Procedural Justice and Climate Change: Defining Who Should be Included in the Decision-making Processes of a Climate Change Agreement

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Section 1. Introduction
There are strong arguments in favour of a multilateral agreement for cooperative action on climate change. Given that climate change requires a multilateral agreement to coordinate collective action, what criteria should guide who participates in the decision-making processes of such an agreement? What types of actor should participate in such processes, and what level of inclusion should these actors enjoy? To date, these questions have been largely overlooked in the literature. Where these questions are considered, it is from the viewpoint of practicality, or political feasibility. This paper attempts to address these questions from the point of view of procedural justice.

To this end, this paper determines a principle of procedural justice that can guide participation in the decision-making processes of a multilateral agreement on climate change. Having determined this principle, the paper outlines how this principle can be achieved in the multilateral negotiations and institutional structure of a climate change agreement.

The paper is structured as follows. First, I discuss the most commonly held principle for guiding participation in a climate change regime, namely: the All Affected Principle. Second, I outline some of the justifications that are given in support of this principle and examine each of these in turn. I argue that none are sufficient to justify the use of the All Affected Principle in the context of participation in the decision-making processes of a climate change agreement. Third, I examine several proposals for alternative principles that can guide participation in a climate change agreement and argue that none of these are adequate in promoting procedural justice in this context.

1 These are well covered in the Assessment Reports of the Intergovernmental Panel on Climate Change (hereafter: IPCC). See, for example: Banuri et al. 1995; Toth et al. 2001; Gupta et al. 2007
instance. Lastly, I propose an alternative principle that can guide the level of participation in climate change agreement and discuss the implications that this principle may have for a multilateral agreement such as the UNFCCC.  

Section 1.1 Preliminary Points

Several points need to be made at the outset.

First, by a multilateral agreement on climate change, I mean an agreement amongst nation states to address the problem of climate change. I take it for granted that there is both a political and a moral imperative to address climate change. Furthermore, I assume that the nature of climate change means that effective action can only take place through collective action among nation states. This point is not uncontroversial, and some authors argue that the fragmented and multifaceted nature of climate governance implies that effective action must take place in different arenas. However, the current focus of action to address climate change remains within the UNFCCC, a comprehensive multilateral agreement among nation states, and many authors argue that an effective mitigation of greenhouse gases can only be achieved through universal participation in such a global regulatory framework. Consequently, this analysis proceeds from the assumption that action to regulate climate change will involve coordination through a multilateral agreement among nation states.

Second, in this paper, I am concerned with who should participate in the decision-making processes of a climate change agreement. That is, I am not considering who should participate in a climate change agreement itself. This problem would concern who should be subject to the rules and substantive provisions of a climate change agreement. This is a separate issue from that of participation in decision-making processes of an agreement. Participation in decision-making processes determines who influences or determines the substantive provisions that are ultimately adopted by the participants of the agreement. There is already a large existing literature on

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2 The United Nations Framework Convention on Climate Change, 1992, the primary multilateral agreement for collective action on climate change; hereafter, the UNFCCC
3 See, for example: Banuri et al. 1995; Toth et al. 2001; Gupta et al. 2007
4 Pattberg et al. 2010
5 Gupta et al. 2007, p.775
participation in a climate change agreement. Under international law, no country is bound by a multilateral agreement unless it consents to participate. Much of the literature focuses either on the optimal level of participation by actors in an agreement, or how nations states can be induced to participate in such an agreement.

Regarding the former of these questions, it is generally considered that the number of parties involved in climate negotiations should be small enough to make progress on complex issues, yet sufficiently broad to achieve meaningful action. Given that only a small number of countries represent a large share of total global emissions, limited membership or smaller negotiating fora, such as such as the Major Economies Forum or the G8, might be more effective in achieving effective action on climate change. Others argue that an effective regime can only be achieved with participation of key developing countries. Both the UNFCCC and the Kyoto protocol seek participation at global level in their governance processes. For the purposes of this paper, I assume that participation is sufficient to achieve effective action on climate change. This does not necessarily imply universal participation in an agreement, but does imply that a large proportion of the major emitting states are participants of the agreement. I also assume that a minimum number of states are willing to enter into such an agreement and that they will comply with the provisions that the treaty specifies.

