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### Institutional Political Responsibility in a Complex Environment

My subject is institutional political responsibility, which I understand as the role particular institutional forms have in securing key values like justice and democracy. Institutional political responsibility is distinct from personal responsibility. A basic view of both David Held and Iris Marion Young, the key theorists discussed in this paper, is that although individuals have personal responsibilities that include working towards the reform of unjust institutions they have influence over, there is a *collective* responsibility for the actions of institutions that goes beyond personal responsibility in the sense that no one individual can be held fully or even mainly responsible:

Obligations of social justice are not primarily owed by individuals to individuals. Instead, they concern primarily the organization of institutions. Individuals usually cannot act alone to promote justice; they must act collectively to adjust the terms of their relationships and rectify the unjust consequences of past and present social structures, whether intended or not. They need authoritative institutions through which to act collectively. (Young 2000: 250)

Young and Held also share what I will call a post-Westphalian view: they assert that the fact that individuals are entangled in webs of interdependence with distant others raises the further issue of how institutions should be structured to match this interdependence. And crucially, the thesis that individuals are entangled in webs of interdependence means that not just the sovereign state, but other institutions as well, will be subjects of institutional political responsibility.<sup>1</sup> While more and more political theorists are developing post-Westphalian views of this kind, there is much still to be worked through, including how non-state institutions will relate to a reworked understanding of the state.<sup>2</sup> Also, in a post-Westphalian view, where the sovereign state is not a responsible agent in an exclusive or final sense as in a traditional, Westphalian view, the allocation of individuals to collectives can no longer rely on the primary

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<sup>1</sup> Nagel (2005) has argued that justice is only possible within the bounds of the state. On his terms, only the state could be a responsible agent in the sense I intend. Rawls develops a similar, but more nuanced position. His influential *Theory of Justice* located institutional political responsibility in the major institutions of a society's basic structure partly on the basis of the assumption that society was 'closed' – that individuals lived full lives within it. When the bounds around domestic society are removed in the later work *Law of Peoples*, he extends the claim that the basic structure of a single society is the main bearer of institutional political responsibility. 'Peoples' are now the actors who agree to a law of peoples to regulate interactions with other peoples. The thinkers I discuss in this essay would all problematize Rawls's restriction of institutional political responsibility to peoples.

<sup>2</sup> Besides Held 1995 and Young 2000, other prominent post-Westphalian views include Bohman 2007, Fraser 2008, and Habermas 2006.

identification of a citizenry with its state. There are thus important issues surrounding identification with institutions, including but going beyond the state, and relatedly, the sources of motivation for individuals to take personal responsibility for working towards reform of those institutions for which they are collectively responsible. I leave these important questions to the side until the closing section in order to focus on the further issue of how institutions are structured in relation to one another. For this latter concern, the guiding question is: in theories that move beyond the sovereign state as the primary locus of institutional political responsibility, and attempt to structure institutions so that they match webs of interdependence, where should institutional political responsibility lie, and how are institutions to be structured in relation to one another?

The paper has two parts. In the first section, I evaluate how Held and Young allocate institutional political responsibility. Held, I argue, locates ultimate institutional political responsibility in a top level of cosmopolitan law. The problem is that this top level of cosmopolitan law cannot support the weight put on it. The principles of functionalism and subsidiarity that Held relies on will be more controversial than he realizes, and courts will not be able to legitimately solve disputes. Young's work is interesting to compare to Held's because, on the one hand, she has voiced common cause with those who are skeptical of cosmopolitanism as potentially dominating and culturally homogenizing if its principles are applied in such a way as to cover over difference.<sup>3</sup> Further, an element that distinguishes her work is the concern to recognize the self-determination of what she calls 'peoples'.<sup>4</sup> On the other hand, she develops an account of institutional political responsibility with some strong similarities to Held's. For example, she envisions functional regulatory regimes at a transnational level, and argues, with Held, for a principle of subsidiarity, based on the conviction that decisions are best made at the local level. There are even similarities between her account of freedom as non-domination and Held's account of autonomy. Following a recent article by Jacob Levy, I will argue that her account of non-domination as a principle for structuring institutions and thereby allocating institutional political responsibility cannot do the work required of it. Non-domination may be an important normative ideal, but more needs to be said about the roles of particular institutional forms.

