How to Fix It*.

²¹² See Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, esp. Chapter 4.

certain conditions met,²¹³ has rightly been cautioned against on several grounds. The greatest of these is the consequent threats to basic human rights—including the right to life—posed by military operations.²¹⁴ Given the miserable track record of military operations with regard to noncombatant deaths—deaths that have far exceeded those of combatants, and with a ratio of noncombatant casualties to combatant casualties that has rapidly increased rather than decreased since the end of WWII²¹⁵—political representatives cognizant of their duty to uphold human rights might reasonably conclude that other forms of political and economic intervention are the only justifiable forms of redress.

It is worth noting with regard to military intervention that the justifications offered for much of today's most salient political violence is couched in terms of reciprocity, and more specifically in terms of reprisals, familiar from their formulation in just war theory.²¹⁶ In Osama Bin Laden's "Open Letter to America" referred to previously, this language is invoked explicitly:

Those killed in the World Trade Center and the Pentagon were no more than a fair exchange for the ones killed in the al-Amiriya shelter in Iraq, and are but a tiny part of the exchange for those killed in Palestine, Somalia, Sudan, the Philippines, Bosnia, Kashmir, Chechnya, and Afghanistan... We have not reached parity with them. We have the right to kill four million Americans, two million of them children, and to exile twice as many and wound and cripple hundreds of thousands.²¹⁷

Whatever one makes of the numbers here related or the notion of a "right of reprisal" by which these acts are meant to be justified, Bin Laden's commentary points to a grave difficulty that the West—and more specifically the United States—has created for itself: namely, that

²¹³ See, e.g., Luban, David. "Intervention and Civilization: Some Unhappy Lessons of the Kosovo War." *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization*. Ed. Pablo De Greiff and Ciaran Cronin. Cambridge, MA: MIT, 2002. 79-115.

²¹⁴ Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*, 320-323.

²¹⁵ Hedges, Chris. *What Every Person Should Know about War*. New York: Free, 2003. See McPherson, "Is Terrorism Distinctively Wrong?" 524-46.

²¹⁶ See Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic, a Member of the Perseus Group, 2015.

²¹⁷ <http://www.theguardian.com/world/2002/nov/24/theobserver>. Accessed 1/1/16.

humanitarian intervention has become to many observers synonymous with invasion. To take a highly salient example, when the absence of weapons of mass destruction (WMDs) became manifest early in Iraq conflict, the United States quickly pivoted to defend their actions in terms of deposing the regime of Saddam Hussein who had been massacring the Kurds.²¹⁸ This dubious latter argument was unpersuasive, but it did encourage the inference that the long, bloody, and yet unresolved Iraqi debacle was characteristic of what the West referred to as humanitarian intervention; after all, the United States framed it as such. From such a perspective, it is an easy move to the familiar argument that humanitarian intervention is merely the masked continuance of imperialism, with the corollary that absolute state sovereignty remains a value all reasonable states must hope for as a defensible norm in international law.

There are, however, two further points worth noting. First, intervention that manifested broad international consensus and was carried out by a democratic coalition of forces acting under the banner of respected international bodies—the sort of action that the original formulation of R2P, prior to its corruption, was intended to support—would at least obviate the inherently controversial scenario of the Iraq war, with one state unilaterally intervening in another’s affairs. Further, political representatives should welcome the shift of emphasis manifested in R2P from the concerns of states—typically the focus of intervention—to the plight of individuals whose human rights are threatened. In addition to making the interventionist aspects of R2P a last resort, this shift of emphasis condones only what actions are necessary to protect the welfare of persons, and does not authorize additional political goals such as regime change.

²¹⁸ For a widely read example of this—largely defunct—defense of the US invasion of Iraq, see Tesón, Fernando R. "Ending Tyranny in Iraq." *Ethics & International Affairs*. 19.02 (2005): 1-20.