The third point to be made is that there are different ways in which actors can participate in the decision-making processes of a climate agreement. The question of who should participate in the decision-making processes of an agreement therefore implies a number of different ways that actors can participate in these processes. First, there are decision-making processes over which actors have direct influence or control. In the COP, such processes are limited to the voting procedures afforded to

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6 See, for example, the collections of articles in Aldy and Stavins, 2007; 2010
7 Wiener, J.B. 2000, p.7; Barrett, S. 2007, p.233
8 Bashmakov 2001, p.432; Held, D. 2010, p.224
10 Höhne et al. 2002, p.72; Gupta et al. 2007, p.788; Prins and Rayner 2007, p.974; Antholis and Talbott 2010; Cao, J. 2010, p.12; Winkler and Beaumont 2010, p.649; Antholis and Talbott suggest that, at the COP15 negotiations, the only way to make progress on decisions was through small, exclusive meetings between parties. See: Antholis and Talbott 2010, p.64
11 Figueres, C. 2007, p.92
12 Yamin and Depledge 2009, p.436
actors that are given formal standing in the UNFCCC. Here, I refer to this level of participation as formal participation, and traditionally, this is the exclusive privilege of the nation states of the agreement. But there are also informal ways that actors can participate in the decision-making processes of an agreement. Currently, many actors participate in the initial deliberation, or discursive decision-making processes of the COP of the UNFCCC. These actors do not have formal standing in this arena, and do not have formal voting power. But these actors are able to put forward their views and indirectly influence the decisions that are made. When considering who should participate in the decision-making processes of a climate agreement, it is therefore necessary to specify the form or type of decision-making process being discussed.

Fourth, the decisions being made in a climate agreement will have different implications for different actors. The global nature of climate change means that some of the decisions that are made in a climate agreement will have some effect on the entire population of the earth. Such decisions might concern the optimal level of greenhouse gases that the atmosphere can tolerate, or the time frame within which emission reductions must be made. But it is not the case that every decision that is made in a climate agreement will have an impact on the global population, nor is it the case that each decision will have the same impact on each individual across the world. There are many different types of decisions that are made within a climate agreement, each of which can have very different implications for actors across the world. There are decisions that affect specific actors on a local level. Such decisions are likely to occur when considering adaptation to climate impacts. This point may seem self-evident, but those addressing this subject overlook the importance of specifying the type of decision being made in a climate change agreement. There are several different forms of participation in such an agreement, and the same principles may not apply equally in each case. It may be the case that different principles should guide participation in decision-making processes depending on the decision that is being made. Before defining a principle of procedural justice for participation in a climate agreement, it is necessary to specifically define what is that the principle is used for.

13 The Conference of the Parties of UNFCCC, hereafter COP UNFCCC; the COP represents the formal decision-making arena of the UNFCCC
14 For discussions concerning sub-national representation of interests for adaptation to climate change, see: Ott et al. 2004; Paavola et al. 2006
Lastly, different types of actors can participate within the decision-making processes of a climate agreement. As stated, formal standing in the COP has traditionally been the exclusive privilege of the nation state. But many Non State Actors (NSAs) also participate in the deliberative phase of climate negotiations. It is argued that multilateral negotiations may concern more interests than nation states can fully represent alone.\textsuperscript{15} NSAs may provide additional representation in the decision-making processes of a climate change agreement, where nation states are unable to fully represent the interests of all those who should have some say in these processes. These NSAs include representatives of business interests, cultural groups and other NGOs. Procedural justice may require that such actors be given formal standing in decision-making processes, so that they are directly able to influence the decisions that are made. Alternatively, more stringent rules might be necessary to make these NSAs representative and accountable to those that they claim to represent. When analysing the level of participation in climate change decision-making that procedural justice requires it is also necessary to take into account the different types of actors that can participate.

Having outlined some preliminary points regarding participation in the decision-making processes of a climate change agreement, I am now going to discuss the most prominent principle that has been proposed for this participation, namely: the All Affected Principle. The purpose of the following section is to outline this principle and to discuss the implications that its application has in the context of climate change.