In the second part, I describe a complex international environment, and suggest that the attention of theorists with deep democratic commitments like Held and Young should turn to an investigation of what particular institutional forms can accomplish. To this end, I distinguish two elements of the international environment that become visible once the sovereign state is no longer assumed to be the ultimate bearer of institutional political responsibility. First, new institutional forms such as the European Union, indigenous political organizations, institutions of international law, international organizations, and transnational civil society organizations exist above, within, or across the state. Second, within and sometimes across the borders of the state, political communities can have overlapping memberships and do not necessarily neatly overlap

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<sup>3</sup> Young 2000: 236-7.

<sup>4</sup> One of Young's key sources of inspiration is the claims of indigenous peoples against their states: while they seek self-determination, they often do so without calling for their own sovereign, territorial state. 2000: 255-6. Also see the essay "Hybrid Democracy: Iroquois Federalism and the Postcolonial Project" in Young 2007.

with institutional forms. The distinction between the institutional forms and political communities, along with the criticisms developed in the first section, point to the need for more detailed work on what particular institutional forms accomplish, and thereby the character of the institutional political responsibility they bear.

## I. Held and Young

Young and Held both think that globalization is advancing the entanglement of individuals in webs of interdependence with distant others (Held 1995: 20, Young 2000: 246). While the importance of their arguments is advanced by rapid globalization, they do not strictly depend on it (Young 2000: 246-51). There is a problem of institutional political responsibility as long as there are webs of interdependence that create obligations of justice, and there is a mismatch between existing patterns of institutional organization and these webs of interdependence. For Held, he worries about the mismatch because democratic accountability will be affected; those who should have a say in making a decision will not have it. For Young, she worries about the mismatch because of domination; to take just one example, the mismatch can allow some privileged individuals or groups, such as richer states, to ignore their obligations of justice to others, such as poorer states.

*Held.* Held argues that at the core of the liberal-democratic tradition is the idea of autonomy, understood in a structural as opposed to an individualistic sense:

For persons to be free and equal in the determination of the conditions of their association requires, in brief, a common structure of political action which specifies the rights and obligations which are necessary to empower them as autonomous agents. The principle of autonomy, entrenched in democratic public law, ought to be regarded, therefore, not as an individualistic principle of self-determination, where ‘the self’ is the isolated individual acting alone in his or her interests, but rather, as a structural principle of self-determination where ‘the self’ is part of the collectivity or ‘the majority’ enabled and constrained by the rules and procedures of democratic life. (1995: 156)

Until recently, the democratic constitutional state has provided the common structure of political action for enabling and constraining autonomy, and because of this has been the primary location of institutional political responsibility. In a globalizing world, however, “shifting patterns of powers and constraints [...] are redefining the architecture of political power associated with the nation-state” (1995: 135). In other words, the increasing entanglement of individuals in webs of interdependence calls into question whether the state can still provide the common structure of political authority necessary for autonomy. Held proposes to disperse institutional political responsibility over a multilayered system, based on a cosmopolitan law that will entrench and promote democratic voice. Here I isolate a key feature of his system, namely, that it ultimately locates institutional political responsibility in a top level of cosmopolitan law.

The levels of the multilayered system include a strengthened UN, regional organizations like the EU, and functional organizations that control important global issues such as trade or the environment. States would also still have a role to play, but they would not be sovereign in the classical sense of having the right not to be interfered with in their domestic affairs. “States

would be ‘relocated’ within,” Held writes, “and articulated with, an overarching global democratic law” (1995: 233). When the sovereign state is no longer the primary agent of institutional political responsibility, however, some clarity is lost. How will institutional political responsibility be allocated? And how will the layered units relate?

Held’s answer is that cosmopolitan law will provide the common structure of political authority, and its principles will guide relations between different institutional units. In other words, cosmopolitan law must handle the problem of which units will handle which problems, and over which territories. Held describes three tests that will guide the dispersal of policy issues to institutional levels (1995: 236). These tests are based on the principle that those affected by a decision should have a say in making it. The first two are extensity of influence, or scope, and intensity of affectedness, or degree of impact. A third principle of subsidiarity says that decisions should be made at the lowest possible level. For those issues like climate change, for example, which affect all persons and groups around the globe, and poorer countries perhaps more than others, a global institution will be required to block the evasion of responsibility by the more powerful. Local issues, by contrast, affect only local persons and groups, and therefore local institutions should have the decision-making authority and the responsibilities that come with that authority. In this system, sovereignty is reconceived in the plural as ‘malleable space-time clusters’ that can attach to different institutional levels (Held 1995: 234, 1999: 104-8).<sup>5</sup> Institutional political responsibility, although it is present at all levels of political organization, ultimately resides in the top level of cosmopolitan law, because resolving disputes about the authority to make decisions rely on the principles and rules outlined by this level, and can ultimately be appealed to a top-level court (1995: 237, note 6, and 271).

