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# The Non-Solicitation Principle of Democratic Legitimacy

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THE NON-SOLICITATION PRINCIPLE OF DEMOCRATIC LEGITIMACY

by

JAMES HALL

B.A., Arizona State University, 2011

A thesis submitted to the  
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This thesis entitled:  
The Non-Solicitation Principle of Democratic Legitimacy  
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has been approved for the Department of Philosophy

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The final copy of this thesis has been examined by the signatories, and we  
Find that both the content and the form meet acceptable presentation standards  
Of scholarly work in the above mentioned discipline.

Hall, James Michael (M.A., Philosophy)

The Non-Solicitation Principle of Democratic Legitimacy

Thesis directed by Professor Michael Huemer

There are many problems with contemporary forms of democratic government. Apathy, factions, and the problem of legitimizing authority in a democracy plagued by both are among the most important of the problems democracies face today, especially in the United States. I propose a principle of non-solicitation for government positions. This principle solves the aforementioned problems by (i) widening the sphere of possible political participation, (ii) abating the problem of factions, and (iii) legitimizing authority as the right to rule under deliberative democracy, consent, reasonable consensus, and equality theories of legitimization.

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# Chapter 1: Introduction

## 1.1 An Introduction to Non-Solicitation

In writing political philosophy, the aim of the philosopher should be two-fold. The philosopher should help the community decipher what the ideal form of government is while at the same time producing or defending practices that can help us bring about this ideal, or at least prevent us from falling farther from it.<sup>1</sup>

In this paper I will defend a Principle of Non-Solicitation which will illuminate some key ideas about the ideal form of democracy; however, an equally important aim of the principle is to attempt to correct some of the most important problems currently affecting the democracy of the United States today.

In section 2, I will assume that deliberative democracy grounds political authority, where authority is construed as both the right to rule and the duty to obey. This assumption will not carry through to the other sections of this paper. I only make this assumption in the first section in order to exemplify how the Principle of Non-Solicitation works. It is often thought that apathy is a problem for democratic government. I will discuss why apathy is a problem, and then I will show that within a deliberative democratic setting, the principle can abate the level of apathy;

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<sup>1</sup> A similar idea can be found in Aristotle (*Politics*, 1288b37-40). Here he states, “We should consider, not only what form of government is best, but also what is possible and what is easily attainable by all.”

Judt (2012) makes a brief case for the view that defending democracy today should be done, not by drawing large abstractions about ideal democracy, but by instead defending the tangible mechanisms that lead to those ideals. In this way we can protect democracy from its own “genetic shortcomings”.

i.e., increase people's participation. This will show that the principle is legitimacy conferring under deliberative democracy because it widens the sphere in which political participation is possible.

In section 3, I will discuss the Principle of Non-Solicitation in regard to the problem of class factions. I will start by discussing the Majoritarian Problem of Factions which was popularized by James Madison and John Stuart Mill.<sup>2</sup> This will provide an introduction to the overall problem of factions. I then discuss the problem of class factions. Here some discussion of Plato and Joseph Schumpeter will be required. I will argue that the system James Madison puts forth in the Federalist papers goes a long way in solving these two problems of factions; however, the addition of the Principle of Non-Solicitation is a necessary addition to Madison's project if the problems are to be solved.

Section 4 makes the claim that the Principle of Non-Solicitation must be accepted because it is required by the three major theories of political authority; namely, consent theory, reasonable consensus theory, and equality theory. I will discuss each in turn before tackling objections to the view in Section 5.

From these arguments, I will conclude that the Principle of Non-Solicitation must be accepted because it is a necessary condition for legitimating authority while at the same time being a useful tool for stemming the increase in apathy and eliminating the problems of factions.

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<sup>2</sup> See Madison (1787) and Mill (2003).

## 1.2 What is the Principle of Non-Solicitation?

The purpose of the Principle of Non-Solicitation (PNS) is to advance the ideals of democracy. In other words, the purpose of the PNS is to put power in the hands of the general population such that no one subsection of that population can hoard political power, thus turning the democracy into a form of oligarchy.

The PNS works toward these goals by stipulating that no man desiring a position in the government may self-canvass for that position, deliver electioneering speeches, or otherwise address the electorate on his own behalf. Self-canvassing and electioneering are already seen as debatable practices by both philosophers and politicians alike.

In terms of philosophers, the practice of self-canvassing has been seen as problematic as far back as the work of Aristotle. In the *Politics*, Aristotle states, “[I]t is improper that the person to be elected should canvass for the office; the worthiest should be appointed, whether he chooses or not.”<sup>3</sup> This is partly due to Aristotle’s belief that, “...ambition and avarice, almost more than any other passions, are the motives of crime.”<sup>4</sup>

In *The Principles of State and Government in Islam*, Muhammad Asad applies the commandments of Islam to the structuring of the state in order to determine that, “[T]he constitution of an Islamic state would explicitly declare that self-canvassing by any persons desirous of being appointed to an administrative post (including that of head of the state) or of

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<sup>3</sup> See Aristotle (*Politics*, 1271a10-12)

<sup>4</sup> *Ibid.*, 1271a16-17

being elected to a representative assembly shall automatically disqualify that person from being elected or appointed.”<sup>5</sup>

However, some philosophers who support more aristocratic forms of government, such as Joseph Schumpeter, will find canvassing to be a beneficial practice. For Schumpeter, democracy becomes merely a mechanism by which the leaders and elite of a country are able to compete against one another for government positions. Since competition is a major characteristic of Schumpeter’s system, it seems likely he would be in favor of self-canvassing. Self-canvassing would allow the leaders and elite to put themselves into the competition for positions they were desirous of.

In the legal history of the United States, electioneering has been a major topic of debate. The legal restrictions on electioneering have varied widely, and in some cases have been extreme. For example, in 2012 North Dakota’s electioneering law included a clause that stated, “Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, is guilty of an infraction.”<sup>6</sup>

At one point Alabama had a similar law. A newspaper editor was arrested under Alabama’s law for printing an editorial piece on election day in favor of one of the propositions up for adoption. This sparked the Supreme Court case of *Mills v. Alabama* in 1966. The Supreme Court found that the Alabama law was unconstitutional under the First Amendment because the discussion of governmental affairs is central to the kind of speech that the First

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<sup>5</sup> Asad (1961, p. 47)

<sup>6</sup> Port (2014)

Amendment protects. Since this decision, many states have restricted their electioneering laws so that they only apply to polling locations and some specified area surrounding such locations on election day. However, it is still a topic of debate as to what counts as electioneering and to what extent laws against electioneering limit a person's right to free speech. Should people be allowed to wear a t-shirt or button in support or disdain of a candidate to polling locations, or should laws only prohibit those actions at polling locations which are meant to directly persuade people to vote one way or another? Does electioneering on election day actually influence the results of the election? Does limiting electioneering even at polling locations limit people's right to free speech in an unjustifiable way?

The Principle of Non-Solicitation holds that electioneering and self-canvassing are detrimental to government. By eliminating such practices the PNS is able to help solve the problem of factions and confer legitimacy to states.

For now let us think of the Principle of Non-Solicitation as follows:

*The Principle of Non-Solicitation: No individual may self-canvass for any leadership position, deliver electioneering speeches, or otherwise address the electorate on his own behalf.*

One important question which I will put off until later but which should be kept in mind is: What kind of election process does such a principle require? The PNS may require that people get far more involved in government. It may require elimination of the current election process in favor of sortition. It may require something in between. No answer will be given to this question, but I will highlight how the principle works within each extreme. For now, let us begin with the problem of apathy.

## Chapter 2: Deliberative Democracy and Political Apathy

### 2.1 Deliberative Democracy

To many, the ideal form of democracy is called deliberative democracy. In this section, we will be assuming that deliberative democracy grounds political authority. As described by Joshua Cohen:

*The deliberative conception of democracy is organized around an ideal of political justification. According to this ideal, justification of the exercise of collective political power is to proceed on the bases of a free public reasoning among equals. A deliberative democracy institutionalizes this ideal. Not simply a form of politics, democracy, on the deliberative view, is a framework of social and institutional conditions that facilitates free discussion among equal citizens--by providing favorable conditions for participation, association, and expression--and ties the authorization to exercise public power (and the exercise itself) to such discussion--by establishing a framework ensuring the responsiveness and accountability of political power to it through regular competitive elections, conditions of publicity, legislative oversight, and so on.<sup>7</sup>*

In short, a deliberative democracy is characterized by the requirement that political power can be exercised by some governing body only after the people have had the chance to deliberate and discuss the issue at hand in a public manner. How does this confer legitimacy upon a governing body? There are multiple ideas at play here.

First, one should pay attention to the phrase, ‘power is to proceed on the bases of a *free public reasoning among equals*’. Although each word of the italicized phrase plays an important role, the most mileage for deliberative theory is drawn out of the idea of equality. In a deliberative setting, each individual gives reasons for or against some proposal. By treating each other as equals, individuals are supposed to be able to expect that those reasons alone will determine the outcome. In other words, political power and social standing are to play no role in determining the outcome of our political decision making when we treat each other as equals. By

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<sup>7</sup> See Benhabib (1996, p.99).

treating each other as equals, each individual is treated *fairly*. This is not to be confused with equality theories of political authority, which will be discussed later. Authority is not derived from treating each other equally. Instead, treating each other equally makes the discussion process fair and only when we have a fair process can decisions arising from that process have authority.

Secondly, Cohen states that the deliberative view includes ‘a framework of social and institutional conditions that facilitates free discussion among equal citizens’. Thus, in addition to the condition of equality we just discussed, the state does not have political authority unless the institutions are set up so as to facilitate the type of deliberation required. This addition is important because it is not enough for the people’s decision process to be fair, but the state must ensure that the conditions for this process are met and advanced.

To summarize, the idea is that deliberative democracy grounds political authority because the process by which political decisions are made under this theory is fair to each individual since it only worries about their reasons for or against some proposition and not on seemingly irrelevant characteristics. Also, the state must foster this type of process in its very institutions so that the process is maintained in its ideal form.