**Section 2. Procedural Justice and the All Affected Principle**

Given the need for a multilateral agreement on climate change, what principle should guide the level of participation in formal decision-making procedures? It is generally argued that there are several normative principles that should guide the design of a climate change agreement. These principles typically include, environmental effectiveness, economic efficiency, political feasibility, and justice or equity.\textsuperscript{16}

\textsuperscript{15} Albin, C. 2001, p.8-9
\textsuperscript{16} See, for example: Banuri et al. 1995; Toth et al. 2001; Gupta et al. 2007
Justice, or equity is taken to apply to the substantive outcomes of an agreement, and to the decision-making processes that generate these outcomes. Here, I am concerned specifically with justice and the decision-making processes of an agreement, that is, I am concerned with procedural justice. This concerns the fairness of the processes by which substantive outcomes are agreed and relates to the level of participation and recognition of all the actors involved in decision-making processes.\(^{17}\)

In relation to participation, procedural justice is typically taken as stipulating that those who have an interest in the outcome of a decision should enjoy some form of participation in the decision-making process that generates this outcome. That is, to be considered fair, procedural justice implies that a decision-making process needs to offer some form of participation to those who are affected by the outcome of the decisions that are made. This is a form of the All Affected Principle (AAP). This principle can be interpreted in a number of different ways. For instance, there are several different ways that one can participate in decision-making process, or be affected by the outcome of such a process. However, the basic concept is that all those who are affected by a decision should have some say or representation in the decision-making process.\(^{18}\)

The AAP gains a great deal of support in the existing literature on who should participate in decision-making processes. This includes support in literature relating to: democratic theory in general,\(^{19}\) democracy and global governance,\(^{20}\) and democracy specifically within multilateral environmental agreements.\(^{21}\) The AAP is even promoted as the ultimate principle that should guide the design of international organisations, and many argue that such institutions should be redesigned to accommodate the increased interdependence brought about by globalisation.\(^{22}\)

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\(^{17}\)This definition is from the Assessment reports of the IPCC, see: Banuri et al. 1995, p.85; Toth et al. 2001, p.668. More recent reports by the IPCC cite these earlier reports when defining procedural justice.


\(^{19}\)Dahl, R. 1970, p.64; Lijphart, 1984, p.21; Agné, H. 2006; Goodin 2007, p. 40; Goodin, R.E. 2008


\(^{21}\)Eckersley, R. 2000, p.118

Having introduced the concept of the All Affected Principle as a criterion for defining who should participate in decision-making processes, the following section shows how this principle has been applied in the climate change context.

Section 2.1 The All Affected Principle and Climate Change

The AAP is typically affirmed as the principle that should guide participation in the decision-making processes of a climate change agreement.\(^{23}\) This is out of considerations of procedural justice, as well as for values such as legitimacy and political feasibility. The IPCC explicitly states that procedural justice requires that those who are affected by decisions should have some say in the making of those decisions through either direct participation or representation.\(^ {24}\)

Given that climate change is a phenomenon that affects individuals on a global scale, it is generally assumed that decision-making processes of a climate agreement should achieve universal participation or representation of the global population.\(^ {25}\) As a result, it is commonly argued that, as all countries have an interest in the global climate change problem, procedural justice requires that all stakeholders should have access to the decision-making processes of the international institutions that are designed to coordinate action on this problem.\(^ {26}\) This also applies to considerations of adaptation to climate impacts. It is argued that, because impacts and adaptation occur locally, procedural justice requires that mechanisms exist to ensure that those impacted at the sub-national level have their interests considered.\(^ {27}\)

For this reason, a high degree of participation has been sought since the formation of the UNFCCC, and formal decision-making power is given to all member states of the convention. This has had the implication that all of the parties to the UNFCCC were

\(^{23}\) Banuri et al. 1995, p.86; Grasso, M. 2010, p.53; Hare et al. 2010, p.605; Bell, D. 2011; Toth et al. 2001 advocate ‘participation’ as a principle of ‘good’ governance, presumably inferring that a high level of participation is desirable in climate change decision-making. Held, D. 2010, p.230-1 argues that there is general consensus that climate governance should be broadly inclusive

\(^{24}\) Banuri et al. 1995, p.86

\(^{25}\) Sagar and Banuri, 1999, p.513; Adger et al. 2003, p.1095; Ashton and Wang, 2003; Klinsky and Dowlabati 2009, p.93-4

\(^{26}\) Ashton and Wang 2003; Hare et al. 2010, p.605

\(^{27}\) See, for example: Ott et al. 2004; Paavola et al. 2006
allowed to participate in the Kyoto Protocol negotiations, even though it was agreed
that obligations would only apply to a limited number of states.\(^{28}\)

However, it is not immediately apparent that the AAP should be applied to the context
of participation in a climate change agreement. There are many objections to the AAP
and, even if the AAP is suitable for other international institutions, it is not
necessarily the case that it should apply in the context of climate change governance.
In the following section I examine several justifications for the AAP as a principle
that should guide participation in decision-making processes of a climate change
regime. I want to argue that none of these justifies the use of the APP in the context of
climate change and that the AAP should be rejected in this instance.