A second response to the strong sovereigntist is that the permissibility of compromises to sovereignty and the determination of acceptable use of such permission are independent of one another. One might adopt a definition of sovereignty including “the responsibility to protect,” thereby increasing state vulnerability to interference²¹⁹ while maintaining a principled stance against military intervention. Taking such a position would allow political representatives to advocate for greater international cooperation while avoiding the moral hazards to which she would subject her constituents in the course of traditional intervention. In tandem, greater reliance upon the International Criminal Court and international tribunals in rendering individual criminal accountability for war crimes and human rights violations, with increased powers and efficiency of extradition, might provide a means of pursuing justice that is far less invasive and less sovereignty-diminishing than “boots on the ground” interventions—a project in its infancy, but which shows substantial promise.²²⁰

Enshrining such an understanding of sovereignty in international law would “...generate a revolution in consciousness in international relations.”²²¹ Again, a skeptical response might be that agreement to an “updated” conception of sovereignty in the international community is far from likely, if there is no motivation for states to accept such a norm that increases their vulnerability to outside influence. To this it can be responded that when and if the international culture shifts toward a greater sensitivity to human rights,²²² those states that remain unwilling to abide by emerging norms will risk isolation and their legitimacy in the international domain will

²¹⁹ Joyner, Christopher C. "The Responsibility to Protect": Humanitarian Concern and the Lawfulness of Armed Intervention." *Virginia Journal of International Law* 47 (2007): 693-725.

²²⁰ See, e.g., Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: W.W. Norton, 2011.

²²¹ Joyner, Christopher C. "The Responsibility to Protect": Humanitarian Concern and the Lawfulness of Armed Intervention." *Virginia Journal of International Law* 47 (2007): 693-725.

²²² See Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, especially chapter 1.

be threatened.²²³ Moreover, the inability of individual states to protect the interests of their citizens from global threats is increasingly apparent.

Although the dire warnings of climate science thus far largely remain an abstraction—only the most vulnerable and least able to voice their concerns are thus far being affected in noticeable ways—its effects will pose unprecedented challenges to sovereignty. In this regard, classical sovereignty, as well as more contemporary but still thoroughgoing conceptions of sovereignty reinstate the nightmare of the global commons, wherein states conceived of as isolated self-interested actors are likely to pursue the “rational” course of action that hastens their own demise.²²⁴ The political representative in this circumstance will lack the resources to advocate for the interests of their constituents, because those resources require a degree of international regulation and coordination that cannot be marshalled unilaterally.

The relevant contrast to be drawn here is between two possible future scenarios. In one, with states having continued to act largely independently of one another with predictable results, each state does its best to relocate its coastal peoples in the face of rapidly rising seas and superstorms, while continuing the very practices that are generating and accelerating the threats, but which they cannot cease pursuing for reasons of competitiveness even in the context of diminishing returns. In another, states have authentically collaborated under the auspices and organization of global institutions on preventive and damage-minimizing efforts so that—perhaps—sufficient accommodations can be made for the most vulnerable global populations as less dire consequences reach them at a slower rate.²²⁵ Current geopolitical circumstances, and

²²³ See Abbott, K. W., and D. Snidal. "Why States Act through Formal International Organizations." *Journal of Conflict Resolution* 42.1 (1998): 3-32.

²²⁴ See Hardin, Garret. "The Tragedy of the Commons." *Science* 162.3859 (1968): 1243-248. Web.

²²⁵ See Caney, Simon. "Climate Change, Human Rights, and Moral Thresholds." *Climate Ethics: Essential Readings*. Ed. Stephen Mark. Gardiner. Oxford: Oxford UP, 2010. 163-77. Caney does not take up the subject of

specifically the ongoing Syrian refugee crisis alongside Britain's bid to exit the European Union, provide a sharp and sobering preview of what is to come as a consequence of climate crises, when refugees number not in the hundreds of thousands but the hundreds of millions.