There is much more to say about deliberative democracy which I will not discuss here. Other ideas are involved in creating the ideal deliberative process, and there are different views as to what this process must include.<sup>8</sup> More importantly, philosophers question whether or not deliberative democracy does actually ground political authority.<sup>9</sup> We will not discuss these

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<sup>8</sup> For an example, see Guttman (1996).

<sup>9</sup> See Huemer (2012). Huemer advances both a practical and theoretical point against deliberative democracy. In practice, we fall far too short of the deliberative ideal for our state’s authority to be grounded in the deliberative ideal. Theoretically, even if we did reach the ideal deliberative state, there are prima facie rights that individuals have that no fair and reasoned process can justify violating.

questions. Instead we will now discuss how the PNS can solve the problem of apathy and confer legitimacy to a state within a deliberative democratic setting.

## **2.2 An Introduction to the Problem of Apathy**

Democracy comes in many different forms, but a necessary constituent of democracy is collective decision making, which is a procedure in which “decisions that are made for groups [...] are binding on all members of the group.”<sup>10</sup> Assuming that deliberative democracy grounds authority raises the following question: how many people can fail to participate in the group decision procedure before it fails to be democratic? This question makes the problem of political apathy one which must be solved. Political apathy is the absence of interest, or indifference, to political activities. Although not entailed by apathy, apathy is often coupled with inaction. When inaction reaches a certain level, the process will fail to be democratic and will resemble something like an aristocracy or oligarchy in that only a small section of the population will be making decisions that are binding on the entire group. This is problematic for a deliberative democratic theorist because participation in the deliberative process is part of what grounds the claim that the process confers legitimacy upon the state.

Sadly, one can see an increase in apathy in the United States.<sup>11</sup> However, even without an increase in apathy, voter participation in the United States has always been at levels low enough to cause alarm for democracy. The United States ranked 120th among countries with a voting procedure with an average of 66.5% of the registered voters casting a ballot in federal elections from 1945-2002.<sup>12</sup> In the 2012 election, only 57.5% of eligible voters cast a ballot, which is a decrease from the percentages in the 2008 and 2004 elections even though there were eight

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<sup>10</sup> See Christiano (2006).

<sup>11</sup> See Lehrer (2013).

<sup>12</sup> See Pintor (2002).

million new eligible voters in 2012.<sup>13</sup> From 2008 to 2012, five million fewer people voted, and in 2012 ninety-three million eligible citizens did not vote.<sup>14</sup> All of the aforementioned statistics come from years in which there is a presidential election. The results are far worse when looking at election years in which there was no presidential election. Turnout in midterm elections peaked during the sixties at 48.7% and has dropped as low as 39% in 1978, 1986, and 1998.<sup>15</sup> Even more disturbing, recent mayoral elections in Dallas, Austin, and Charlotte were decided by a voter turnout of under 10%.<sup>16</sup>

Are these levels of participation enough to secure political authority in a deliberative democracy? Decisions that are binding on entire groups of the population are decided by 60% or less of eligible voters, and in midterm elections decisions are being made by less than half of eligible voters. Even though 60% participation may be enough for the system to remain democratic, it seems as though there must be an increase in participation for reasons of legitimating authority. In the ideal deliberative process, everyone is participating in their political environment. The process calls for public discussion and advancement of reasons reaching toward a consensus. When consensus fails only then do deliberative democratic theorists fall on a voting procedure. Obviously, the deliberative ideal is a hypothetical scenario that the United States falls far short of. However, as stated at the beginning of this paper, the philosopher should not only focus on the ideal scenario in political philosophy, but also make recommendations as to how we can move toward that ideal, or at least keep from falling farther from it. Thus, the question now becomes, can the United States' political environment move closer to the

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<sup>13</sup> See Gans (2012).

<sup>14</sup> Ibid.

<sup>15</sup> See Richie (2012).

<sup>16</sup> Ibid.

deliberative ideal? By adding the Principle of Non-Solicitation to deliberative democratic theory, the answer is an emphatic ‘yes’.

### **2.3 Pre-selection in the Current System**

After the quick exit of the last section, one might be feeling mildly uncomfortable. Who cares if the United States can move closer to the deliberative democratic ideal? Unless it can actually reach that ideal, the United States government will never actually have political authority! This may be right. If only under ideal conditions does the state have authority, then even residing one step away from that ideal seems to deprive the state of its authority. If this is the case, why should we talk about whether or not the United States can move closer to the ideal?

This question necessitates a two part response. First, political authority may be such that it comes on a scale. Some state can have more or less political authority the closer or further it is from the stated ideal. If this is the case, then clearly the question of whether or not a particular state can move closer to that ideal is important. This option raises some difficult questions. Must citizens obey the commands of an authority that fails to reside in the ideal? Are citizens required to show different levels of obedience depending on where their state resides on the scale? These are important questions to think about, but unfortunately they cannot be answered here.

Secondly, political authority may be such that it is an all or nothing game. A state either reaches the ideal conditions and has political authority, or it falls short and has no right to rule or justified expectation of obedience. Here the question of whether or not we can move closer to some ideal state may seem less important. However, this is the wrong way to think about the situation. Barring some characteristic of government that would necessarily preclude us from

ever reaching the ideal state, the question of how we can move closer to that ideal is still of great importance. The hope here is that by making incremental steps toward the ideal over time, we will eventually reach our goal. Thus, regardless of how one thinks about authority, there is still reason to entertain the question as to whether or not the United States can move close to some ideal, which in this case is assumed to be the deliberative democratic ideal.

So how can a Principle of Non-Solicitation start to cure the problem of apathy and confer legitimacy upon a deliberative democratic state? In short, the PNS can do so by advancing the goals of deliberative democracy better than any system which does not include this principle.

First, let us elucidate what is going on in the current United States system so that we may see how the system is amended by the PNS. In the current system, all candidates for representative positions in government are preselected for the people by political party organizations based on a candidate's popularity and chances of winning in comparison to other members of the candidate's party. The people can participate by taking part in the voting process or by performing actions that help the campaign of a particular candidate, but they can only do so for candidates who have been preselected for them.

What does it mean for a candidate to be preselected for the people? There are the caucus and political primary systems in the United States. Don't these systems allow the people to choose who their candidates are going to be? No! These systems are controlled by political party organizations. Let us look at some of the flaws of the primary system.

First, there are three types of primaries; namely, closed, open, and blanket. A closed primary is the most problematic from the standpoint of political authority for a deliberative democratic theorist. In a closed primary, only those voters who have registered with the Republican or Democratic Party are allowed to vote, and they are only allowed to vote for

candidates within the political party they are affiliated with. This is problematic. Closed primaries do not take into account the preferences of registered independents. According to Gallup polls taken over the last 5 years, at least thirty percent of voters identify as independents.<sup>17</sup> This means that, in a system with only closed primaries, thirty percent of registered voters would get no say in the political primaries which determine their candidate choices for office. This would clearly be a case of candidates being preselected for voters. In other words, thirty percent of voters had no choice in who to select for the office of president until the final two candidates were presented to them in the general election. Pre-selection occurs in this case because a third of voters were not able to take part in deciding which candidates would advance to the final rounds. They simply had to show up to the final round of voting and pick between two people that the Republicans and Democrats decided were the best options. This is problematic for deliberative democracy because it precludes individuals over whom political power will be exercised from taking part in the deliberative process by which candidates are selected.

Are the other types of primaries as problematic? Blanket primaries are set up such that all registered voters may participate. Also, in blanket primaries all participants may vote for any candidate regardless of the voter's or the candidate's party affiliation. The Supreme Court found blanket primaries unconstitutional in the case of *California Democratic Party v. Jones* based on the conclusion that the blanket primary in California violated a political party's right to freedom of association by forcing their candidates to be chosen by individuals of the rival party whom they had no desire to associate with.<sup>18</sup> Furthermore, blanket primaries may be seen as problematic because rival parties can use them strategically to hinder the other party's chances of

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<sup>17</sup> See (Gallup 2014)

<sup>18</sup> See Washington (2008)

selecting the best candidate. For example, the democrats of a state could all band together in the primaries and vote for the Republican least likely to win in the general election thus boosting the Democratic Party's chance of having their candidate win the general election.

An open primary seems to have no appreciable difference from a blanket primary. In a blanket primary voters may choose to vote for any candidate regardless of political affiliation. In an open primary any registered voter may vote but they first must declare which party they are choosing to vote for. One can vote for candidates within other parties than the party one is registered with. In other words, at the polling station each individual is asked which party they are voting for, they are then given a ballot with that party's candidates, and then they are allowed to vote. If the Supreme Court finds blanket primaries unconstitutional, then I see no reason why open primaries aren't unconstitutional for the same reason. For example, registered independents and Republicans can declare that they are voting for the Democratic Party. This violates the Democratic Party's right to association in the same way as blanket primaries and also carries along the worry that other parties may vote for the Democratic nominee least likely to win in a general election.

Are blanket and open primaries problematic from the point of view of deliberative democracy? Yes. The problem of pre-selection still applies to open and blanket primaries, although to a lesser extent than closed primaries. In all primaries, the candidates who appear on the ballot have been selected by the relevant party. The Republican Party chooses who will represent the Republicans on the primary ballot, and likewise for the Democratic Party. Thus, the power is in the hands of the parties and not the people. The people show up to the polling location during the primaries and are presented with a list of candidates preselected for them by the party. If the people think there is someone more fit for the job, this can play no role in who

advances to the general election. All the people may do is choose between the candidates presented to them by the two major parties. Once again, pre-selection is a problem for deliberative democracy because it precludes individuals over whom political power will be exercised from taking part in the deliberative process by which candidates are selected. However, in the case of open and blanket primaries we have taken a great step towards the ideal deliberative process by allowing all registered voters to take part in moving candidates forward to the general election.