**Section 3. Problems with the All Affected Principle**

There are several justifications that are typically proposed for the use of the AAP. In
this section, I examine several of these justifications for using the AAP as a principle
to guide participation in the decision-making processes of a climate change
agreement. In doing so, I want to show the problems with applying the AAP to the
context of climate change. This section consequently develops several arguments
against the AAP as a principle in this context.

**Section 3.1 All Affected Principle as an Intuitively Attractive Principle**

First, the AAP is justified as a guiding principle simply because it is an intuitively
attractive principle that provides a simple answer to the question of who should
participate in the decision-making process of an institution.\(^{29}\) Many authors argue that
the AAP gives a simple solution to what is known as ‘the boundary problem’.\(^{30}\) That
is, given that a democratic organisation cannot decide on its own composition, who
should constitute the decision-making authority?\(^{31}\) The AAP appears to be a relatively
simple solution to this problem, which has been quickly adopted by some authors.
However, as I will argue below, the AAP is not as simple as it first appears.

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\(^{28}\) Bodansky, D. 2007, p.717

\(^{29}\) Arrhenius, G. 2004, p.6; for a discussion of the boundary problem, see: Whelan, F. 1983

\(^{30}\) Karlsson, J. 2003

First, the AAP is vague in its application.\textsuperscript{32} The AAP says nothing about what it means to be affected in this case. There are many different ways that actors can be affected by the decisions of a multilateral agreement on climate change. Actors may be subject to the provisions of the agreement itself, or they may be affected indirectly by decisions that are made regarding the use of the atmosphere. It is necessary to complement the AAP with some further provision about what it means to be affected.\textsuperscript{33} Furthermore, the AAP says nothing about what it means to have influence over a decision. As stated, there are different ways that it is possible to participate in decision-making in a climate change agreement. Actors can enjoy formal decision-making authority in an agreement. Alternatively, they can enjoy limited participation and influence decision-making indirectly. As such, the AAP principle is incomplete in specifying a suitable level of participation in climate change decision-making. This is not to say that the principle is incorrect, but rather that it needs to be supplemented, or at least defined in more detail.

Second, the AAP is too strict, or utopian as a principle that can guide decision-making in climate change.\textsuperscript{34} Interpreting the AAP literally would, in effect, prohibit the demos from making any decision. It would be highly impractical to suggest that all those affected by a decision should have their interests taken into account for every decision that affects them. Direct participation, however, need not be required at all times for the AAP to still apply.\textsuperscript{35} It is generally considered that direct participation in decision-making processes is an unnecessarily strong necessary condition for procedural equity in this case.\textsuperscript{36} Due to the problems associated with the practical implementation of the AAP, procedural equity may not require direct participation in the decision-making process, but rather implies that all those affected by a decision should have some form of representation in the decision-making process. Again, whilst this does not represent an outright rejection of the AAP, it does indicate that the principle requires further specification and revision if it is to be applied in this context.

The third objection to the AAP concerns a related, pragmatic point; that of fickle

\textsuperscript{32} Arrhenius, G. 2004
\textsuperscript{33} Karlsson, J. 2003
\textsuperscript{34} Albin, C. 2001, p.8-9; Keohane, R.O. 2005; Agné, H. 2006; Goodin 2007, p.66-7
\textsuperscript{35} Besson, S. 2009, p.81
\textsuperscript{36} Caney, S. 2009, p.113; Buchanan, A. 2010, p.146
boundaries.\textsuperscript{37} The AAP implies that political boundaries should be redrawn for each decision that is made. If each decision requires the input of those affected by the decision, then each separate decision may require a different group or decision-making authority. As such, the AAP may require what is feasibly impractical. If a new constitution of decision-makers is required for each decision, then it might be the case that the AAP is impractical from the point of view of feasibility. The AAP therefore implies a situation, which may be impractical.

Fourth, some authors argue that the AAP does not in fact solve the boundary problem. The AAP creates a logical impossibility. Since every political decision presupposes a prior decision about who should be included in the decision-making process, the AAP creates a logical impossibility. \textsuperscript{38} As Frederick Whelan demonstrates:

“Before a democratic decision could be made on a particular issue a prior decision would have to be made, in each case, as to who is affected and therefore entitled to vote on the subject—a decision, that is, on the proper bounds of the relevant constituency. And how is this decision, which will be determinative for the ensuing substantive decision, to be made? It too should presumably be made democratically—that is, by those affected.”\textsuperscript{39}

The AAP cannot be used as a solution to the boundary problem. That is, it is necessary to derive another principle that can guide the level of participation in a climate change agreement. The objections outlined above are not limited to the climate change context. Nor do these objections invalidate the AAP as a principle that can guide participation in an agreement. They do, however, represent serious challenges to the use of the AAP as a criterion for defining who should be included in the decision-making processes of a climate change agreement. Certainly, these objections show that further definition and explication of the principle is necessary if it is to be used as a principle that can guide participation in a climate change agreement.