To this it must be added that critics are correct to observe that Western powers—and more particularly the United States—are simultaneously among the most vocal about the need for climate and environmental regulation and by far the worst perpetrators.²²⁶ The track record of those representing developed nations on issues relating to climate change continues to be a travesty in this regard. Because the mechanisms of global governance are clearly needed here, the opposition of the US and other world powers to climate covenants with broad global support stands as a grave indictment of their representative duties. Moreover this intransigence does not support a reversion to a less integrated international order, but lays bare the need for such in more democratic, robust form. There is, again, little reason to think isolated states (or their representatives) can or will take the necessary steps to address these problems. As I have argued throughout, political representatives, as they are accountable to the robustly construed interests of those they represent, bear a much greater responsibility for these matters than they have taken, or than they have been assumed to be responsible for.

When sovereignty is understood to include the responsibility to protect citizens, the obligations held by those occupying the role of political representatives mirror and—in some cases—overlap with these responsibilities of sovereignty, given the intimate connection both have to the interests of constituents. Sovereignty thus interpreted requires that the fundamental interests of all citizens are protected against just the sorts of threats that classical sovereignty

sovereignty but gives an excellent summary of the scientifically verified threats to human rights and welfare posed by climate change.

²²⁶ See Singer, Peter. *One World: The Ethics of Globalization*. New Haven: Yale UP, 2002.

failed to defend these citizens from. It specifically forbids regarding these basic interests according to any ranking of persons, for example. Political representatives, for their part, are obligated to advocate for these same basic interests, but also for various non-basic interests of their constituents—those interests that are largely unrelated to constituents’ human rights.

The obligations and duties of representatives also go beyond the responsibilities of R2P sovereignty, on my account, in their requirement to promote general duties toward outsiders. However, such a notion of sovereignty further prompts reevaluation of the relations between sovereign states, for it suggests new ways in which they might be mutually supportive of one another. The framing of related ideas by Francis M. Deng, representative of the secretary-general on internally displaced persons from 1992 to 2004, is particularly germane to my larger arguments here:

Sovereignty is not a way of closing doors against the international community. In this world of intense interaction and interdependence, sovereignty is to me a positive concept, which stipulates state responsibility to provide protection and assistance for its people... Given an appropriate level of comfort, one can even add that the best way to protect sovereignty is to discharge the responsibilities of sovereignty and to call on the international community to assist in carrying out these responsibilities.²²⁷

To this I would add that “discharging the responsibilities of sovereignty” should be framed within a normative conception of political representation, as this account can explain and justify these responsibilities and the reasons for the relevant agents holding them. The additional duties of impartiality held by political representatives offer a normative grounding for members of the international community to offer such assistance above and beyond the clear practical advantages of promoting stability through such measures.

²²⁷ Deng, Francis Mading. *Sovereignty as Responsibility: Conflict Management in Africa*. Washington, DC: Brookings Institution, 1996. See Weiss, *What's Wrong with the United Nations and How to Fix It*, 135-37.

IV. Global Democracy and International Law

Acknowledging an evolution in the concept of sovereignty leaves many questions unanswered regarding the structure of the international system, including to what degree that system can be made more democratic and, if this goal is desirable, how it is most likely to be achieved. In particular, whether the international order should be conceived of as a “global democracy” or instead a “system of fair democratic association” turns on a number of additional challenging issues. In what follows I critique two accounts that argue against the need for global democracy. I argue that the concerns registered within these accounts fail to show that greater individual participation in global governance is undesirable. I then make preliminary arguments to the effect that at least in some cases the interests of persons would be better regarded through global democratic structures, and thus that political representatives should work toward the development of these structures. I further argue that, other things equal, political representatives who work to undermine democratically established international institutions fail their duty to uphold frameworks required for representation.