While both the sovereign state and top-level cosmopolitan law are common structures of political action, the former can rely on clear formal political authority, or sovereignty, within a delimited territory to back up its authority. Cosmopolitan law, by contrast, faces a more difficult challenge because of its role vis-à-vis the multilayered system of institutions. Some of these institutions may have delimited territories, but must share jurisdiction over those territories with institutions at other levels. Depending on how the system is conceived, all institutions could have determinate territories and be ‘nested’ within each other, or some functionally defined institutions could operate without a determinate territory (See Pogge 1992). In either case, the system cannot be static; cosmopolitan law must be able to guide the restructuring of the multilayered system to match the outcome of the tests I described above. This could require lessening formal political authority over particular issues for some institutions, or revising the borders of others. But without the power to back up its decisions, cosmopolitan law could not ensure that the authority to make decisions aligns with those affected by a decision; without this symmetry, Held’s fundamental commitment to structural autonomy would be endangered. From

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<sup>5</sup> Held raises Bull’s worries about the prospect of a neomedieval order at 1995: 137-9. Whereas Bull argued that when jurisdictions overlap some of the key achievements of the state-centered order, such as toleration, accountability, and legitimacy may be endangered, Held thinks these dangers can be overcome at least in principle “if a multiple system of authority is bound by fundamental ordering principles and rules,” i.e. if cosmopolitan law acts as a common structure of political action above the state. 1995: 140.

this perspective, then, the success of Held's proposal depends on cosmopolitan law being able to bear the weight put on it.

I do not think that it can bear this weight. There are several related problems. A first difficulty has already been mentioned. In the Westphalian view, the coercive power of the state ensures compliance with decisions, but in the cosmopolitan law framework the comparable force for ensuring compliance is much less clear in principle, let alone in practice. In other words, Held seems to underestimate the problem of transferring – or at least demoting – the system norm of sovereignty from states to cosmopolitan law (Held 1995: 234). A second difficulty concerns the application of the three tests for allocating political authority. Extensity of influence and intensity of scope, along with a commitment to subsidiarity, are supposed to produce a balance between centralization and decentralization. With the case of environmental externalities across borders, for example, those communities whose members are significantly affected by the externalities would have the joint responsibility of making decisions (or the unit that had the formal authority to make decisions over the externality-causing activity would have to take the other unit's interests into account such that they could have made a joint decision). But what if disputes arise, as they surely will? Held's reliance on courts as the proper body for resolving difficult disputes is both revealing and troubling (Saward 2000: 36-7). Courts and arbitration bodies rely on the legitimacy of the institutional contexts they inhabit, meaning that they cannot unproblematically rule on jurisdictional issues without having their own legitimacy called into question. His vision of a plural institutional landscape, it seems, cannot unproblematically rely on functional discriminations and the principle of subsidiarity to divide overlapping institutional levels from each other.

Michael Saward raises a further concern. Is Held jumping the gun by proposing new and permanent, often territorially based institutions? Saward suggests that there are other democratic mechanisms that can deal with cases of temporary mutual affectedness, cases where the affected parties may not map easily onto an existing territorial unit (2000: 39-41). As examples of alternative democratic mechanisms that might lessen the urgency of Held's reforms, Saward lists cross-border referenda and deliberative forums, among others. Such proposals are especially valuable because they make room for what Saward calls 'subjective' determinations of mutual affectedness, where interested individuals and groups themselves push for alternative democratic mechanisms to tackle the issues that concern them (2000: 43). Such subjective determinations will be more organic, and less controversial, than objective determinations that depend only on the theorist, or a court, employing the all-affected principle via Held's three tests.