\textsuperscript{37} Näsström 2003, p.824; Arrhenius, G. 2004, p.9; Karlsson, J. 2009, p.10
\textsuperscript{38} Whelan, F. 1983, p.19; Karlsson 2003 p.9-10
\textsuperscript{39} Whelan, F. 1983, p.19
**Section 3.2 The Epistemic Value of the All Affected Principle**

The second justification that is given for the AAP relates to the epistemic value that the principle entails. It is argued that those whose interests are affected by a decision are best placed to make the right decisions concerning those interests. Participation in the decision-making process by all those who are affected by a decision thereby increases the efficacy of the decision-making process. The idea here is that the AAP promotes a correct outcome, that is, the decision-making process should be based on the notion that epistemic value is a primary motive for the decision-making process. In this sense, an outcome is only effective if the decision-making process involves the participation of those who are affected by the outcome of the decision.

But the AAP is not necessarily a suitable criterion for defining participation if this is the case. In fact, the AAP may deteriorate the epistemic value of the decision-making process. Climate change is characterised as an extremely complex issue with high levels of uncertainty. Whilst individuals may be the best placed actors to determine their own interests, it is not necessarily the case that they are best placed to make decisions regarding those interests. Furthermore, individuals may not be the best judges of their own interests. Individuals may make decisions that do not promote their interests, due to short termism, or a lack of consideration for long term values. If the AAP is justified on the basis of its epistemic value, then it might be the case that this value is met more effectively through limiting participation to a select group, such as experts, on certain issues.

The point to make here is that climate change is an extremely complex issue with high levels of risk and uncertainty. Whilst it might be the case that individuals are the best placed actors to know what their interests are, it is not necessarily the case that these individuals are the best placed to make decisions regarding these interests. Once this point is made, the AAP loses its appeal as a principle that promotes epistemic value in decision-making. As such, the epistemic justification for the AAP as a criterion for participation in climate change decision-making becomes redundant.

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40 Holden, B. 2002, p.50
41 Arrhenius, G. 2005
42 Dahl, R. 1989, p.88
43 Karlsson, J. 2006, p.21
Section 3.3 Moral Justifications for the All Affected Principle

The third justification for the AAP as a guiding principle for decision-making is that it promotes moral values. These values include: moral standing, autonomy and political equality. These values are explicated as follows.

First, it is argued that all those affected by a decision should have an opportunity to influence the outcome of that decision out of considerations of substantive justice.44 Here, I refer to this idea as ‘moral standing’. This relates to the idea that all those who are affected by a decision should have some involvement in the decision-making process, because this involvement is a necessary condition for the achievement of a just state of affairs. The ultimate outcome of a decision-making process will only be fair if the interests of all those affected are properly represented. As such, all those who are affected by a decision should have some influence in the decision-making process in order to achieve a fair outcome.45 This argument is particularly pertinent in the context of climate change, due to concerns that the outcomes of the negotiation process of the COP may not be just due to the marginalisation of some voices in these negotiations.46

However, the moral standing of individuals does not necessarily imply that the AAP should govern participation in climate change decision-making processes. The decisions that are made in climate change negotiations can be roughly separated into two categories. First, there are decisions governing the substantive provisions of the agreement. Second, there are decisions that have affects on individuals in other, indirect ways. That is, through decisions relating to outcomes that will have impacts on individuals through the physical process of climate change. Neither of these decisions requires that all those who are affected should be part of the decision-making process in this instance. As stated earlier, due to international law, only those who are willing to submit to the provisions of a multilateral agreement can be subject to the substantive provisions of such an agreement. In this case, the AAP is an unnecessary principle for deciding who should participate in an agreement. Second, regarding the effects of climate impacts on the moral standing of individuals, it is not

45 Shelton, D. 2007 p.660; Hare et al. 2010, p.605
46 Hare et al. 2010
the case that this implies that the global population should be included in the decision-making process of the agreement. There are other ways of respecting the moral standing of individuals, without affording these individuals participation in the decision-making processes of a climate agreement. For instance, an agreement may have limitations on the provisions it can make in order to respect the moral standing of all those affected by a decision. The point here is that the AAP is not justified by an appeal to respecting the moral standing of those affected by the decisions of a climate change agreement. Such concerns can be accommodated in different ways, and do not necessitate the AAP as a principle for participation in climate change decision-making.

