Taking Consent Seriously

- Area: SET OF INTERNET GOVERNANCE PRINCIPLES
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Abstract

That many nongovernmental stakeholder communities are electing to participate in Internet governance processes on their own account implies that governments lack the consent necessary to legitimately exercise a primary role.

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It is a self-evident truth, wrote Thomas Jefferson, that governments “derive their just powers from the consent of the governed.” If this statement is indeed so self-evidently true that NETmundial participants can agree to it, then it has important implications for the role of governments with respect to the multistakeholder model of Internet governance.

The role of governments has been one of the multistakeholder model’s most controversial aspects. Before the development of the Internet, questions of global importance were always addressed by governments, with minimal involvement from other sources. The Internet now enables greater global coordination and problem solving without reliance upon governments, and indeed, Internet governance has so far been effected without the implementation of any clearly articulated role for governments at all.

The fact that governments are not evidently *needed* to coordinate global Internet resources raises the valid question of whether other stakeholder communities *want* governments to represent them or whether they want to represent themselves. Many are electing to represent themselves. On a consent-based view of the legitimacy of government, other stakeholder communities have this right.

Insofar as stakeholder communities elect to participate in Internet governance processes on their own account, governments should not have a primary role in Internet governance. Policy authority for Internet-related public policy issues is not, as the Tunis Agenda (a document agreed to only by governments) claims, the sovereign right of states. It is the sovereign right of the people, delegated to states as they see fit, which, in view of their participation on their own account, means not at all.

Instead, we should conceive of the role of government as a subordinate one. Governments should facilitate the participation of their domestic stakeholder communities in Internet governance processes. They do not have the right to advance positions that contradict the consensus of other domestic stakeholders because such exercises of government power do not reflect the consent of the governed and are therefore illegitimate.

If some stakeholder communities want and are able to represent themselves, it follows also that intergovernmental bodies are never the right fora to discuss matters relating to Internet governance. Stakeholder communities participate directly in Internet governance discussions because their governments do not adequately represent their views. Consequently, any process that relies on governments to represent the views of domestic stakeholder communities when those communities do not consent to that representation is illegitimate and exclusionary.

Finally, in exercising even their subordinate role of facilitating the participation of their domestic stakeholder communities, governments should subject themselves to rigorous standards of transparency so that domestic stakeholder communities can verify that they are being well served.

To conclude, a view of governmental legitimacy that is grounded in the consent of the governed has several implications for Internet governance. I invite fellow NETmundial participants to join me in endorsing the following high-level principles.

- The role of governments in the multistakeholder model is limited to the facilitation of the participation of their domestic stakeholder communities in Internet governance processes.
- Intergovernmental bodies are inappropriate fora to discuss matters relating to Internet governance.
- Governments should be subject to rigorous standards of transparency in

matters relating to Internet governance.