Saward's reflections point in the direction of shifting attention to the roles or functions of particular institutional forms, including but going beyond the state. At one point Held notes that the state will 'wither away' – if not nominally then at least in significance because of the changes his proposals will bring (1995: 233). This claim is especially implausible if the criticisms I lodged against his top level of cosmopolitan law are accepted. In order to take on board the motivation to address the threats to democratic autonomy that webs of interdependence create, and to further evaluate non-state institutions such as the EU, I think theorists should turn their attention to assessing what particular institutions can accomplish. Doing so would involve keeping the state as a centrally important institution, but asking what it accomplishes in a complex international environment. In other words, even if we posit a developing context of

webs of interdependence, and the necessity of the institutional landscape expanding to match these developing webs, attention to particular institutions and institutional forms is warranted.

In summary, although Held is committed to the principle of subsidiarity, it is in the details of how top-level cosmopolitan law creates an overarching system for distributing authority among institutional levels that he runs into difficulties. Shifting attention to what particular institutions can accomplish is a more promising path for evaluating how institutional political responsibility can be distributed.

*Young.* As I mentioned above, Young's work on institutional political responsibility is interesting to compare to Held's because of the fact that she ends up at a similar place, but on the basis of different foundational concerns. I develop similar criticisms to Young's work as just developed for Held, and then outline the distinctive elements of Young's account, especially her commitment to recognizing the self-determination of peoples.

The basic premises of Young's work, especially in *Inclusion and Democracy*, are that inclusion means giving those who are affected by a decision a say in making it, that inclusion furthers democracy, and that democracy furthers justice. This deep commitment to inclusive democratic practice issues in two positions relevant to the problem of institutional political responsibility. The two positions are often not fully distinguished by Young because they rely on similar reasoning. After filling in the details of each position, I will argue that the second point is the strong point of Young's account.

The first position is that the threat to democratic voice in an era of globalization should lead to an attempt to match the scope of institutions with the actual interdependencies that exist between individuals and groups. Although she grounds her theory differently, as I outline below, she endorses many of the elements of Held's multilayered system, including a strengthened UN, regional organizations like the EU, and functional regulatory institutions for issues like trade or climate change. Unlike Held, however, she does not emphasize the role of cosmopolitan law, and in fact continually notes that her model can perhaps best be applied at the local level. For example, an important case for her theory of how borders can enact exclusions concerns the way municipal boundaries in the United States are used to allow wealthier citizens to escape obligations to an interdependent region (2000: ch. 6). Young's second position relevant to institutional political responsibility is her resolve to recognize the self-determination claims of groups such as indigenous peoples. Their claims, she insists, are impossible to realize under a traditional understanding of state sovereignty as a right to non-interference.

The basis of the first position is interdependence. What Young calls 'social connection' – the fact that A's actions have B's actions as a background condition, and vice-versa – mean that A and B have obligations of justice to each other. Out of the thesis that social connection creates obligations of justice arises one of the key research questions of Young's later work: "what is the proper scope of the democratic polity, and how are exclusions enacted by restricting that scope?" (2000: 6). This will apply, Young claims, both above and below the level of the sovereign state:

The scope of a polity ... ought to include all those who dwell together within structural relations generated by processes of interaction, exchange, and movement that create unavoidable conditions of action for all of them. (2000: 197)

Below the state, as I mentioned above, Young criticizes how municipal boundaries are used to allow wealthier citizens to escape obligations to an interdependent region. Above the state, the current international system is heavily weighted towards the interests of nation-states, especially those in the North to the detriment of the South, and to corporations. In *Inclusion and Democracy*, she makes several proposals to match webs of interdependence with the necessary institutions, including democratic reform of the UN and its institutions, and “a global system of regulatory regimes to which locales and regions relate in a federated system” (2000: 267). These regimes will cover issue areas such as the environment, trade, human rights, and so on, and will “provide[] a thin set of general rules that specify ways that individuals, organizations, and governments are obliged to take account of the interests and circumstances of one another” (2000: 267). Further, on her account the state’s “uniformity, centrality, and final authority ... would be seriously altered” (2007: 35). Young is thus committed to moving beyond a traditional Westphalian conception of the state as an exclusive, dominative form of political organization that can block interference from outsiders, as well as any obligations to outsiders, through appeal to its sovereignty. Institutional political responsibility will be, in Young’s term, *decentered* (2007: 33-4).