Second, the AAP is justified by appeals to autonomy, or self-determination. The argument here is that all those who are affected by the decisions of a climate change agreement should be included in the decision-making processes of the agreement because, if this condition is not fulfilled, these actors will not achieve a suitable level of autonomy, or self-determination. These values are considered crucial aspects of justice in this instance. If actors are not allowed to participate in decision-making processes that affect them then they are being denied these values. But it is not necessarily the case that concerns of autonomy justify the AAP in this case. There are many decisions that affect actors in significant ways, yet we do not consider the AAP to hold in each and every instance. It is not the case that we’re considering the provisions of the agreement. Rather, the important element here is being subject to the effects of other states actions. It is necessary to make a distinction here. First, it is necessary to specify those who are subject to the binding constraints of an agreement. Here, I argue that denying such actors decision-making power does represent an infringement of autonomy. Second, there are those who are indirectly affected by outcomes of an agreement, without being subject to the provisions of the agreement itself. Here, I argue that the AAP is an unnecessarily strong principle for participation. It is not the case that an actors’ autonomy is violated if they are not involved in the decision-making processes that generate this second type of effect.

47 Agné, H. 2006
Having demonstrated that there are some limitations associated with the AAP as a guiding principle for participation in climate change decision-making processes, I now consider several alternative principles for participation in such processes. In the following section, I show that none of the proposed alternatives provides an adequate principle for participation in these decision-making processes.

**Section 4. Alternative Principles for Participation**

This section reviews some of the alternative principles to the AAP that have been proposed as criteria for participation in the decision-making processes of a climate change agreement. There are several principles that are suggested in the literature. These proposals are not limited to climate change, but are advocated as alternative principles to the AAP as a solution to the boundary problem. Some of these principles represent modifications of the AAP, whilst others mark quite different approaches to the problem. Ultimately, I want to propose and defend a principle that can guide participation in the decision-making processes of a climate agreement.

**Section 4.1 The All Inclusive Principle**

The first principle that is discussed is a revision of the AAP, namely: the All Inclusive Principle (AIP). This principle attempts to address the first objection that was raised against the AAP; that it does not define what it means to be affected, and is therefore incomplete. The AIP implies that the decision-making processes of a climate change agreement should include all individuals. The argument behind this idea is that global interdependence means that sovereignty can no longer be defined by the nation state. As such, global interdependence (such as the decisions made concerning climate change) implies that the global population now constitutes a political community and, consequently, that every member of this community should have some form of representation in every decision that is made.

However, the AIP appears to be too strict in defining who should participate in decision-making. First, it seems highly unlikely that a world community will be created in which all individuals can be represented. Even if there could be some form of representation, the AIP would imply a state of affairs that would be highly

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48 Näsström 2003, p.822; Bartelson, J. 2008
impractical. Given that many decisions will affect many different individuals at some level, the problem of incorporating all those affected by these decisions into the decision-making process is a pragmatic one. 49 Furthermore, there are decisions that are made which only concern a select group of individuals. Leaving aside concerns that the AIP would be impractical or infeasible, it does not seem to be the case that every individual should have a say in each decision that is made, regardless of who is being affected by the decision. In this way the AIP does not represent a sufficient alternative to the AAP.

Section 4.2 The Sufficiently Affected Principle

A further alternative to the AAP is the Sufficiently Affected Principle (SAP). This principle stipulates that all those who are significantly affected by a decision should have some form of participation in the decision-making process of that decision. 50 The SAP attempts to provide an answer to the question of what it means to be affected by a decision. The idea is that, whilst the effects of some decisions may not warrant participation in decision-making processes, there is a strong intuitive appeal to the idea that those who are significantly affected by the outcome of a decision should have some say in the decision-making process.

Some theorists have suggested that basic human rights provide the baseline criterion for inclusion. That is, political institutions and decisions affect actors significantly if they have an impact on basic human rights. 51 The argument is that those whose basic interests are affected by a decision-making process ought to have an influence in that process. 52 Given that the decisions made in a climate change agreement are expected to have significant consequences for human wellbeing, it could be argued that the SAP should govern participation in the decision-making processes of such an agreement.