There is at least one further worry about the current primary system; i.e., the existence of delegates and super-delegates. Due to the results of a state's primaries, a number of delegates are sent to the national convention for one of the political parties. These delegates are assumed to vote in line with the outcomes of the primaries from their state. However, the delegates are not required to vote in any way. At the national convention they may vote for whichever candidate they please. While this is problematic because it fails to require that delegates accurately represent voter interests, the delegate system at least has the appearance that it is tracking voter interests. More problematic is the existence of super-delegates. Super-delegates have no commitment to vote for any candidate. They may be courted by candidates and pledge their vote then or make up their minds at the last second. Here the primary system gives up even attempting to create an illusion of voter representation. This is problematic from the viewpoint of deliberative democracy because it undermines the entire deliberative process.

Assume that open or blanket primaries are in line with the ideal deliberative process. The existence of super-delegates undermines the entire process. Essentially, the existence of super-delegates says to the voter that their deliberation is not to be taken seriously. Voters can take part in primaries and discuss the merits of candidates all they want. In the end, parties have super-

delegates come in with the possibility of swinging the vote toward any candidate they please. One may question whether super-delegates really have this kind of power, and the answer is that they do. In the 2008 presidential election, a candidate from the Democratic Party needed 2,183 delegates to vote for them in order to win the nomination as the party's general election candidate. That year there were 800 super-delegates. In other words, super-delegates made up over a third of the delegates any one candidate needed. Over a third of the delegates needed to secure a nomination had no loyalty to the voters and no requirement to accurately represent voter interests. This clearly is in conflict with the ideal deliberative process, as the very institution in which this process takes place takes steps to undermine that process by incorporating a sizeable body of non-representative voters.

It is no wonder political apathy is so prevalent among voters. In the current system they only get to choose between pre-selected candidates, and then the people who are supposed to represent their interests aren't even required to vote so as to actually represent those interests. Why take part in the political process at all? The political parties have all of the power they need to get around the voting public's opinions on who is best fit to hold government positions.

At the very least the PNS makes positive steps towards the deliberative ideal. Let us now discuss the system recommended by the PNS to see what improvements it makes over the current system.

#### **2.4 Application of the Principle of Non-Solicitation**

Returning to Cohen's description of deliberative democracy, Cohen states, "[D]emocracy, on the deliberative view, is a framework of social and institutional conditions that

facilitates free discussion among equal citizens--by providing favorable conditions for participation, association, and expression.”<sup>19</sup>

Given the discussion of the last section, if we were to remove super-delegates, require delegates at the national conventions to vote in line with the voters they represent, and eliminate closed primaries, then the United States’ political system will be much closer to the deliberative ideal than it is now. These changes will eliminate the undermining effect of the delegates and lessen the degree to which pre-selection of candidates occurs.

If the United States were to make such changes, this new system would not work against the ideals of deliberative democracy. The people could engage in critical discussion with one another in a public manner. The people could discuss the merits of the different candidates for office and how the election of each candidate will affect major policy questions; however, as noted earlier, the problem of pre-selection will still occur given open or blanket primaries.

Pre-selection is problematic for deliberative democracy because it puts a constraint upon the sphere in which political discussions occur. This is not to say that it limits people from discussing the political worth of certain individuals who were not preselected; however, it does limit the power of such discussion. Looking back to the passage from Cohen, deliberative democracy “ties the authorization to exercise public power (and the exercise itself) to such discussion--by establishing a framework ensuring the responsiveness and accountability of political power to [the deliberative process] through regular competitive elections, conditions of publicity, legislative oversight, and so on.”<sup>20</sup>

As the passage states, the deliberative process grounds the authorization and exercise of public power because such power is responsive and accountable to the deliberative process.

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<sup>19</sup> See Benhabib (1996, p.99).

<sup>20</sup> Ibid.

Where pre-selection exists, the condition of responsiveness is violated. For example, assume that the Democrats and Republicans have already selected which candidates to include on their primary election ballots and that Vermin Supreme is to be found on neither ballot. For the two weeks prior to the primary elections, the people have gathered in order to discuss who would best fill the role of President. The people not only discuss the pre-selected candidates, but any other individual who a person suggests as a possibility. Through this discussion the people decide that Vermin Supreme is the best man for the job. Since Vermin Supreme appears on neither of the primary ballots, he cannot move on to the general election. Thus, the people will not be able to elect him as the President of the United States. Here it is clear that by giving the political parties so much power through the primary system, the election process is not responsive to public discussion. If it were, Vermin Supreme would have become President. Thus, it seems that we need to eliminate pre-selection.

The Principle of Non-Solicitation eliminates pre-selection from the political process by removing the constraint on the power of public discussion. In the current system, political parties decide who to include on their primary ballots out of a pool of self-nominated individuals. If no individual were able to solicit for a government position, then the current primary system would no longer exist since political parties would have no self-nominated individuals. A new primary system may be built that does not entail pre-selection, but the current system would surely be done away with.

With political parties stripped of the power bestowed upon them by the primary system, and no individual able to solicit for a government position, the selection of officials would be left entirely in the hands of the people. Deliberation about candidates would now take place from the ground up. Instead of deliberating over which party's pre-selected candidates are the best choices

for some position, the people would be deliberating over who to even select for office in the first place. How is this to be done? Luckily, I don't have to fully answer this question. Being that we are in the framework of deliberative democracy, the people may now discuss how to go about selecting officials for government positions. If their deliberative process leads to a process of election by lot or legally required voting and participation, then so be it. All that is required is that they create a deliberative system in line with the PNS so that pre-selection does not find its way in.

The ideals of deliberative democracy are better instantiated in any such system because the sphere in which participation can take place has been widened. Participation is now possible in more avenues than it was before because discussions of candidates who were not preselected now have power in the political arena.

Although I have now explained how the PNS is legitimacy conferring within the framework of deliberative democracy, one should still be wondering how apathy towards involvement in government has been stimulated in the right direction. If apathy is really as strong and widespread as the aforementioned statistics indicated, how does eliminating pre-selection and solicitation for power solve the problem?

First, one of the major reasons people don't vote is that they dislike, or are apathetic towards, their choice of candidates.<sup>21</sup> In 2012, the United States Census Bureau collected information on why registered voters did not vote in the 2008 election. In 2008, there were 15 million registered voters who did not vote. Sadly, 26.4% said that they failed to vote because they were 'not interested/didn't like the candidates'.<sup>22</sup> There were also thirty million Americans who never registered to vote for the 2008 election. 51.6% of this group claimed that they never

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<sup>21</sup> See Plumer (2012) or for a humorous account of this problem see Stone (2004). See also Sharp (2012) and File (2012).

<sup>22</sup> See Plumer (2012).

registered to vote because they were not interested.<sup>23</sup> Thus, although people gave other reasons for not voting, the Census Bureau data reveals that a major reason people fail to vote, or even register to vote, is due to political apathy.

Now that we have eliminated pre-selection and widened the sphere in which people can participate, the people can create a system through the deliberative process in which they will be interested. While some people may remain uninterested, for those who claimed their apathy stems from a dislike for the candidates, the ability to create a system in which worthwhile candidates are put forth should eliminate this source of apathy. If the people decided that sortition was the best way to go then voter apathy would no longer be a worry. Thus, the prescriptions the PNS makes under the framework of deliberative democracy, while not eliminating apathy, at least provide the tools for reducing it by increasing the sphere in which the people through their discussion have power over how government power is to be used and distributed.

So far I have argued that the Principle of Non-Solicitation is legitimacy conferring within the framework of deliberative democracy because it eliminates pre-selection. I have not claimed that the PNS brings us all the way to the ideal deliberative state; however, just as open and blanket primaries are an advancement towards the deliberative ideal over closed primaries, the PNS brings us closer to the ideal by eliminating pre-selection. In eliminating pre-selection, the PNS also gives some tools for solving the problem of apathy by allowing people to structure the voting process in ways that get the population involved and that avoid sticking people with unappealing candidates. I will now drop the assumption that political authority is justified by the theory of deliberative democracy and go on to discuss how non-solicitation for government positions can abate the problem of factions.

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<sup>23</sup> Ibid.

## Chapter 3: The Problem of Factions

### 3.1 The Problem of Majoritarian Factions

The problem of factions plays an important role in gaining insight into democracy. The problem of factions can take at least two different forms. The first form is that of the majority faction versus the minority faction. This can most easily be seen by looking at a pure democracy. A pure democracy is a form of government in which everything is decided by a vote in which the entire population is involved. One identifying characteristic of a pure democracy is its direct representation. The people do not select officials to represent them in the running of the government but are instead involved in the voting, and any other decision making, processes themselves. In a pure democracy the problem of majoritarian factions arises because the majority on any issue can always outvote the minority. Thus, majority factions create a problem for democracy in that they can create a perpetual minority. In other words, majority factions are problematic because they allow for the possibility that the interests of the minority will never be advanced in a system where every voter is seen as an equal. If the people are equal there seems to be some intuition that perpetually favoring one party's interests over another violates equality.

One might be inclined to think that the tyranny of the majority, while problematic for pure democracy, does not apply to representative democracies. In a representative democracy the will of the majority cannot be imposed on the minority because the people elected to office are responsible to the community at large and can be removed from office for failing to represent different important interests. However, representation is clearly not enough.

In discussing democratic republics in *On Liberty*, John Stuart Mill states:

*It was now perceived that such phrases as "self-government," and "the power of the people over themselves," do not express the true state of the case. The "people" who*

*exercise the power, are not always the same people with those over whom it is exercised, and the "self-government" spoken of, is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means, the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, may desire to oppress a part of their number; and precautions are as much needed against this, as against any other abuse of power. The limitation, therefore, of the power of government over individuals, loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein.<sup>24</sup>*

In this passage Mill is getting at the idea that just moving from direct involvement in government to a representative form of government is not enough to protect against the tyranny of the majority. In representative governments today, political officials are selected by a voting procedure. As long as there is a voting procedure the majority can still impose its will on the minority by controlling which candidates get into office. The majority will only select those representatives which will represent the majority interest, and the representatives are incentivized to ignore minority interests in favor of majority interests so that they can be reelected. The continued problem of tyranny even in representative government is what leads Mill to state that government power over individuals should be limited. However, short of eliminating the voting process in favor of sortition, it is unclear how limiting government power can eliminate the problem of the tyranny of the majority. Instead, if we want to maintain a voting process, we should focus on how to minimize the power that the majority has over the minority. James Madison puts together a system that does just that. However, let us look into the problem of class factions before we look at Madison's solution.