Despite the similarities to Held on functionally differentiated global regimes, the local context is never far from Young’s mind. This is evident from her firm commitment to recognize the self-determination of peoples such as indigenous groups. Young prefers a relational social ontology for groups to definitions that depend on substantive characteristics; “if we abandon the either/or conception of nation,” she says, “then the distinctiveness of peoples emerges as a matter of degree” (2000: 253). That claim that group identities are a matter of degree has affinities with the more general thesis that social connection is the ground for obligations of justice: “social group identities emerge from the encounter and interaction among people who experience some differences in their ways of life and forms of association” (2000: 253). A strength of this account is that a wide range of groups can count as peoples deserving of political self-determination and individuals can more readily conceive of themselves as members of multiple peoples at once.

In order to ensure the “equal right of peoples to self-determination,” Young challenges the standard state-centric, Westphalian model which views equal rights as exclusive jurisdiction for a people within a territory, with no obligation to engage with or come to the aid of other peoples (2007: 6-7). Understanding self-determination on this ‘noninterference’ model is itself responsible for many of the exclusions that borders enact (2007: 44).<sup>6</sup> Because peoples are not

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<sup>6</sup> One of the roots of Young’s view here is her concern with social differentiation and structural inequality. She attempts to include marginalized groups by making room for their voices as a window on and resource for negotiating the needs of inclusion in contexts where some interests have more of an effect on decisions than others. Structural inequalities attend gender, race, and class, for example, in domestic society, and similarly, structural inequality attends the bordering

and cannot be neatly differentiated according to substantive criteria, but only by degree, sharp distinctions such as those of the noninterference model will be detrimental to the self-determination of many peoples, and does not capture how peoples mix and interact with one another. As a more inclusive alternative, Young draws on feminist accounts of relational autonomy and on Philip Pettit's theory of freedom as non-domination (Pettit 1997). Pettit argues that the traditional understanding of individual freedom as non-interference is misconceived; it is not interference per se that is objectionable, but the *capacity for arbitrary interference* that does not consider the interests of those who are potentially interfered with. Institutional arrangements within the state should be designed so as to reduce this capacity for domination. Young describes her extension of Pettit's view from the individual case to that of peoples in these terms:

Pettit argues that states can legitimately interfere with the actions of individuals in order to foster institutions that minimize domination. A similar argument applies to actions and relations of collectivities. In a densely interdependent world, peoples require political institutions that lay down procedures for co-coordinating the actions of all of them, resolving conflicts and negotiating relationships. (2000: 260)

The right of self-determination, then, implies an obligation to listen to the concerns of other peoples and come to jointly acceptable resolutions of difficulties. In a densely interdependent world, where peoples are intertwined to a significant degree, political institutions and other procedural mechanisms must be designed to channel and regulate interactions. Without such institutions and mechanisms, the self-determination of peoples could be compromised by domination. The contrast with the state-centric view is sharp: rather than inhabiting an exclusive territory in which a people is not interfered with and has no obligations to other peoples, self-determining peoples are obliged to ensure their relationships with other peoples are non-dominative, and to design institutions to meet this end.

In summary, Young's two positions are (i) a commitment to problematizing the scope of existing institutions, coupled with the suggestion that institutions should be matched to actual webs of interdependence in order to ease structural injustice, and (ii) a commitment to recognize the self-determination of peoples, and the employment of the principle of non-domination to this end. Young sometimes speaks as if the latter commitment is primary on the grounds that it is precisely in order to protect the self-determination of peoples that elements of the former commitment should exist, such as functionally differentiated global regimes.<sup>7</sup> Jacob Levy has argued there is a deeper tension between the two positions. Young's defense of the claim that boundaries enact exclusions, he argues, can run against her intent to recognize the self-determination of groups like indigenous peoples (2008: 65). Indigenous peoples will need some jurisdiction in which they have non-interference rights in order that they are not dominated by larger and more powerful interests, like the state:

A conception of self-determination such as Young's that lacks [...] legal rigidity and clarity, one that emphasizes negotiation over the question 'who holds the rights?' rather

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of more powerful states into sovereign territories in relation to less powerful states. See 2000, ch. 3.