Still, it is necessary to expand this definition in order to develop an accurate level of participation in decision-making processes of a climate change agreement. Human

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49 Fraser, N. 2008, p.14 footnote
50 Caney, S. 2009, p.113; Caney argues that institutions that impact greatly on a person’s interests should adhere to certain democratic principles
52 Besson, S. 2009, p.64
rights do not provide an uncontroversial standard of affectedness. Therefore, further specification of this principle is necessary. Furthermore, it would seem as though participation in decision-making should not be limited to those whose human rights are affected by a decision. There may be many ways of being affected that do not involve the violation of human rights, yet still justify inclusion in decision-making processes.

**Section 4.3 The All Subjected Principle**

The All Subjected Principle (ASP) is a further revision of the AAP. This principle defines being subject to the law as the criterion for participation in decision-making. That is, the principle states that all those who will be bound by a law should have a say in making of that law. There are three problems with applying the ASP as a principle of participation in the context of climate change.

First, as explained earlier, such decision-making processes must include those due to the principle of sovereign equality. Therefore, it is assume that all those who are subjected to the provisions of climate agreement are included in the decision-making processes. Due to the limitations of international law, it is not possible to be excluded from decision-making processes that generate substantive laws that you are subject to unless you choose to be. Therefore, the ASP does not imply any new state of affairs in this instance. It might be the case that all those who will be bound by a law should have a say in making of that law but, due to the conditions of sovereign equality, this would have been the case regardless of the ASP.

Second, this method of constituting participation is open to the same objections that were stated against the AAP. As such, the ASP does not provide an outright answer to the problems raised earlier in this paper.

Third, it would seem to be the case that climate change decision-making does have significant impacts on those who are not subject to the provisions of an agreement. Therefore the ASP fails to address an important issue in this case.

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53 Karlsson, J. 2006, p.6
55 Goodin, R.E. 2008, p.49
Section 4.4 The Principle of Proportionality
The Principle of Proportionality attempts to address the fact that the AAP takes no account of the fact that different people are affected by different degrees. The Principle of Proportionality is derived from the idea that amount of influence that each actor should enjoy in the decision-making processes should correspond to how much they are affected by the outcomes of these decisions.\(^{56}\)

However, the Principle of Proportionality is not a sufficient principle for guiding participation in this instance. The Principle of Proportionality addresses the amount of influence or say that each actor should be afforded in the decision-making processes of a climate change agreement. This principle does not address the question that was stated at the outset, namely: who should participate in the decision-making processes of a climate change agreement. The Principle of Proportionality may address some of the problems encountered earlier regarding the use of the AAP as a principle of participation. However, it is insufficient as a principle of participation in its own right.

Section 4.5 The All Coerced Principle
The All Coerced Principle (ACP) specifies that the decision-making processes should include all those who will be coerced by the outcomes of the decisions that are made.\(^{57}\) If actors are coerced in some way by the outcomes of a decision-making process then it would seem that they are entitled to a say in those decisions.

This leaves open the question of what it means to be coerced. It is also subject to the same objections faced by the AAP earlier in this paper. However, as a guiding principle of participation, the ACP appears to be the most promising as a principle of justice that can guide participation in the decision-making processes of a climate change agreement.

Section 5. An Alternative to the AAP – a Principle of Justification
The above arguments suggest that, not only is the AAP insufficient as a principle that can guide participation in the decision-making processes of a climate change agreement.

\(^{56}\) Arrhenius, G. 2004; Tännsjö, T. 2005; Goodin, R.E. 2007, p.51; Brighouse and Fleurbaey 2010, p.138; Bell, D. 2011

\(^{57}\) Arrhenius, G. 2004, p.214; Miller, D. 2009, p.218
agreement, but also that the proposed alternatives to the AAP are also inadequate in sufficiently specifying a level of participation for procedural justice in this instance. Given the inadequacy of these principles, and the necessity of designing a fair agreement on climate change, what can be said about the fair level of participation in an agreement? Here, I want to argue that the AAP can have some application as a guiding principle in the design of a multilateral climate change agreement. This does not, however, confer that all those who are affected by the decision-making processes of an agreement should have formal standing or representation in the agreement. Rather, the AAP can act as a normative ideal that guides who should participate in this instance. Furthermore, this is not the only principle that should be applied in this context. Due to the multitude of decisions and impacts associated with climate change it is necessary to specify different principles for the different types of decisions that are being made in a multilateral agreement. The following section attempts to outline what these principles might be.