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<sup>24</sup> See Mill (2003).

### 3.2 The Problem of Class Factions

Although traditionally the phrase ‘the problem of factions’ has been linked to the problem of the tyranny of the majority, there is another problem of factions which has been worried about seemingly just as long. This second type of factional problem can be called the Problem of Class Factions. In the words of James Madison, this problem stems from:

*The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interest. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.<sup>25</sup>*

In this passage, Madison is highlighting the importance of recognizing the differences in individuals. We cannot make men have uniform interests because there is diversity in the mental and physical powers of individuals. This diversity in powers leads to different abilities to acquire goods, which then leads to different interests. Some will want goods they cannot acquire, and some will have acquired all of the goods they require and want to protect their ownership of these goods from those who are lacking them. If we redistribute goods such that everyone has an equal share, this will not solve the problem. Those with greater faculties of acquisition will still have different interests than those with lesser faculties; namely, those with greater faculties will have an interest in abolishing redistribution while those with lesser faculties will have an interest in maintaining redistribution. Thus, based on basic facts about the natural differences between individuals, it is impossible to make the political interests of humans uniform.

Being that our natural differences in faculties lead to different levels of property acquisition, and thus different interests, it is natural that society divides into classes. From the viewpoint of democracy, it is problematic when one class is able to hoard political power and

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<sup>25</sup> See Padover (1953)

dominate the other classes since it deprives the other classes of power in a process in which everyone's interests are supposed to be represented.

Historically, this class divide has been seen as some elite class versus the general populace. The elite class can be elite in terms of wealth or in terms of ability to effectively run a government. There has been an ongoing debate, from the time of Plato and Aristotle to now, about what class of people should run the government.

On the one hand there are those philosophers, such as Plato and Joseph Schumpeter, who believe the general populace is not qualified to take part in the running of the government, and the government positions should be filled by those who hold some form of expertise necessary, or at least valuable, for running a government.<sup>26</sup>

Plato believed that democracy required the wrong type of expertise in its officials. In a democracy, as long as voting is the process by which officials are selected, officials will have to become experts in winning elections. The worry here is that over time officials will become nothing but experts at winning elections. Since there is no necessary connection between the expertise needed to win an election and the expertise needed to justly run a government, governments will fail to be staffed by individuals who have the mental power to think through difficult political issues and solve them in a just manner. Instead the government will be staffed by those who are experts at manipulation and winning elections.<sup>27</sup>

Although the above is only a part of the explanation as to how Plato arrives at his view, Plato ends up favoring an aristocracy in which philosopher kings are the ruling class.

Philosopher kings are supposed to have the kind of expertise necessary to deal with political

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<sup>26</sup> See Schumpeter (1942, p. 250-283) and Plato (1997, *Republic*)

<sup>27</sup> See Christiano (2012) "Democracy".

issues, and, since they are selected by merit and not democratic election, there is no worry that the people will be ruled by those who are experts in rhetoric and manipulation.

Joseph Schumpeter also develops a type of aristocracy but keeps a democratic voting procedure. Schumpeter holds an elite theory of democracy. This means that Schumpeter believes the general populace is not capable of ruling themselves. Thus, the desirable form of democracy is not egalitarian but one in which the elites compete for the votes of the general population. The elites here are clearly meant not as the wealthy elite but instead as the political elite. Democracy is simply the competitive platform for elites to fight for political positions. Once elected, the elites are not to exercise political power in line with the fleeting whims of the general population, but in line with their own rational determinations. The role of the people is to simply facilitate the rotation of officials so that no official gains too much power and abuses the population.

Elite theorists such as Schumpeter normally motivate their view by pointing out that citizens are generally uninformed about politics. Some theories claim that it is rational for people to be ignorant about political issues because the cost of staying up to date on all of the necessary political information far outweighs the benefits one can receive by collecting such information. Some even claim that it is rational to be irrational about politics. Here the idea is that it can be instrumentally rational for one to be epistemically irrational. Being ill-informed and forming false beliefs about political issues can be justified because there are instrumental reasons for forming false or tenuous political beliefs; e.g., to bond with a social group, to serve self-interest, or to construct a pleasant self-image.<sup>28</sup>

If the general population has reason to be ignorant or irrational about politics, then why would we want government power to be in the hands of such a population? Instead we should

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<sup>28</sup> See Huemer (2014).

give power to those who have the knowledge and expertise to make rational decisions about politics.

On the other hand there are those, such as Aristotle, James Madison, and John Stuart Mill, who believe the general populace are in fact qualified to take part in the running of government and should do so.<sup>29</sup> We will discuss James Madison in detail in the next section so for now we will just look at Aristotle and John Stuart Mill.

Aristotle in general does not favor democracy because it is the rule of the poor. Being that the poor are lacking in the resources to live comfortably, they are more likely to abuse their power in order to better their positions in life. However, Aristotle does make a particular case in favor of democracy that aligns with one of Mill's instrumental arguments for democracy.

Aristotle and Mill both think that democracy may be beneficial because it pools together the resources of the population. For Aristotle the resource pooled will be virtue. The government may be ruled by one very wise man, but the multitude may turn out to be an even better ruler. Each individual has at least some virtue and practical wisdom. When we pool these things together the multitude may be more virtuous and wise than any wise individual. Mill claims something similar. Instead of virtue, representative government allows us to pool together information with practical wisdom. Varying viewpoints and critical assessments are pooled together in a democracy so we should end up with better political views based on this process.<sup>30</sup>

Mill also thinks that democracy is instrumentally valuable because it improves the moral character of citizens by forcing them to be introduced to different moral viewpoints and critically assess and defend their own viewpoints against the alternatives. Mill also thinks this benefit to

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<sup>29</sup> See Aristotle (2012), Madison (2011), and Dahl (1998, p. 69-76)

<sup>30</sup> See Christiano (2012) "Democracy".

moral character will increase the quality of legislation since legislation will be created by those individuals with increased moral character.

Although Aristotle is against democracy as the rule of the poor, Aristotle does favor government in which the people take part in running the government directly. The ideal government is one in which every individual has perfect virtue and the tools to carry it out in practice. Each individual takes part in government in this ideal state. Even the form of government one step under the ideal has the people directly involved in government. Aristotle calls this a polity. The best way to form a polity is to have it be controlled by a numerous middle class where the citizens all have virtue but less than perfect virtue. This is because the middle class lives in moderation, and moderation is supposed to make individuals less likely to abuse their power and fellow citizens.<sup>31</sup>

Essentially, the debate can be reduced to whether an aristocracy, democracy, or some combination of the two is the best form of government. There seem to be strong arguments against both pure aristocracy and pure democracy.

Those against an aristocratic form of government argue that aristocracies often fall into patterns of corrupt behavior and make decisions for the people even though they are the class that has the least in common with the people and their needs. The very notion of aristocracy includes the idea that officials have some meritorious characteristic that makes them fit for the job of ruling. However, since these people have something that the average citizen does not, the objector to aristocracy worries that officials will be too different from the average citizen and will not be able to make decisions in tune with the needs of the general population. As for the decline into corruption, there are two worries. First, being that the officials will be a small group compared to democracy, the officials can unite in their interests and not act as a check on each

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<sup>31</sup> Ibid.

other as factious citizens do in a democracy. Secondly, since officials in an aristocracy are often thought to be chosen by merit, there is a worry that if they start acting in ways that show corruption, the people cannot act as a check on their power.

It can also be argued that aristocracies present a problem as to how officials are supposed to be selected. If they are selected by the people, then there will be a dispute over what qualities make someone an expert in politics or what other merits one may need. If they are not selected by the people, but instead by their merit, then there seems to be a problem of legitimacy in regard to the official's authority. Why should any individual listen to the legislation of an individual simply because that individual has more merit? Merit and political ability doesn't seem to justify a duty to obey on the part of citizens. One might think the problem of selection is problematic for all forms of government, and to an extent this is true. In democracies we wonder whether people should be selected by popular vote or electoral vote. We also wonder what requirements should be met by any individual who wants to run for office. However, the problem is worse for an aristocracy. In democracies we at least have the starting assumption that officials should be selected by the people although we disagree as to whether or not this should be done directly or through representation. In aristocracies there is the further worry about whether or not the people should even be involved in the selection process. Thus, those favoring democracy based on selection characteristics want to say we've at least answered one important question in a democracy that hasn't been answered in the selection of aristocratic officials.

Those against a pure democratic form of government argue that, not only is the general populace too incompetent to run government in their own best interests, but also that pure democracy leads to a tyranny of the majority over minority groups. As we've seen above, there are the theories of rational ignorance and rational irrationality. If these theories are true, then the

people have reasons for being too incompetent to run government. We have also seen statistics about the level of apathy. If people tend to be apathetic towards democratic government, why would we want them taking part in it? Also, if democracy comes with the tyranny of the majority, which seems to trod all over the minority's rights to representation, then shouldn't we adopt some other form of government which respects all individuals? These are some of the worries about democratic government.

To avoid the problems of both forms of government, while maintaining some of the features that make them so attractive in the first place, James Madison proposes a system in which the two are blended. Essentially he tries to create a system in which the people maintain ultimate authority over the government power, but they elect individuals to represent them in the running of the government based on merit. This system allows us to begin solving both the problem of majoritarian factions and the problem of class factions. Let us now look at Madison's project.

### **3.3 Madison's Solution**

James Madison was one of the great minds in the history of political theory and did much to contribute to the system of republicanism we find in the United States Constitution. Two of his major worries about systems of government were the concentration of power in any one branch of the government and the problem of factions. Although I am focusing on the problem of factions, one cannot understand Madison's solution to the problem without also looking into his solutions for avoiding the hoarding of power by any one branch.