<sup>7</sup> "Global regulatory regimes should aim to minimize domination both of individuals and self-determining locales" (2000: 268). The main threats of domination come from other peoples or states, or from powerful economic actors.



than negotiation over how rights holders exercise their rights, unavoidably tends to multiply initial power imbalances. (2008: 72)

Such groups need, Levy insists, the right to exclude on certain issues. Exclusion does not preclude negotiation; rather, one group has the right to make a decision, and then the other can negotiate with the first in an attempt to persuade it to act differently. To make his point, Levy employs a distinction between the scope and degree of authority in making a decision (2008: 69). Scope denotes the range of issues over which a particular jurisdiction has authority. Degree denotes the level of independence the jurisdiction has in making the decision. Levy accuses Young of mischaracterizing the non-interference view as “all-or-nothing” (2008: 68). If it was it would be wholly implausible, but in fact there are many examples of jurisdictions, including those limited jurisdictions under the control of indigenous groups, which have a high degree of independence to make decisions over a narrow range of issues. Levy asserts that “non-interference, whether in today’s international sphere or domestically within a federation, is always a constrained and limited rule. An actor has rights of non-interference *within certain domains* or *subject to certain constraints*” (2008: 68, italics in original). Without some non-interference rights, he thinks Young underestimates how her two positions are in tension, to the potential detriment of the self-determination of indigenous groups.

More generally, Levy worries that even if a principle of non-domination is accepted as appropriate for normatively evaluating the merits of a particular issue, it will not be a useful decision rule because “rules about jurisdiction ... concern who gets to decide the merits of a question” (2008: 70). Without the specification in advance of a jurisdiction that has the authority to make a decision, free from interference from outsiders, including those who will be affected by the decision, the principle of non-domination will simultaneously decide the merits of an issue and the jurisdiction to make that decision (*ibid.*). It cannot, in Levy’s mind, function as a decision rule for apportioning political responsibility to particular institutions.

Levy does concede that Young’s general optimism about democratic encounters, and her commitment to not buy stability at too high a price, may speak in favour of a more fluid employment of the non-domination principle, where frequent debates over the proper functions of particular institutions would occur (2008: 75). While there is some truth to this, Levy’s point is still a powerful objection to Young’s principle of non-domination. It casts doubt on the ability of the principle to provide a basis for re-allocating institutional political authority away from the state. In other words, although it may be a potentially useful normative ideal, it cannot take the place of a more specific account of what particular institutional forms accomplish. Built into such accounts will be both an accounting of normative rightness – how the institution meets the principle of non-domination and thereby enables self-determination or reduces exclusion – and an accounting of the stable features of the institution that enable its everyday functioning.

This recalls a point made with respect to Held. Theorists concerned with how institutional political responsibility is dispersed in a world that decenters the state should turn their attention to specific analyses of what particular institutional forms accomplish. Young, it could be said, might herself endorse the spirit of this claim. She was not, she insisted, making

concrete institutional proposals, and did, as I have made clear, pay close attention to the local.<sup>8</sup> In the following section, I pursue this intuition, and attempt to distinguish some of the elements that would comprise the diverse analyses of what particular institutions accomplish.

## II. A More Complex Environment

Building on the analysis of the two parts of Young's account, the commitment to match institutions to webs of interdependence, and the recognition of the self-determination of groups, I now argue that it is useful to distinguish two elements of a more complex international environment. These two elements are (i) institutional forms and (ii) political communities.

First, new institutional forms such as the European Union, indigenous political organizations, institutions of international law, international organizations, and transnational civil society organizations exist above, within, or across the state. For example, as an increasingly powerful regional and supranational institution, the EU treads awkwardly on the sovereignty of its member states. The powers of EU courts and the EU bureaucracy are substantial enough to support the claim that the Union as an institution is already more than an international organization reliant on the delegative authority of its member-states. In addition, EU citizens exercise both their home state and EU citizenship. These features of the EU clearly challenge the traditional dominance of the state form in contemporary Europe. As a second example, take the case of indigenous peoples, who are in an important sense self-determining (and claim the right to appeal to international law), but are also subject to the authority of the states in which they reside. In many cases, they seek to expand their power in order to more effectively represent their own interests institutionally. The claims they raise problematize the division of the globe into mutually exclusive sovereign states (See Alfred 1999 and Ivison et. al. 2000).

Second, although political communities may often overlap with institutions, especially states, it is important to maintain a distinction between the two concepts for the cases where they do not overlap; some political communities may utilize another institutional form than the state to pursue their interests, or may lack any effective means to pursue their interests. Also, within and sometimes across the borders of the state, political communities can have overlapping memberships. Rainer Baübock writes that political boundaries have:

“[a] dual nature ... which demarcate jurisdictions over territories or persons. ...