Following similar arguments to those given in this paper, Gustaf Arrhenius claims that the AAP might not be a suitable principle for deciding who should participate in decision-making processes.\(^{58}\) However, that is not to say that the AAP should not be part of a normative ideal in this respect. Many of the concerns outlined earlier in this paper related to practical difficulties associated with the implementation of the AAP. Once it is realised that the AAP might be a guiding principle, rather than an outright rule determining participation, these objections lose their significance.

Still, Jonas Karlsson argues that the application of the AAP as a normative ideal remains problematic.\(^{59}\) That is, the AAP as a normative ideal still requires further revision and specification regarding issues relating to what it means to be affected and what it means to influence a decision. Even as a normative ideal, the AAP requires some modification as a principle of participation.

Here, I want to propose that many of the appealing features of the AAP can be retained if the AAP is used as a principle that can constrain the decisions that are

\(^{58}\) Arrhenius, G. 2004, p.218; Miller, D. 2009

\(^{59}\) Karlsson, J. 2006, p.14
made in an agreement, rather than as a principle of participation in itself.\textsuperscript{60} The AAP is too strong in requiring representation of all those affected by the outcomes of a decision in the decision-making process. There are many decisions that are made which have transboundary impacts on actors yet it is not the case that these actors are afforded decision-making power in the processes that generate these impacts. Furthermore, the AAP allows the inclusion of actors who may be unprepared to undertake the provisions of an agreement. This inclusion seems counterintuitive on account of the influence that it gives actors who refuse to undertake the substantive provisions of an agreement. At the same time, there are legitimate concerns that the decisions that are made in a multilateral agreement on climate change have significant impacts on actors who are not represented in the decision-making processes.

The point that I want to make is that this concern reflects a need for a multilateral agreement to justify the outcomes of the decisions that it makes to the actors that are affected by the decisions. This is not to accord all those who are affected decision-making authority, but rather, it is to prevent actors from coercion in this context. The intuitive appeal of the AAP reflects a notion that no one should be subject to impacts that will harm them in some way. This idea can be approximated by the need for a multilateral agreement to justify the decisions that it makes to those affected by the outcomes of these decisions. As such, I want to argue that the AAP is an important guiding principle in this context, but this does not require formal decision-making authority of all those affected by a decision. Rather, the AAP should guide a principle of justification, which limits the decision-making authority of a multilateral agreement.

Section 6. The Implications of the Principle of Justification for Climate Change Decision-making

Given the discussions so far, what can be said about the level of participation that is required in order for a multilateral agreement to be in accordance with procedural justice? There are several conclusions that can be made.

\textsuperscript{60} Goodin makes a similar point regarding the All Affected Principle; see: Goodin, R.E. 2007, p.62
First, it is argued that direct participation of parties is not necessary to uphold a procedural justice in climate change. Decision-making authority should remain with those actors who are subject to the substantive provisions of the agreement.

Second, states remain the primary actors in this context. Nation states are the primary representatives of those who are subject to the provisions of the agreement: their domestic populations. Furthermore, nation states are the only actors capable of implementing the regulations necessary in order to achieve effective action on climate change. As such, nation states should remain the primary actors in this context.

Third, NSAs may play an important role in climate change decision-making, where nation states fail to adequately represent the interests of those subject to the outcomes of a multilateral agreement, either in the sense of being subject to the substantive provisions of the agreement, or indirectly affected by the outcomes of the agreement. In this instance, it might be the case that NSAs should be granted formal decision-making power in the decision-making processes of a multilateral climate agreement.

Section 7. Conclusion

In this paper, I’ve attempted to determine a principle of procedural justice that can guide participation in the decision-making processes of a multilateral agreement on climate change. I’ve criticised the most commonly held principle for guiding participation in a climate change, the AAP, by outlining some of the justifications that are given in support of this principle showing that these are inadequate in promoting procedural justice in this case. I’ve also examined several proposals for alternative principles that can guide participation in a climate change agreement and have shown that none of these is adequate as a principle of procedural justice that can guide participation. In response to the inadequacy of these principles, I’ve proposed an alternative conception of the AAP, namely the Principle of Justification.

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61 Robert Keohane argues that states remain the most powerful actors in world politics and that multilateral cooperation through global governance institutions provides valuable and unique benefits; see: Keohane, R.O. 2005. David Held argues that there is general consensus that the political elements of a global deal should state centric. See: Held, D. 2010, p.230-1
62 For further discussion on the possible role of non-state actors in COP negotiations, see: Gupta et al. 2007
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