First, I believe it is important to clear up a common misconception about Madison's project dealing with the separation of powers among the branches of the government. Many

believe that the separation of powers is supposed to pit the different branches of government against one another. By pitting them against each other, the branches are supposed to keep each other in check. In other words, a branch's power will be kept in check because the other branches will always be acting so as to limit the power of that branch. However, I think this is the wrong way to interpret Madison and this misinterpretation is due to a famous passage in *The Federalist* No. LI.

*This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other – that the private interest of every individual may be sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of state.<sup>32</sup>*

The talk of 'opposite and rival interests' and of one branch being 'a check on the other' both seem to advance the idea that Madison wanted to secure the people from abuses of power by the government by pitting the government branches against one another. However, by looking at Federalist papers 47-51 one can get a better idea of what Madison was actually after.

One of Madison's major worries about government stemmed out of experience. Madison noticed that whenever power was concentrated in a single branch of government, despotism and tyranny seemed to follow. Thus, the government system should have multiple branches.

However, in *The Federalist No. XLVIII*, Madison argues that the branches of government cannot be completely disconnected from one another. Madison's argument rests on two key premises.

First, power is of an encroaching nature. His idea seems to be that the very concept of power carries along with it some requirement of expansion. If a person or body has power, it will

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<sup>32</sup> See Padover 1953 (pg. 179)

always be the case that the person or body will expand their power, not always intentionally. He further supports this idea by appealing to empirical data about government power.

Madison's second key premise is that no simple demarcation on paper will actually limit any body from abusing its power. In other words, no constitution actually has the power to limit government bodies from hoarding or abusing power. This premise seems trivially true. No written statement alone can act as a limit on government, there must be some actual means of enforcing the limits set forth in such a statement.

Thus, Madison concludes that the multiple branches of government must at least be somewhat interconnected with each other so that the provisions of the constitution have some kind of enforcer that isn't over and above the three branches of government. If there was some further body above the three branches then power would be concentrated here, which Madison clearly wants to avoid.

Given the above argument, Madison now has to provide us with information as to how the three branches of government, once connected, are to interact with one another. Given that Madison believes power is of an encroaching nature, his main concern is to give each branch just enough dominion over the others that the other branches will avoid encroachment of that branch. Here is where we find Madison has been misinterpreted in the way I mentioned above. Madison is not interested in pitting the different branches against each other. Instead, Madison is worried about giving the different branches defensive powers. In Madison's words:

*But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.*<sup>33</sup>

Pitting the different branches against each other seems to put the branches in a position such that they are forced to encroach upon one another. The branches would be constantly

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<sup>33</sup> Ibid., pg. 179.

competing for control over different dominions because they will have competing interests. Since Madison wants to abate the encroaching nature of power, pitting the branches against one another will not be a possible solution. To motivate each department to resist encroachment of the others, Madison wants to give each department defensive powers so that if some branch were to encroach upon another's dominion, those defensive powers would kick in and allow the defensive branch to negatively affect the offending branch.

A second means of ensuring this process is by making multiple divisions within the government. Initially, the government is split into the three branches. However, Madison notes that the mere size and connection to the people makes the legislative branch more powerful than the others. Thus, he advocates a bicameral legislature such that the two branches are "as little connected with each other as the nature of their common function and the common dependence on the society will admit."<sup>34</sup> Finally, the government is split among the state and federal level, and even at the state level the government is further divided into parts. The divisions of government are supposed to secure government branches from encroachment because not only are there defensive powers in place, but the power is divided such that no branch has a disproportionate amount of power. Now that we have an introduction to Madison's thought on avoiding an undesirable concentration of power, we can see how he tackles the problem of factions.

Madison defines a faction as follows:

*By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.*<sup>35</sup>

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<sup>34</sup> Ibid., pg. 180.

<sup>35</sup> Ibid., pg. 51.

I see no reason to amend Madison's definition. Today we still think of political factions as groups of people who have some interest that is adverse to the interests of some other group in their political community.

Madison deals with the problem of factions in much the same way as he deals with the problem of concentration of power in a single branch. Essentially his idea is to departmentalize government and divide the people up into so many political regions that government is slowed down, so that majority whims have time to fizzle out, and the mobilization of a majority becomes difficult or ineffectual.<sup>36</sup>

Here it is important to note that Madison is not working in ideal theory. Ideally, we would eliminate the problem of factions by making every individual have the same interests. On the other hand, we could also eliminate the problem by destroying the very liberty which leads to factions. However, Madison realizes that neither of these is a viable option. We can't make every individual have the same interests because of our very nature. Our freedom and rationality leads us to different powers of property acquisition and the amount of property one has will lead to different interests. Destroying the liberty which gives rise to factions is no solution either because it solves a problem at a much higher cost than the benefit we receive. In other words, we don't want to sacrifice our freedom in order to protect against the mere possibility of transgressions against our rights. Thus, Madison deals with the problem of factions by putting in place practices that will control the effects of factions.<sup>37</sup>

At this point it is useful to look at a few different passages from Madison in order to understand his ideas.

*Federalist X: By what means [may we secure the public good and private rights against the danger of faction]? Either the existence of the same passion or interest in a majority*

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<sup>36</sup> See Madison (2011).

<sup>37</sup> *Ibid.*, pg. 51-52.

*at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression.*<sup>38</sup>

Here Madison is acknowledging that we can only control the effects of factions. One way to control the effects is to ensure that no majority arises. This is not the same as the idea discussed above in regard to ideal theory in which we make everyone have the same interests or eliminate the liberty that leads to factions. Instead the idea is that in the United States the people will be spread out across such different ecosystems and vast expanses that no majority will arise. The people will have different interests based on their different locations and groupings. There may be local majorities but no majority will rise to the national level where the dominating rulings derive from.

The other is to allow a majority to come about but make it hard for any faction to act on their interests. The idea isn't to stop people from taking part in government and thus stifle their interests. Instead the idea is to make it so that the fleeting whims and passions of a faction are ineffectual. The individuals of a faction must first find one another and decide to act in concert, then they must coerce their representatives to advance those same interests, and then the representatives have to deliberate and vote on these procedures with representatives of different interests. Even then another branch can do away with any passed legislation by presidential veto or by it being found unconstitutional by the Supreme Court. Here we still may see local majorities arise. However, based on the differences between regions it will be unlikely for a majority to arise and even if it does the sheer distance between regions will make it difficult for majority factions to act in concert. Obviously, today this will seem less effective than in Madison's time. Today we have the technology to discover we are part of a majority and get

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<sup>38</sup> Ibid., pg. 54.

connected with others who have similar interests. However, the distance still acts as a buffer against concerted action although it no longer hinders the communication.

Madison summarizes his view in *The Federalist X*:

*The smaller the society the fewer probably will be the distinct parties and interest composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their planes of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists. It will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.<sup>39</sup>*

And in *The Federalist LI*:

*Whilst all authority in [the federal government] will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interest, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interest and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government.<sup>40</sup>*

Hopefully by now the idea is clear. An extensive republic is better than a small republic which is better than a democracy. This is because as we extend the sphere of government to cover more citizens over an expansive territory, we will increase the diversity and number of interests which are included in that sphere. As we increase diversity in interests, it is less likely that a majority will arise, and as we increase the territory over which these interests are dispersed, it will be more difficult for a majority to realize it exists and then act in concert to affect things at the federal level. Even if all of the previously mentioned fails, the government is divided into so many subsections that the majority faction will not be able to bring about

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<sup>39</sup> Ibid., pg. 55.

<sup>40</sup> Ibid., pg. 181.

immediate change at the federal level. Their ideas have to be filtered through representatives and multiple branches before things take effect. Thus, the republic of the United States is favored by Madison because it allows multiple protections from majority factions by employing multiple tools to control the effects of factions.

Madison's project clearly deals with the problem of majoritarian factions, but what about the problem of class factions? Here the answer is not as clear. Madison's system can keep the upper class from acting as a faction, but does it give an answer as to which class should rule? I think the answer is yes. Madison states that the idea of republican government is "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country."<sup>41</sup>

In other words, ultimate authority still rests with the people. Power is derived from the people and responsible to them, but at the same time the people are not directly governing themselves. The people elect those who will best represent them. Thus, Madison wants to blend the two forms of government. Aristocratic government and democratic government are both problematic, as we saw earlier. By blending the two Madison hopes to keep the advantages of both while eliminating some of the problems. For example, democratic theory holds that ultimate authority is grounded in the people who make up the citizenry and thinks they are competent enough to rule themselves. Aristocratic theory holds that more meritorious individuals should run the state because they have the necessary characteristics. After independently arguing for an extensive republic, a pure democracy is no longer practically viable. Instead, the people rule themselves by voting for representatives, thus satisfying one goal of democratic theorists, and these representatives who make the final decisions are supposed to be of a higher caliber than your average citizen, thus satisfying the meritorious characteristic sought after by aristocratic

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<sup>41</sup> *Ibid.*, pg. 55.

theory. There are still some worries however. There is no guarantee that meritorious individuals will be elected. It could just be that those who are best at advertising themselves will win political positions. Also, are the people really ruling themselves if decisions aren't made by them but instead by representatives? The next section will look into some of these worries in detail.

### **3.4 Non-Solicitation's Addition to Madison's Project**

Madison's project is highly successful in achieving its goals, but I believe the Principle of Non-Solicitation can help achieve these goals to an even greater extent. As noted earlier, Madison is interested in controlling the effects of factions and putting in place practices that will move us as close to the ideal state as we can possibly get. When added to Madison's system, the PNS helps us move closer to the ideal.

First, the principle can help abate the worry of those favoring an aristocracy that a democracy eliminates merit from government positions that call for meritorious individuals for the job to be done correctly. As we noted earlier, the PNS could require at least two different changes to the electoral process.