Theoretically, there are two possible mismatches between territorial and membership boundaries: political communities can be distinct and separate with regard to their membership, while their territorial jurisdictions overlap, or, conversely, polities may have territorially separate jurisdictions while their membership overlaps. (2007: 92)<sup>9</sup>

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<sup>8</sup> Her analysis, Young noted, “should not be construed as a proposal for concrete institutional design, but rather as a set of principles that social movements and policy makers should keep in mind in their work” (2007: 32).

<sup>9</sup> The Ottoman millet system and federal autonomy for national minorities are examples of the former, while transnational citizenship, caused by large scale migration where the migrant holds both source country and destination country citizenship, is an example of the latter.

“Paradoxically,” Bauböck continues, “state sovereignty over membership rules tends to generate

Canada is an instructive example of how political communities can overlap. First, indigenous political communities in Canada must grapple with the institutions of sovereignty and territoriality in their negotiations with the federal government, assert their own political identity as a political community, and find an appropriate institutional form to pursue their interests. As we have seen, indigenous claims for self-determination are an important case for Young. Second, many Canadians hold dual citizenship, which pluralizes their membership in political community away from the baseline case of the sovereign nation-state with an exclusive citizenry (see Williams 2007 and Kostakopoulou, forthcoming). Third, Canada has long debated questions of political identity concerning the place of Quebec in Canada. The federal government recently recognized the Quebecois as a 'nation' within Canada.<sup>10</sup> A plausible interpretation of this act is that the Quebecois are being recognized as a political community; the membership of this political community partially overlaps with the membership of the larger Canadian political community.<sup>11</sup>

There are difficult conceptual issues involved in defending political communities as distinct from institutional forms, and I cannot deal with all of them here. In Young's case, she defends her concept of peoples against the worry that it will be difficult to attribute agency to the group and responsibility to individual members for the group's decisions, or to deal with intra-group dissent, with the claim that "insofar as a collective has a set of institutions through which that people make decisions and implement them, then the group sometimes expresses unity in the sense of agency" (2007: 50). In this sense, by definition all political communities make decisions through some institutional means. I think there is the further issue, though, of when it is useful to distinguish political communities from institutional forms. Young herself, I argued above, made a version of this distinction by advancing the two distinct positions that institutions should be matched to actual webs of interdependence in order to ease structural injustice and that the self-determination of peoples should be enabled.

Obviously there are potential overlaps between institutional forms and political communities. Some of the examples I have given above are non-state institutional forms that do not have political communities at their base, while others are both non-state institutional forms *and* a new political community (which overlaps with pre-existing state political communities). IGOs are an example of the former case; they are a non-state institutional form, but do not have attached political communities. Indigenous communities are an example of the latter case; they are a non-state institutional form, and have a political community at their base. The case of the EU is more complex still. While it might be argued that the EU is more like a state than not, this

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within the Westphalian system overlaps between political communities that subvert the coincidence of territorial and membership boundaries. An alternative model of global political order would instead recognize nested, shifting, and overlapping domains of political authority as possible and in some cases also as permissible or even required" (2007: 92).

<sup>10</sup> The text of the motion reads: "That this House recognize that the Québécois form a nation within a united Canada." Hansard; 39th Parliament, 1st Session; No. 087; November 27, 2006.

<sup>11</sup> Other provinces might also be thought of as political communities, especially in light of the decentralized nature of the Canadian federation, which gives provincial governments significant control over and responsibility for the persons living in their jurisdictions.

view doesn't address the relation of the EU to its member states; on a traditional, exclusive model of the state, such an overlap wouldn't make sense. If we instead think of the EU as a non-state institutional form, there is the additional problem of whether it is also a political community. Some have argued that there are early signs of a European public sphere, and this could signal the development of a European political community.<sup>12</sup>

Despite these complications, I think that the distinction between institutional forms and political communities is a valuable one. Its utility is that it allows a more complex reading of the international environment. In a more traditional model, the state would be both an institutional form and a political community. Sometimes, the one-to-one match is approximated: the state is the political community, and citizens own loyalty above all to their political community. The formulation 'nation-state', which runs together the idea of a grouping of people sharing certain substantive characteristics with the organizational unit of the state, is the clearest example of this. But the one-to-one match is rarely approximated; this is especially clear in cases where one part of a country wants to secede, which demonstrates the lack of identification between that part of the country and the majority political community. The theoretical point to insist on is that institutional forms and political communities do not automatically overlap. To make this point, the two concepts must be distinguished, even if in practice they often overlap. To assert that institutional forms and political communities do automatically overlap may miss (i) horizontal challenges to traditional state models, such as secession, (ii) vertical challenges, such as federalism or regionalism below the state level and supranationalism above it, (iii) communities based explicitly on choice, and not fate, such as transnational NGOs, and (iv) cases where there is a mix of identity and territory, such as indigenous groups that distinguish themselves both through their indigenous identity and through a claim on land.