Given particular examples of conflation, it is again crucial to separate questions of feasibility and (normative) desirability. In terms of feasibility, it has been argued that the international order lacks anything like the institutional capacities, possessed in a robust democratic state, to allow democratic procedures to function. Lacking, among other things, “A system of political parties, interest group associations, and other types of associations...necessary to give ordinary citizens an orientation among the vast array of issues that arise in a democratic polity,”²²⁸ such arguments conclude that the international order does not have the requisite structure for legitimate democracy to function. It is further argued that the interdependence of

²²⁸ Christiano, Thomas. "Democratic Legitimacy and International Institutions." *The Philosophy of International Law*. Ed. Samantha Besson and John Tasioulas. Oxford: Oxford UP, 2010, 130.

persons at the global level is exaggerated, given that “...the set of international laws and institutions...play a fairly small role in the lives of people throughout the world.”²²⁹ The truth of this latter claim would significantly undermine the urgency and import of restructuring international laws and institutions, as the motivations to do so derive from their purported effects on individuals. I criticize both these views in turn.

1. HUMAN RIGHTS, DOMESTIC AND INTERNATIONAL LEGITIMACY

In terms of feasibility, if the question is “...whether or not global democracy can be legitimate,”²³⁰ the answer turns not on whether this is taken to mean 1.) given current circumstances (a feasibility question) or 2.) in principle (a possibility question). Rather, it turns on whether it is taken to mean 1.) given current circumstances or 2a.) given permutations within a tolerable probability range of current circumstances. If one responds that only the first question is of any interest, and that the normative is always constrained by *immediate* feasibility, it should be pointed out that the legitimacy—again understood in terms of robust representation—of the United States, for example, has been infeasible at various historical moments. Quick recourse to the notion that ought implies can oversimplifies this issue, since what can be done remains a matter of significant debate, and because there is evidence that the system has significantly, if far from adequately, become more democratic and more politically equitable at the close of the 20th century and the beginning of the 21st century.

Were there good reasons to think that global democracy cannot be legitimate in principle there would indeed be normative reasons to argue against attempting its implementation. But contingent obstacles to its realization do not demonstrate this on their own. Rather, the case

²²⁹ Ibid., 132.

²³⁰ Ibid., 133n.23

would have to be made that the magnitude of such obstacles and the related degree of infeasibility are decisive and will be so for some significant span of time. This is a much harder case to make, particularly given salient examples of radical social change at both the domestic and the international level. Moreover, the matter is complicated by the fact that feasibility is dynamic, for it is significantly determined by current efforts being made. For example, the feasibility of universal suffrage in the United States improved drastically with concerted efforts by activists and other sympathizers. All of this suggests that the objection to global democracy being considered addresses only the immediate feasibility question, or normativity constrained by current institutional capacities, a circumstance that also frames feasibility too narrowly to be regarded as decisive. As questions of feasibility are not (indeed, are far from) insoluble in principle and clearly admit of matters of degree in practice, I instead focus upon questions of desirability in terms of the conditions best allowing political representatives to promote the interests of persons.

Philip Pettit's well-known republicanism offers substantive reasons for thinking global democracy should be resisted.²³¹ A central worry for Pettit is that the lack of civic structure at the international level implies that global democracy would invite rampant abuse and allow the very sort of domination that his republicanism rightly cautions against. Additionally, if individual states function in nondominating ways, avoiding arbitrary uses of power, Pettit argues, a desire for citizens to control the international order individually rather than by the states that they control seems unmotivated.²³² While it is reasonable to think that "...the legitimacy of the international order turns in good part on the domestic legitimacy of the states that constitute

²³¹ Pettit, Philip. *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon, 1997.

²³² Pettit, Philip. "Legitimate International Institutions: A Neo-Republican Perspective." Ed. John Tasioulas. *The Philosophy of International Law*. Ed. Samantha Besson. Oxford: Oxford UP, 2010. 152ff.

it,”²³³ there is theoretical room to further explore a reciprocal relationship between domestic and international legitimacy, instead of the “bottom-up” account here described by Pettit.