First, it could require that all election of officials is done by lot. If this is the case, then initially the worry of government officials lacking merit still lingers. If we are just randomly selecting citizens, there is very little chance we will select those with the proper qualifications. However, this seems like an easy fix. Some requirement can be added that an individual must meet in order to be entered into the pool of possible applicants. For example, many people say that due to the increasingly complex legal language used in legislation, it is good to have some training in law before taking part in the legislature. If this was the type of merit an aristocratic theorist was looking for, then we could add a requirement that anyone who wants to be added to

the pool of possible candidates must have a four year degree in legal studies. All that is required for the democratic theorist to be satisfied in such a case is that the requirement added must be attainable by the average citizen. The democratic theorist wants the average citizen to run the government so no requirement could be added which the average citizen could not attain. One may worry that the type of merit wanted by aristocratic theorists is just by its very nature unattainable by the regular citizen, but this is just to assume that the aristocratic theorist is correct. Instead, Madison's system, and the addition of the PNS, takes the aristocratic theorist's point that merit is important and, if voting by lot is required by the PNS, accommodates for that point by adding a requirement to be added to the pool of candidates.

On the other hand, the PNS may require some type of electoral process which is greatly more involved than the current process. It may require that the people advance candidates from the ground up; i.e., choose candidates who have not been pre-selected for them. As we mentioned earlier, pre-selection occurs when people are presented with ballot options who have already been selected by some political party. This is problematic because it precludes people from choosing candidates who they think may be most fit for the job and forces them to either vote on candidates someone else thinks are the best fit for the job or refrain from voting. Without getting into too many details, this type of electoral system suggested by the PNS would require people to put forth candidates even for the primary ballots. Any individual could nominate any candidate they thought was fit for the job. Groups such as political parties would no longer dominate the primary system. This electoral process may have some practical concerns. First of all, it may result in primary ballots with thousands of names on them since any individual could nominate a person for candidacy. The sheer number could at least be controlled however by adding primaries at the local level. For example, if Arizona were to nominate 4,000 people for

the position of President, you could have local primaries where each district votes so as to decide on two nominees from that district. After this the state will still have a plethora of nominees. Here there could be another primary at the state level so we once again cut the nominee pool down to two nominees for that state. Already we have taken the worry about there being thousands of nominees on the general election ballot, and taken it down so that during the national election only 2 nominees are on the ballot from each state for a total of 100 nominees. This may be problematic. Maybe justice demands that each state be allowed a number of nominees proportional to their population. Maybe 100 nominees is still too many. These possible problems do not concern me for two reasons. First, I was simply trying to give an example to show that we could pare down the number of nominees so that we aren't left with thousands of names on the national ballot. I have no claim as to how the actual process must be organized. Secondly, if having 100 candidates on the ballot helps to solve Madison's worries about government, then I think the benefit outweighs the practical considerations. Let us now look at how this electoral process recommended by the PNS helps to further Madison's project.

This electoral process furthers Madison's project because it forces the people to choose which individuals to put in office. People can avoid participation in the process, but ultimately the people will be able to select their representatives instead of being forced to rely on political parties and the current primary system. This assumes that people are at least basically rational and worried about advancing their own well-being so that they would not put someone in office who was not capable of doing the job. If the officials selected were devoid of merit, then government would fail to function properly and the people's individual interests would suffer because of that; thus, the people will choose meritorious individuals. This advances Madison's

project of blending democracy and aristocracy because the people still maintain ultimate authority while at the same time trying to maintain merit in government officials.

Here one may object that the worry of those favoring an aristocracy has not been dealt with. To select officials of merit, the people need to be able to know their own interests. If you can assume that people know their own interests, then you can just have direct democracy. Ignorance and irrationality are the reason why you need representative democracy in the first place. If people are ignorant and irrational, then why won't people be just as ignorant and irrational in selecting representatives as they would be in selecting policies directly?

First of all, I think this objection misunderstands the motivation for moving from direct democracy to representative democracy. The motivation, at least for Madison, isn't to account for the irrationality and ignorance of the population but is instead to avoid the tyranny of the majority and avoid power centralization. Focusing on ignorance and irrationality seems problematic because both things seem to be inescapable for humans. Even those with merit will still be ignorant about some political information and can be irrational in their decision making. Madison's motivation takes those seeming facts about human nature and instead finds his motivation in attempting to solve the problems that stem from ignorance and irrationality. Thus, he moves from a direct democracy to a representative democracy because he thinks having a large population disseminated across a great expanse of different lands, resources, and climates will cause people to have different interests, and the great diversity in interests will help control the possibility of the majority tyrannizing the minority.

Not unique to Madison, there are also practical motivations for moving from direct to representative democracy that are different from accounting for ignorance and irrationality. For example, given that the legislature makes so many decisions, the people simply could not take

part in their work and family lives while also taking part in the full time job of being a member of the legislature. Thus, we move to representative democracy so that we can have individuals focus on just their legislative job. This move helps to eliminate some of the worry that direct democracy would produce poor legislation because the people don't have the time to do the necessary research and critical thinking. Overall, the objection holds too narrow a view about the motivation for moving from direct to representative democracy, and fails to account for the possibility, which Madison realizes, that irrationality and ignorance may not factor into the motivation at all.

The second way in which this electoral process advances Madison's project is by stopping a subset of the population from monopolizing government power. Those favoring democracy worry that the people may not actually be the ultimate authority because some subset of the population has control over the government. For example, one worry about the current state of democracy in the United States is that the upper class has a stranglehold on political power. Professor G. William Domhoff, a sociology professor at UC Santa Cruz, argues that the upper class has a stranglehold on political power for two main reasons. First, many of the economic elite in the upper class own the businesses and corporations that produce most of the wealth in the country. With this economic power they are able to influence who runs for office, which advocacy groups are well-funded, and so on simply by funding those people and projects that are in line with their interests. This is an economic influence that the middle class and below simply do not have. Also, the upper class is the major group that makes up the board of directors for most non-profit organizations. Not only are these organizations once again funded by the wealth of the upper class, but these organizations have major political power and are controlled by those in the upper class. Thus, their economic power allows the upper class not to completely

control the government, but to at least influence the ways in which decisions are made. For example, since it takes so much money to run for president, the upper class is able to diminish the number of choices that the middle and lower classes have simply by only funding those candidates whose interests align with the upper class. Domhoff's theory is much more detailed than this. For example, he also argues that the upper class coheres in their political beliefs as this shows their political influences aren't fighting against one another, but act as a cohesive unit. However, for our purposes this summary is enough to show how one may think the upper class has a stranglehold on political power.<sup>42</sup>

So why is it problematic for the upper class to have a stranglehold on political power? The idea is that the monopolization of power is done by a group that is less in tune with the needs of the general population and they are severely limiting the political power of the lower classes. Thus, the interests of the elite are being advanced at the cost of the interests of the lower classes even though the elite make up the smallest percentage of the population. For the democratic theorist this is clearly problematic as it is taking away political power from the average citizen. For Madison, this is even more troubling because it seems as though power centralization is occurring, not in any one government body, but in a small political class.

The initial solution within the United States framework for dealing with government officials who do not make decisions in tune with the interests of the people who elected them is to vote them out in the next election cycle. However, if members of the upper class are actively controlling the choices for presidential candidates by funding only those candidates who sympathize with the interests of the upper class, then people can no longer solve this problem through the current election cycle framework. The people may be able to remove one person who failed to act in their interests, but they will only be presented with more candidates who do not

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<sup>42</sup> See Domhoff (2005).

sympathize with the interests of the general populace. The PNS gives the people recourse in such a situation. If officials are selected by lot, this clearly avoids the problem by simply eliminating the electoral process. If we have the more involved electoral process, then once the people remove some official, they can select any individual as candidate for that office. Once again, we are getting around the problem of pre-selection. Instead of the upper class pre-selecting candidates for the other classes to choose from, the people have the power of selection from the very beginning. We may be forced to move to selecting officials by lot to eliminate the influence of wealth completely, but even the more involved electoral process takes the proper steps to diminish the influence of wealth in the electoral process by eliminating pre-selection of candidates by the upper class.

Thus, the Principle of Non-Solicitation should be accepted because it can further the worthwhile project of James Madison. Madison's framework for government was able to set up a system in which the people get the benefits of aristocratic rule while retaining ultimate authority. The principle furthers this project by maintaining merit in office, a wish of those favoring aristocracy, while stopping a subset of the population from monopolizing government power, a wish of those favoring democracy. I will now go on to discuss how the Principle of Non-Solicitation can help deal with problems of legitimating authority.

## **Chapter 4: Legitimate Authority**

### **4.1 The Problem of Legitimizing Authority**

Political authority presents a problem for a governmental body because there seems to be a need for the government to legitimate its authority. This is due to the fact that the authority by its very nature will deprive people of their autonomy. This deprivation of autonomy may range from a small loss of autonomy, such as a one cent tax on all goods a person buys in order to provide for services that person and the community desires, to a loss that feels akin to slavery, such as when a government declares a necessary relocation of entire populations to camps for reasons of government safety during times of war. Even though one seems more problematic than the other, both are problematic in that, unless the authority has been legitimated, the government is not justified in taking away a person's autonomy.

One conception of legitimate political authority says that a legitimate authority has the right to rule. This right to rule normally implies that the government has the right to issue commands and make rules. It is generally thought that the people have a duty not to interfere with the government under this conception as long as the government satisfies some conditions. It is sometimes thought that the people have more than just a duty to not interfere, but actually have a duty to obey the government as long as the government satisfies some set of conditions. Either conception of duty works for my purposes. What's important is that both views claim that the government does not have legitimate authority unless some set of conditions are met. What these conditions are varies greatly from theory to theory, but some of the main theories say that the government has legitimate authority when the people consent to the authority, the government institutions are structured so as to accord with the reasonable views of the members

of society, or when the government treats every individual under its rule with some form of equality.<sup>43</sup>

I will make no claim as to which theory of conditions a government must satisfy is correct. Instead I will argue that the Principle of Non-Solicitation should be accepted under all three of the theories mentioned above. Here one may worry that I am ignoring an important view; namely, the view of anarchists. However, the PNS does not apply to an anarchic state because there will be no election process for government officials where there is no government! Pre-selection may still be a problem for anarchic governments. For example, if one is an anarcho-capitalist and thinks the judicial system should be composed of any number of judicial corporations, then there may be a worry that the economic elite who will inevitably control these businesses will set up these businesses such that they make decisions that are only sympathetic to the upper class. Here the middle class have their options pre-selected for them insofar as the corporations are structured by the political elite even though they have the freedom to choose which judicial corporation to employ. However, this wouldn't deny the state authority since there is no state. Instead, this may provide some sort of moral objection to anarcho-capitalism. However, this is clearly a discussion for another time. For now I want to explore the idea that those political theories which do accept the idea of legitimate authority must accept the PNS.