I think that the distinction between institutional forms and political communities adds a further reason for theorists to develop accounts of what particular institutions accomplish. The category of institutions includes, as mentioned above, newer regional organizations like the EU, transnational civil society organizations, indigenous forms of political organization, and the state. By explicitly recognizing that political communities are diverse and can overlap, this clears some ground for the analysis of what particular institutional forms accomplish in relation to these diverse political communities.

In contrast to a theorist like Rawls, who maintains links to the familiar framework of the sovereign state with his concept of 'peoples', the growing literature on topics such as global distributive justice, transnational social movements, and global governance, can sometimes obscure the issue of where institutional political responsibility is lodged. Not only Young and Held, but also cosmopolitan approaches in general decenter the state and thereby problematize its traditional role as the final or exclusive responsible agent. While few cosmopolitans reject the state entirely, the simple act of decentering it pluralizes institutional responsibility away from its familiar home. But when institutional political responsibility is not lodged primarily in the sovereign state, it is still the case that individuals "must act collectively to adjust the terms of

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<sup>12</sup> Habermas, for example, writes that the conditions for a European postnational democracy are, among others, "a common practice of opinion- and will-formation, nourished by the roots of a European civil society, and expanded into a Europe-wide political arena" (2001: 100).

their relationships” (2000: 250). In other words, although the task is more difficult, the project of apportioning institutional political responsibility must address both what different institutional forms do, and how these forms relate to one another. Since political responsibility can (no longer) rely on the overlap of state and citizenry, the question of which political communities act collectively through particular institutional forms will be an important element of these analyses. With indigenous political communities, for example, distinct institutional forms that allow for self-determination beside states are required. With the example of the EU, the already-mentioned debates about European identity, and how such an identity relates to national member state identities is a topic that has received, and should receive, considerable attention.

The distinction between institutional forms and political communities also enables thinking about the state as merely one institutional form among others. This claim coheres with the aim of Held and Young to decenter the state – the state can no longer, in other words, be the sole location of institutional political responsibility. But of course the state is still an important institution. Just as an analysis of Held and Young on new, non-state institutions and political communities should lead us to focus on what each one can accomplish, this same attention can be turned to the state as well. What does the state accomplish? As noted above, Young insists that in her proposal the state’s “uniformity, centrality, and final authority ... would be seriously altered” (2007: 35). Decentering the state away from its most exclusive and dominative features is surely a step in the right direction. But these qualities of state authority do not exhaust its functions. We might say, for example, that the state secures basic rights such as political and civil rights, as well as social rights, for all citizens. It often has a constitutional structure. And it also has set boundaries – territoriality – within which responsibility for particular issues can be precisely defined. For the state, just as for non-state institutions, accounts of what these institutions accomplish, and what their relations are to each other, need to be developed.

### III. Conclusion

The more focused analyses I suggest would respond to the motivation behind the work of theorists like Held and Young to decenter the state, but would provide more specific accounts of how different institutions can match webs of interdependence, and also how each institution would relate to other institutions and to political communities. Although Held and Young raise many of the pertinent issues, I have raised doubts about the viability of systematic answers to the issue of reapportioning institutional political responsibility. Held’s top level of cosmopolitan law cannot support the weight he puts on it, while Young’s principle of non-determination is indeterminate in important respects but seems to stand on stronger ground with the commitment to recognize the self-determination of political communities such as indigenous groups. Finally, notice that the criticisms levelled at Held and Young by Saward and Levy, respectively, point in the same direction as my claim that more attention needs to be paid to what particular institutional forms accomplish. Saward suggests alternative democratic mechanisms to achieve the goals Held sets. Levy makes the case that self-determination for indigenous groups requires rights of non-interference. In summary, the problem of allocating institutional political responsibility in a post-Westphalian world is a complex one. Solving this problem involves investigating what particular institutional forms can accomplish, how institutional forms relate to

each other, and how potentially overlapping political communities can negotiate a complex international environment.

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