Pettit’s view can be criticized on two fronts. First, nondomination as a relation between states is also meant to characterize international legitimacy, but Pettit says little about how, if at all, domestic legitimacy is affected when a state clearly exercises domination in the international arena. My argument going forward is that compromised international legitimacy should be seen as placing domestic legitimacy in doubt or at least as diminishing (domestic) legitimacy. An openly expansionist superpower’s violation of others’ interests and human rights discredits the representative entities responsible for such policies, not merely with regard to those they aggress against but also with regard to those whom they ostensibly represent.

An argument for this view can be given along both prudential and normative lines. Prudentially, a dictator’s violation of the sovereignty of neighboring nations, for example, simultaneously imperils his own people in various ways: by isolating them from the international community; bringing economic sanctions down upon them; or making them members of a nation with undermined moral authority. While such acts have become less common, the example of Vladimir Putin’s 2014 annexation of Crimea is illustrative. These facts contribute to the appropriate dubiousness that typically meets claims by such an individual that he is representing the interests of “his people.”

Normatively, such actions express disdain for a system within which representation can authentically occur, and which political representatives are duty-bound to uphold. They fail to respect not just sovereignty and the tenets of international law—for all its current limitations—but also the impartiality essential to a concept of law. Framed in traditional (Hobbesian)

²³³ Ibid., 140.

language, such actors reinstitute the state of nature by undermining any covenants—expressed or implied—between nations, and in so doing color the character of international relations more broadly. It is noteworthy in this regard that even if circumstances were less dictatorial, and a leader in fact had a clear mandate for aggression from his people, he would be a very poor representative indeed in the normative sense of representation used here. In such a case the obligation a representative has to promote the general duties of his constituents and the constraints human rights impose upon legitimate mandates would both have been flouted.

Given Pettit's above qualifications, these observations do not constitute a counterargument to his position; they do, however, suggest that both domestic and international representation are reflexively relevant to legitimacy.²³⁴ As it has very often been the case historically that relative nondomination in one domain has been mixed with severe domination in another, there is more motivation for direct citizen control, for all its difficulties, than appears to be allowed when domestic legitimacy and international legitimacy are considered independently of one another. Citizens have significant interests in the international legitimacy of their state, understood both in terms of nondomination and in terms of promoting justice informed by human rights.

The relationship of the United States with the International Criminal Court (ICC) offers a case in point. As previously mentioned, the ICC came into being as the result of remarkable democratic consensus within the United Nations General Assembly, and despite the pressure against its development by the US and the other permanent members of the Security Council. This resistance by the political representatives of the US is deeply problematic; it constitutes an attempt to undermine one of the largest global, democratically supported policy decisions ever

²³⁴ As argued for at length by Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*.

made on dubious grounds, threatening the integrity of a representative framework that, in principle, answers to billions of people. In so doing these political representatives also denied the value of the premiere institution aimed at bring violators of human rights to justice.

Because the US is not a signatory, it remains outside the jurisdiction of the ICC, and thus high-profile contributors to human rights violations and war crimes from within the US remain immune. The political representatives who condoned torture in the wake of 9/11, for example, failed in their obligations to constituents and duties to non-constituents not only in the obvious way—by condoning human rights violations—but also by actively promoting a system wherein justice for these types of acts could not be sought. The foreign policy decisions by these representatives and their activities abroad thus significantly impugned both domestic and international US legitimacy.

A second criticism of Pettit's approach is that it is not clear how to frame some forms of political conflict strictly in terms of international nondomination. A military strike aimed narrowly at a "terrorist" cell in a foreign land with the complicity of that country's government might meet criteria of nondomination, but still fail a principle of impartiality and other moral criteria, in particular by imposing unwarranted risks to noncombatants (and specifically their human rights) there.²³⁵ This suggests there is important linkage missing between the idea of political nondomination and the protections of individuals. If in our geopolitical moment robust representation is best realized through the intermediary of states, then Pettit's program for progress—working simultaneously on the dual fronts of improving the international order and working to improve the domestic legitimacy of independent states—might be the course that best