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<sup>43</sup> See Christiano (2012). There are other conceptions of what a legitimate authority has the right to do. A legitimate authority may simply set up some justified government coercion or some duty of the people to obey. This duty to obey may not be grounded in a duty to the government but a duty to the other members of the society under some government structure. These conceptions will be ignored, not because I think they are unimportant in the discussion at large, but because they are used less often in the literature.

## 4.2 Non-Solicitation and Consent Theory

First, the Principle of Non-Solicitation can either legitimate authority by itself or as part of a group of conditions under consent theories of authority. The PNS requires that no person can solicit for a position of authority in government and that the people must not be subject to the problem of pre-selection. The principle itself can be seen as a theory of consent based authority. If a leader was unable to solicit for his position, and was instead given the leadership role by the people, ideally through some sort of communal deliberative actions, then the government authority is legitimate because the people as a group consented to the authority by communally giving this person political authority. This will be open to many of the same problems that consent theory is open to. For example, what happens if there fails to be unanimous consent? Does the government have authority over just those who have consented and not those who dissent? How do you accommodate for those who dissent given that they will inevitably use publicly funded resources such as roads?

However, I think the PNS at least sidesteps one important objection. Some people claim that consent theory is flawed because even if we have initial unanimous consent, there is a problem of future generations. Why should anyone who is presently living be bound by the consent of their ancestors? It is often thought that they shouldn't be, and consent theories try to account for this objection by introducing some notion of tacit consent. For example, some consent theorists claim that by staying in the territory ruled by the state or taking part in the electoral process the people are giving their tacit consent. Many think this type of response fails. For example, one can vote in an electoral process without giving any notion of consent. Perhaps an individual is trapped within the state's territory due to his economic situation. In such a scenario one may be voting not because he consents to the authority but simply because he is

trying to make the best of a bad situation and vote for the individual who will wield illegitimate power over him that will least diminish his quality of life. In other words, one can have prudential reasons for voting in an electoral process that have nothing to do with consenting to the authority.

The PNS sidesteps the worry about tacit consent because it calls for consent to be re-established at whatever interval is established by the voting process. Thus, we don't have to worry about the problem of future generations being bound by the consent of their ancestors since they will have their own opportunity to give their explicit consent. However, clearly the practical issue of what to do about those who fail to consent still exists, but if you think that consent truly is what grounds political authority, then this practical worry should be worth looking into and figuring out how to solve.

Another feather in the cap of this consent process is that it is superior to the process currently used by the United States government. One may claim that we currently have a voting procedure, and we are able to give our consent to our leaders through this voting process. However, as I mentioned earlier, in the current voting process the people are only able to vote from candidates that have already been pre-selected for them. The current United States voting system cannot count as consent because of this. The people are not consenting to government authority, but are instead having government authority forced on them with a provision for selecting from a pre-selected group who gets to wield the political power. For the current voting system to be justified there must be some prior consent to the entire system. With the Principle of Non-Solicitation this is not an issue. The principle itself can act as a consent procedure because the people are deliberately choosing a person to wield political power from the pool of *all* possible people within the territory in which the government authority will be exercised and not

some pre-selected group. In other words, the ground up approach to selecting government officials provides a means for the people to consent to the officials' authority while a system in which the people can only choose from a preselected group of candidates does not. This is a feather in the cap of the PNS because it allows a representative democracy such as the United States to maintain its general voting procedure but make key changes so that the voting procedure can legitimate authority. As I said at the beginning, the philosopher should put forth ideals and then also recommend practices that help us reach this ideal or prevent us from falling farther from it. In the case of consent theory, the PNS both illuminates what the ideal is while also showing how the current procedure could realistically be changed to reach that ideal.

However, I realize that this may not be entirely satisfactory for a consent theorist. One might argue that the PNS is not enough. The PNS must be combined with other principles and characteristics a state must realize in order to gain consent. This could be taken two different ways. First, this line of thinking may be trying to say that consent theory is correct and in order to get consent we must have the PNS in addition to some other set of conditions. This makes an empirical claim as to what principles are required in order to get people to consent. Some people may reject the PNS and some may accept it as a matter of empirical fact. These people are only worried about consent and don't care what principles are required to attain that consent. This seems problematic because it could be open to moral objections. For example, a group could consent to any government authority that allows them to wage war on neighboring states for economic gain regardless of the death toll and ethical practices in war. This clearly seems problematic, so this line of thought must instead point elsewhere. Instead of worrying about gaining consent as an empirical matter, the objector is claiming that people should consent to a

given system and a system with just the PNS is not enough. This thought illuminates the motivation behind reasonable consensus theories, which we will now talk about.

### **4.3 Non-Solicitation and Reasonable Consensus Theory**

The Principle of Non-Solicitation must also be included in reasonable consensus theories of legitimating authority. The most famous theory of reasonable consensus was put forward by John Rawls.<sup>44</sup> In short, Rawls's idea is that the government only has legitimate authority when the basic institutions wielding coercive power over the people are set up in accordance with principles that rational, free, and self-interested people would agree to if they were ignorant of what position they were going to occupy in life.

The PNS must be accepted under such a framework. No rational and self-interested person would agree to a system in which they were forced to vote between pre-selected candidates. The earlier discussion about factions shows why this is the case. For example, if everyone was ignorant of what position they were going to occupy in life, then they would not allow pre-selection in government because it would be easy for a particular faction to gain control of political power. If Domhoff is correct and the upper class hold most of the political power, someone ignorant of which position they will occupy in life would notice that pre-selection would be unfair to them if they ended up in any of the majority of positions outside of the upper class because it strips them of political power. No self-interested individual would choose a system in which they will most likely wield less political power simply because of the economic class they happen to be born into.

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<sup>44</sup> See either Rawls (1971) or Rawls (2005). Both books provide a detailed discussion of how reasonable consensus legitimates authority.

Thus, for someone not knowing what position they would end up occupying in society<sup>45</sup>, they would require non-solicitation for government positions because they might end up in the lower class and be unable to run for office or gain political power if wealth carries so much political influence. The Principle of Non-Solicitation guarantees that the lower class at least has a chance at gaining political power since either voting is done by lot and the average person can enter into the pool of candidates regardless of wealth or any person in society can put someone forth as a candidate for office and not just political party organizations, as is currently the case in the United States. Thus, eliminating pre-selection would be necessary for a reasonable consensus theory of legitimating authority.

#### **4.4 Non-Solicitation and Equality Theory**

Finally, there are the popular democratic theories of legitimating authority that say a government has legitimate authority over the people when it treats the people with some form of equality. However, the notion of equality is used in different ways by different theorists. One may attain the equality needed to legitimate authority by showing equal respect to all that are subject to the authority.<sup>46</sup> One may also attain the equality needed to legitimate authority by giving equal consideration to the interests of all of those subject to the authority.<sup>47</sup> Finally, one may attain the equality needed by assuring that all people subject to the authority have some voice in the political process, some stake in the law, and some degree of independence from the

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<sup>45</sup> The people in Rawls hypothetical don't know what positions they are going to occupy in society because they are making decisions about what principles to accept behind a veil of ignorance. The veil of ignorance is a necessary part of the hypothetical situation because it strips people of all knowledge that would give them an advantage over others in selecting which principles the basic institutions must be structured in accordance with.

<sup>46</sup> See Waldron (1999, p. 109-114).

<sup>47</sup> See Ely (1980).

law.<sup>48</sup> The differences between these views are subtle but important. For example, Jeremy Waldron thinks equality is established through showing equal respect for all of the citizens by some majoritarian procedure.<sup>49</sup> John Hart Ely ends up at a majoritarian procedure as well, but the procedure must follow certain constraints that are required by equality as established through the government showing equal consideration for the interests of all of those subject to the government authority.<sup>50</sup>

Which of these views about equality is correct is of no concern here. Once again I will show that regardless of which view about equality one holds, one must accept the Principle of Non-Solicitation in order to legitimate authority.

For those equality theorists who believe that authority is legitimated when the government shows equal respect for all individuals under its sphere of influence, non-solicitation is easily required. One way to show equal respect for all individuals under its sphere of influence is for the government to find some procedure in which each individual and their opinion is counted equally. For someone like Waldron, this means a majoritarian voting procedure.<sup>51</sup> Such a procedure respects that people have a plurality of views by counting each person equally no matter what view they hold.<sup>52</sup>

Another way to show equal respect for all individuals is for the government to eliminate pre-selection. If the government fails to eliminate pre-selection, then they are not treating every member under its sphere of influence with equal respect because the government is in effect

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<sup>48</sup> See Dworkin (1996, p. 15-20).

<sup>49</sup> See Waldron (1999, p. 109-114)

<sup>50</sup> See Ely (1980).