²³⁵ A parallel conclusion is drawn in Rodin, David. "Terrorism without Intention," *Ethics* 114.4 (2004): 752-71; Rodin argues—persuasively—that the Doctrine of Double Effect is not so much incoherent as it is simply insufficient in the regard it requires for those not liable to attack, and hence the degree of negligence the DDE allows.

realizes (the moral demands of) legitimacy. What seems to be missing from this account is the connection between domestic and international legitimacy I am pressing, viz., including within domestic legitimacy extra-domestic moral concern through regard for a principle of impartiality. It thus seems that nondomination, while an important conceptual guideline, is insufficient on its own to bear the full moral weight of legitimacy.

2. POLITICAL REPRESENTATION AND THE BASIC GLOBAL STRUCTURE

The second argument mentioned above was that international laws have a “fairly small” role in the lives of global peoples, and hence that there are radically different stakes in the global system held by the would-be world citizenry. In response, I will argue that international laws and a basic global structure have immense impact upon the welfare of global peoples. It follows that the stakes people have in how the international system is organized are equal in the relevant sense, and this sets an agenda for political representatives to organize this system in ways that better regard human rights.

First, however, a word must be said about the notion of stakes, what they are, who holds them, and why. Christiano defines the relevant sense of stake as “...the susceptibility of a person’s interests or well-being to be advanced or set back by realistically possible ways of organizing the interdependent group.”²³⁶ If this definition of “stakes” is interpreted to imply merely that a small, poorly-positioned nation can do little to affect policy in its favor, and this gave its citizens less “stake” in the international order, this might be easily granted. Christiano’s

²³⁶ Christiano, "Democratic Legitimacy and International Institutions," 131.

own example²³⁷ suggests this is not the point, however, and hence—as suggested in the above discussion of feasibility—his discussion seems to muddle the descriptive with the prescriptive.

In explaining that visiting faculty ought to have less influence over long-term departmental decisions than tenured faculty, Christiano plausibly claims that treating both groups as though they had equal stakes in the matter would not be fair. The consequences of those decisions will be borne more heavily and for longer by permanent faculty, and it is—increasingly—likely that visiting faculty will soon have no stake in those consequences. But here the stakes held are described in normative terms of fairness and what ought (or ought not) to be the case. For the cases to be analogous, Christiano would have to argue that citizens of the ineffectual marginalized nation *ought* not to have influence equivalent to that possessed by citizens of powerful well-positioned states because they are less affected by international policy. This view would also appear to entail, in turn, the view that such states ought to be or remain marginalized, with the corollary that they are substantially responsible for their ineffectual status. The confusion that seems to have taken place is one of comparing internal and external cases: with regard to the faculty example, only internal questions are addressed, in the sense that what counts as fair can be analyzed without asking who *deserves* to be visiting and whom tenured. There is a background assumption of something like overarching fairness. With regard to the international system, however, external questions are relevant, because few would claim a parallel background assumption of overarching fairness here. To do so would be to imply any

²³⁷ Ibid., 130-3.

marginalized countries *deserve* to be so.²³⁸ One suspects that Christiano did not see these entailments of his argument, but in any case they cannot be supported, as I argue below.

Interdependence and rough equality of stakes—or indeed greater stakes held by those in vulnerable positions—in both the descriptive and normative senses are important to my overall argument. Descriptively, if it could be shown that our domestic affairs had little bearing on the welfare of others abroad, and vice versa, this would significantly limit what impartiality entails; if both my actions as an individual and the policies of my government had minimal impact at the global level, the duties required in light of such recognition could after all be largely discharged through appropriate participation in a democratic state, and the duties of the state could be largely discharged in domestic, fiduciary terms. As I will argue going forward, the interdependence of states is significant, and more importantly—given that it is often a contributing factor to their being marginalized—global peoples have profound stakes in the organization of the international order.

Briefly, biased international monetary policy, dubious regulation of environmental threats, and laws pertaining to the use of force strongly cut against Christiano’s interpretation of matters. Furthermore, the increase in and increasing rate of globalization in its many facets portend a future of more rather than less interdependence.²³⁹ There is good reason to think that international law will continue to affect ever more people ever more deeply. Normatively, as Christiano’s own arguments unwittingly suggest, the idea of international law and the possibility of representation in international relations require a stance of impartiality—and hence one kind of equality of stakes—among global actors.

²³⁸ Such an argument could be made, of course, with reference to specific countries—the case of North Korea comes to mind. One cannot infer from the fact a country has been marginalized that it deserves to be, however, as many countries in the Global South demonstrate.

²³⁹ See Gould, Carol C. *Globalizing Democracy and Human Rights*. Cambridge: Cambridge UP, 2004, 160ff.

An important argument offering support for this view is to be had in Allen Buchanan's critical analysis of Rawls's *Law of Peoples*.²⁴⁰ These points are all the more biting because in the seminal work of Charles Beitz two decades earlier,²⁴¹ Beitz criticized Rawls for not seeing the applicability of his principles of justice to the international domain, given the presence of an international society. A central line of Buchanan's criticism derives from the fact that, while even the later Rawls goes to great lengths to demonstrate the significance of a state's "basic structure," he leaves the existence of an analogous global basic structure completely out of account in determining international principles of justice. "Basic structures" are defined by Rawls as "...the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."²⁴² Thus understood, the basic structure

...is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities.²⁴³

As Buchanan goes on to explain, there is a very substantial literature that, under the headings of political economy, globalization studies, dependence theory, and others, takes as its subject a global basic structure for which Rawls's description of domestic basic structures—and the import he attributes it—is profoundly apt. Yet Rawls writes as though the political and

²⁴⁰ Buchanan, Allen. "Rawls's Law of Peoples: Rules for a Vanished Westphalian World." *Ethics* 110.4 (2000): 697-721. See Rawls, John. *The Law of Peoples; With the Idea of Public Reason Revisited*. Cambridge, MA: Harvard UP, 1999.

²⁴¹ Beitz, Charles R. *Political Theory and International Relations*. Princeton, NJ: Princeton UP, 1979.

²⁴² Rawls, *A Theory of Justice*, 7.

²⁴³ *Ibid.*

economic fates of peoples are entirely of their own making. This perspective leads him to conclude that

... the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues. I would conjecture that there is no society anywhere in the world—except for the marginal cases—with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered.²⁴⁴

Absent here is any consideration of how a global basic structure affects the prospects of peoples and their individual members, in much the same way as domestic basic structures affect the prospects of individuals within a People. Rawls thus fails to acknowledge the profound economic consequences of the structural inequalities enshrined in the Bretton Woods bodies (the World Bank, the International Monetary Fund, and the World Trade Organization),²⁴⁵ the parallel political disadvantages enshrined in the UN Security Council,²⁴⁶ and the injustices of an international law heavily tilted in favor of powerful states in their resort to political violence,²⁴⁷ to name only three of the most highly visible examples.

The principles of international justice Rawls adumbrates in *Law of Peoples* thus harmonize with Christiano's above-mentioned view that international law plays a "fairly small role" in the lives of average citizens, and share the myopia of that perspective. The above-discussion notwithstanding, international law persists in advocating nonintervention and in giving established states greater latitude in the use of political violence, both of which continue to have profound consequences for many millions of people across the globe.

²⁴⁴ Rawls, *The Law of Peoples ; With the Idea of Public Reason Revisited*, 108.

²⁴⁵ As seminally criticized by Thomas Pogge, in Pogge, Thomas. *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*. Cambridge: Polity, 2002.

²⁴⁶ As elaborated in Weiss, *What's Wrong with the United Nations and How to Fix It*.

²⁴⁷ See, e.g. Rodin, David. "Terrorism without Intention." *Ethics* 114.4 (2004): 752-71, esp. 754.