<sup>51</sup> See Waldron (1999, p. 109-114)

<sup>52</sup> This may be problematic in that counting each person equally in a majoritarian vote may not actually show equal respect for each individual. If a minority group has consistently been abused by the majority vote on a subject in which the minority group has the moral high ground, then it may actually take the government giving the minority's view more weight in order to show them equal respect.

telling a majority of individuals that they are not equipped to select who should run the government for them. The government would be saying that a small group of people, namely the organizers of a political party or the upper class, are the ones who should be choosing who can be a candidate. Once these people have pre-selected the candidates the average citizen may choose between individuals in this group. This is to disrespect the majority of individuals because it tells them that they are not mentally equipped, as at least averagely rational adults, to know what is in their best interest or properly judge the character of those they are recommending for office. This can best be seen in the United States. Political parties are selecting those candidates who they think have the best chance at winning an election. For the government to tell the people they aren't equipped to select officials that will advance their best interests while the government allows political party organizers to choose candidates, not even by the overall qualifications for representing the interests of the people, but by chances of winning an election is disrespectful to autonomous adults.

To piggyback on an earlier point, the Principle of Non-Solicitation might in fact be needed prior to Waldron's idea of majoritarian procedure in order to show equal respect because for the government to tell the people they must choose from these pre-selected candidates, by their failure to enact a non-solicitation principle, is to once again say the majority of people are incapable of choosing their own representatives.

The PNS is again easily required for those equality theorists who think that authority is legitimated when the government gives equal consideration to the interests of all individuals under its sphere of influence. The idea here being that a government, or the democratic process, is not considering the interests of its citizens if the representatives are pre-selected by a special subset of the population due to the mere fact that these people have the means to influence the

political process. In other words, the general populace has an interest in who is representing them, and the democratic process doesn't show equal consideration for everyone's interests without the PNS because the lack of the PNS favors a subset of the population's interests in the selection of officials over the rest of the population's interests.

For an example, let us again look at the state of the United States election process. With how much money it costs to campaign for a seat in congress, only those who receive considerable donations will be able to afford to run. Who can provide such donations the easiest? The wealthy upper class and the businesses controlled by the upper class can provide these funds. Thus, it is easier for the upper class to influence the political process. The government's failure to take corrective action against such a system makes its authority illegitimate because it gives a stamp of approval to a system which ignores the interests of the general populace and favors the interests of the economic elite. The general populace has a strong interest in being able to attain political power but that interest is ignored and political power is monopolized by the small subset of the population known as the upper class whose interests have little in common with the general populace.

Lastly, we must look at the equality theory in which equality is attained, and thus authority legitimated, by assuring that all people subject to the authority have some voice in the political process, some stake in the law, and some degree of independence from the law. All three conditions must be met if a government is to have legitimate authority. This type of equality theory is a variation on the equal consideration of interests approach discussed above. Essentially, what is being argued is that equal consideration of interests legitimates authority, but the government cannot show equal consideration for the interests of its citizens without securing the three conditions above.

Any government trying to legitimate its authority through this type of approach requires the Principle of Non-Solicitation in order for the first condition, that all people subject to the authority have some voice in the political process, to be met. Without the principle, people will be stripped of voice in the political process because they will only have a choice between pre-selected candidates. If the people were not involved in the selection of candidates from the ground up, then a vote on pre-selected candidates could easily be seen as just a token move by the government in order to let it appear that the general population has a voice. Really, the political parties or the upper class have a voice and the general populace is just choosing which of the voices from this restricted domain of citizens should be favored. The people must be able to be involved in the selection of candidates from the ground up to truly secure their voice in the political process.

To recap, I have argued in this section that the Principle of Non-Solicitation legitimates, or helps to legitimate, authority under multiple conceptions that assume legitimate authority implies a right to rule. Whether one accepts a consent, reasonable consensus, or equality theory of legitimating authority, the Principle of Non-Solicitation plays an important role and must be included.

## Chapter 5: An Objection from Autonomy

At this point, one may accept what I've had to say about the Principle of Non-Solicitation. They could agree that it helps widen the sphere of participation in deliberative democracies, helps to deal with the problem of apathy, deals with the problem factions, and legitimates authority under the conceptions discussed. However, they could object to the principle on grounds completely independent from my claims in the arguments above. The objector would claim that while all of the above was fine and dandy, the Principle of Non-Solicitation itself should not be accepted because it is damaging to autonomy.

Earlier, we discussed that at least two different electoral processes could be recommended by the Principle of Non-Solicitation. It could either require voting by lot or a more involved process where the citizens are involved in selecting officials from the ground up. Under either system there is a worry that autonomy is being hindered in a problematic way because individuals could be forced to serve as a government official against their desire to not serve.

In a voting by lot system, this is easy to see. If you are qualified, you are entered into the pool and if drawn must serve. Here you could simply fail to qualify for the pool, but this will not be a satisfactory answer to the objection from autonomy. As we discussed earlier, in order to account for the worries of democratic theorists, the qualifications needed to be entered into the pool of candidates must be attainable by the average citizen. Thus, there are bound to be those that qualify to be entered into the pool who do not wish to serve as a government official.

In the more qualified system the problem is essentially the same. It would damage autonomy if anyone could nominate anyone for office because a person could be made a candidate for office against his will. If the person has no desire to take part in running a

government office, but can be elected into the position by the rest of the population, then his autonomy is restricted in an unacceptable way. The only difference between the two systems is that in the first an individual is randomly chosen whereas in the second there was a population of individuals who actively chose the individual. This difference may be important, but I do not wish to explore the idea here. The objection from autonomy can be dealt with without experimentation with that distinction.

Thus, the objector may say the Principle of Non-Solicitation should be rejected because, even though it may do a lot of good, it restricts autonomy, which is far more valuable than the good the principle produces. There are a few things to say in response to this line of thought.

First, it is an important question whether autonomy or political legitimacy is more important, and it shouldn't just be assumed that either wins the battle by means of one's intuition. Under a government that accepts the principle, a small subset of the population will possibly lose a great deal of their autonomy but this loss helps to ensure that *every* member of the population under the government's sphere of influence is not living under illegitimate rule since the principle is a necessary condition for political authority. Arguably, those living under illegitimate rule all lose some autonomy as well in that they will be forced to live in accordance with the rules and commands of a government that they do not recognize as legitimate. If that is the case, then a few losing their autonomy may be justified because if those few don't give up their autonomy then everyone will be forced to; thus, that small subset that would complain about losing their autonomy will end up losing their autonomy anyway.

The government could also create term limits on all government positions. This would decrease the cost to autonomy because then a person only has to give up their autonomy for a maximum amount of time before resuming life with the level of autonomy everyone else enjoys.

The upshot of this discussion being that those who would object to losing their autonomy would lose their autonomy anyway if the Principle of Non-Solicitation was not in effect because then they would have to live under a government with illegitimate rule, and there are certain ways in which the costs to autonomy can be diminished.

Another way in which the objection can be dealt with is to add an opt-out option. Any person could opt out of the random pool of possible candidates if the election is decided by lot. If we have the more involved election process, then any individual selected as a candidate by the general population can have the ability to turn down the selection for candidacy. Thus, there is no loss to autonomy because only those who are both selected by the people and who are willing will be able to be elected. I do not find this answer satisfactory however. It allows for the situation in which all of the best equipped individuals remove themselves from the pool of candidates. One of the main attractions of the principle is that the people are able to put into the running for an office whoever they felt held the best qualifications for running that office in their interests. However, this is an option someone who favors a Principle of Non-Solicitation could take to get around the objection because even if the most meritorious individuals chose to opt-out, the principle would still legitimate authority and solve the problem of factions.

Ultimately, I don't see any problem with the loss of autonomy in the first place. As noted earlier, the amount to which a person's autonomy is restricted can be deflated by methods of term limits or other devices. Once the cost to autonomy is limited as much as possible, the person has a duty to serve in the government if she is chosen by the people. The reason she has a duty to give up a portion of her autonomy for a limited amount of time is due to the fact that she will reap the rewards of living under a legitimized government for the duration of her life. In order to have the right to claim these benefits from a legitimate government a person must be

willing to do what is required of her by her legitimate government, as long as the request is within reason. 'Within reason' here is to account for autonomy overall. I'm more than willing to admit that at a certain cost to autonomy the government may lose their authority, but given the Principle of Non-Solicitation, especially after deflating the costs to autonomy, the person will get far more out of the government, and give more to the population, than she is forced to sacrifice. Overall, the serious objection that the Principle of Non-Solicitation restricts autonomy in an unacceptable way is not fatal to the Principle of Non-Solicitation. Instead, it highlights the fact that term limits, or some other deflation of cost, must be added if we are to expect people to bear the cost of sacrificing their autonomy to maintain legitimacy of government authority.

## Chapter 6: Conclusion

Government structure is one of the most important topics to discuss because it ultimately affects the parameters within which we can live our lives. I have argued that the Principle of Non-Solicitation should be included in government structures for two major reasons.

First, the Principle of Non-Solicitation can fix, or at least diminish, two important problems with democratic governments, namely the problem of apathy and the problem of factions. These problems are especially prevalent in the United States' democratic system.

The Principle of Non-Solicitation helps abate apathy towards participation in politics by increasing the realm in which people can participate since it eliminates pre-selection. The principle also abates apathy by eliminating one of the major reasons why people claim they are not voting, namely apathy or dislike for their choice in candidates. If people can nominate any candidate, they can nominate candidates that they are enthusiastic about instead of being stuck with those selected by political parties and the upper class.

The Principle of Non-Solicitation also solves the problem of factions. The principle does this by furthering the project of James Madison. Madison's framework for government was able to set up a system in which the people get the benefits of aristocratic rule while retaining ultimate authority. The principle furthers this project by maintaining merit in office while stopping a subset of the population from monopolizing government power.

The second major argument for the Principle of Non-Solicitation is that it legitimates authority as a right to rule, which is arguably the most prevalent form of what a legitimate authority has the right to do. The principle should be accepted by theories of deliberative

democracy, consent, reasonable consensus, and equality in order for any of these theories to be able to claim that they are the grounds on which authority may be legitimated.

The job of the political philosopher should be to help decipher the ideal state while at the same time suggesting practices that keep current governments from falling farther from that ideal. The Principle of Non-Solicitation informs us that the ideal state must accept the principle in order to legitimate its authority while suggesting a practice that can increase participation in politics. Non-solicitation for government positions is necessary for advancing government structure in a positive direction.

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