Whether now is the moment pragmatically to push for greater mediated individual control over the international order might be doubted. As argued for above, the ideal form of representation called for, while constrained by impartiality, will vary according to evolving background social conditions. Deciding when (and if) such a moment is upon us, however, should only partially be influenced by immediate feasibility and can safely assume profound interdependence. Rather than interpreting such interdependence as merely grounds for the pursuit of mutual advantage, however, it is better regarded in the first instance as raising the moral stakes. One aspect of this heightened normativity can be better responded to when our understanding of political representation takes fuller account of its normative dimensions and the duties it entails.

Individuals, whether construed as constituents within a specific country or as global citizens, have justified expectations that those in representative roles will advocate for their interests. For the reasons I have suggested, strict forms of sovereignty have inhibited political representatives from realizing this obligation. These points, among others, imply a motivation for evolved sovereignty and greater global governance, but not necessarily greater individual participation within it. The desirability of greater participation instead stems from the profound effects of the international order upon individuals, whatever their domestic political circumstances may be, and also from the normative requirement for global governance to be more democratic. Indeed, many of the concerns associated with weakened sovereignty and global governance can in principle be overcome, when the forms of political representation available to persons give them greater control over the political systems within which they reside. The obligations and duties of an individual political representative are thus reticulate and challenging. They include not only advocating for the broadly construed interests of their

constituents, according to which general duties and regard for human rights are promoted, but also endeavoring to support representative political structures at all levels that heed and advocate for the interests of persons. The office of political representative is thus a position that should both command respect and demand the moral performance to be worthy of it.

CONCLUSION

My central claim has been that the activity of political representatives is irreducibly normative in character. If the foregoing arguments to this end are successful, they show that it is difficult to make sense of political representation without reference to the moral frameworks that political representatives inhabit. I have spelled out what I take to be the moral demands pertaining to political representatives in terms of obligations and duties, borrowing language familiar from traditional moral philosophy. I have not given an independent defense of the existence of obligations and duties, however, but instead have treated them as elements of a baseline morality with reasonably broad intuitive appeal.

The nature of this baseline morality is, of course, a deep and difficult subject in its own right, and one to which I have paid scant attention here. My hope has been that readers unwilling to embrace moral skepticism will find the use to which I put moral arguments relatively uncontroversial. Even if one accepts my appeals to morality and the role it should play in political contexts, questions might remain about whether a promissory relation is the right way of thinking about the relationship between representative and constituent. It might also be objected, for example, that I impose more rigorous moral demands upon representatives than is reasonable and say little about such demands upon constituents.

A significant novel contribution intended here, of course, is a shift in focus from the obligations of citizens to the obligations of political representatives. Citizens, too, however, are the bearers of profound moral demands not only as individuals but as political agents. The character of mandates citizens press upon their representatives, and the ways in which regard for the interests of others are or are not manifested there, are one example of how these demands

apply. In this regard a complimentary account of the obligations and duties of citizens would be valuable, but I have not had the space to provide such an account.

A fuller treatment would also say much more about different categories of representation, and how they compare with one another. One approach to doing so, although one I have not taken here, would be to offer a taxonomy of different forms of representation, including legal, political, and perhaps informal representation, treating democratic representation as a species of political representation. I have instead focused on (what I take to be) the normative features of political representation in more and less robust forms in various political settings. My aim has thus been not to provide an account of the necessary and sufficient conditions for political representation but to shed light upon the kinds of moral demands pertaining to political representation in some of its salient guises.

The complexity of many issues relevant to my subject recommends that conclusions remain tentative. My discussion of sovereignty and global governance in particular is largely conditional, as the proper role for political representation to play in these contexts is contingent upon a vast number of real-world considerations. It will be enough if I have shown that representatives are required to authentically grapple with these contingencies by way of advocating for those they represent. More generally, I hope to have shown that political representatives are underestimated in terms of their capacities but at the same time are insufficiently held to account morally for their actions. I thus hope that the forgoing arguments encourage more discussion about the ways political representatives can improve the welfare of persons.

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