

STUDIES ON **THE DEMOCRATIC BOUNDARY PROBLEM**

Editor: Paul Bowman



Studies on
the boundary problem
in democratic theory

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Preface

This volume comprises eleven papers written as part of the research project, The Boundary Problem in Democratic Theory. The topic of this project, often referred to simply as *the boundary problem*, concerns the question of *who should be entitled to participate in which democratic decision*. The multidisciplinary project, which ran between 2016 and 2021, was generously financed by the Marcus and Marianne Wallenberg Foundation and the Swedish Research Council. The project was led by Principal Investigator Gustaf Arrhenius and was hosted by the Institute for Futures Studies in Stockholm.

The boundary problem is among the most fundamental problems in democratic theory and is also of significant practical import. Every theory of democracy, as well as every actual democracy (including both state entities and non-state associations), refers to some group of individuals – “the demos” or “the people” – that is authorized to make certain decisions in a democratic fashion. It is paramount that the group is composed of all and only those individuals who are entitled to be part of it, and that it makes all and only those decisions that it is entitled to make.

Most work on the boundary problem thus far has focused on identifying the criteria for appropriate inclusion in democratic participation. Theorists have typically identified criteria related either to *affectedness*, such that all and only those relevantly affected by a democratic decision should have a say in it (a principle commonly referred to as the All Affected Principle, or AAP), or to *subjectedness*, such that all and only those relevantly subject to a democratic decision should have a say in it (commonly referred to as the All Subjected Principle, or ASP). Theorists of the boundary problem have also discussed, typically in relation to AAP or ASP, the relevance to democratic participation factors like geography, citizenship, immigration status, criminal history, age, and mental disability. Though less frequently discussed by theorists, the boundary problem also raises questions concerning which *kinds* of entities should be eligible for democratic participation – whether, for instance, future persons, non-human animals, or artificial intelligence should be entitled to democratic decision-making or representation.

The papers in this volume address these questions (and others) and represent the very cutting edge of research on the boundary problem. The volume’s first paper is by Robert E. Goodin, who considers whether it can be justified to limit electorates by geography. Goodin argues that while there were once good reasons for limiting electorates geographically – reasons related to one’s propensity to have interactions with those geographically near to them – in our increasingly globalized world, the case for once delimiting electorates by geography now favors extending voting rights beyond established geographical boundaries.

In the volume's next contribution, David Miller argues that the boundary problem should be characterized by the following three issues: a. *constituency* (who should be entitled to participate in the deciding body), b. *domain* (where and to whom do the decisions made by the body apply), and c. *scope* (which decisions are made by the body). After criticizing both AAP and ASP, Miller argues that theorists should focus their attention on how democratic values bear on the boundary problem, especially the values of political equality and solidarity.

The volume's next three papers all focus on ASP. In his contribution, Vuko Andrić argues that attempts to justify either AAP or ASP by appealing to democratic ideals (like self-government or self-determination) run into difficulties. To avoid the problems with this approach, Andrić instead provides an argument for ASP that is based on the conceptual links between democracy and self-government. Ludvig Beckman, also a proponent ASP, examines the appropriate conception of 'law' relevant to the criterion of one's being subjected to a law that confers the right to participate in its making. Drawing on legal and democratic theory, Beckman ultimately settles on a conception of the law in which law is understood as an institutionalized system of norms. In contrast to Andrić and Beckman, coauthors Robert E. Goodin and PI Gustaf Arrhenius take aim at ASP. In their contribution, Goodin and Arrhenius consider but ultimately reject several different possibilities for how ASP should identify who is relevantly 'subject' to a law.

The next two contributions address the relevance of exile status and age, respectively, to the right to participate in certain democratic decisions. In the volume's sixth paper, Ashwini Vasanthakumar considers whether those who have been exiled from their home countries can legitimately wield political influence there. To answer this question, Vasanthakumar proposes and argues for an alternative to AAP and ASP, what she calls *the stakeholder principle*, according to which those with a stake in the flourishing of their political community should have a say in some of its decisions. Since exiles often have a stake in how their countries of origin fare, Vasanthakumar concludes that exiles can legitimately wield some influence there. For his part, Axel Gosseries examines arguments for the controversial claim that the votes of elderly citizens should have less weight than those of younger citizens. Although Gosseries suggests that the main arguments in favor of such age-adjusted voting weights have some initial plausibility, he concludes that these arguments face serious and potentially insurmountable objections.

The next two papers dig into questions concerning the kinds of entities that may be entitled to participation, or at least representation, in democratic decision-making. In his contribution, Gustaf Arrhenius explores the intersection of population ethics and democratic theory by considering the status of future persons in democratic decision-making. Arrhenius suggests that as beings whose interests are affected by the

democratic decisions of current persons, future persons are entitled to representation through “guardian angels” who would vote in the interests of their charges. Arrhenius’s main finding is that with this guardian angel representation, some versions of AAP lead to Total Utilitarianism. In their contribution, coauthors Ludvig Beckman and Jonas Hulten Rosenberg consider the status of artificially intelligent entities (AIs) in democratic decision-making. According to Beckman and Rosenberg, although neither AAP nor ASP rules out the legitimate democratic participation of AIs as such, AIs must satisfy certain standards of both agency and patiency for such inclusion, and it is uncertain whether they will ever do so.

The final two papers are the most abstract and theoretical of the volume and go beyond the democratic boundary problem as it is typically conceived. In her paper, Katharina Berndt Rasmussen brings into alignment two seemingly contradictory theorems concerning individually and collectively optimum rules for collective decision-making. In the volume’s final paper, mathematician Klas Markström teams up with Gustaf Arrhenius (a philosopher) to develop a framework for understanding the interaction between the number of voters and the development of their competence over time. One main benefit of this framework, according to the coauthors, is that it can capture the positive effect the heterogeneity of a group can have on its collective decisions.

On behalf of Gustaf Arrhenius and the entire project team, I am pleased to be able to share these groundbreaking works from the Boundary Problem in Democratic Theory project. The authors of these papers would greatly appreciate any comments, questions, or objections that you wish to share with them. Their email addresses can be found in the first footnote of their respective papers.

Paul Bowman
Editor

Robert E. Goodin¹

Proximity Principle, Adieu²

In this paper I analyze what grounds there might be for delimiting electorates in a geographical way, as we have long done. The best justification for that, I suggest, is the Proximity Principle – the principle that we should govern ourselves together with others nearby to us. The justification for that principle, in turn, is that proximity generally increases the frequency, range, depth and certainty of people's interactions with one another. In short, including everyone proximate to one another in the same electorate was just a way of enfranchising All Affected Interests. But with the advent of globalization has come the increasing scope for and reality of action at a distance. Nowadays we can be relatively certain of having frequent, wide-ranging and deep interactions with others far away. So the same factors that once justified including people proximate to one another in the same electorate would now justify extending voting rights to others much more distant, beyond the bounds of today's states.

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² For discussion of these issues, I am grateful to Arash Abizadeh, Jeremy Waldron and participants at a pair of workshops on 'Democratic Inclusion in a Globalized World: Debating the All-Affected Principle' at Harvard's Kennedy School of Government in December 2016 and June 2017. This paper also draws on my reply to Jerry Gaus's paper at Russell Hardin's NYU retirement conference in Nov 2015, where I saw both of those dear old friends for one last time.

Assuming the right to vote is of instrumental value to those possessing it, it is hardly surprising that those who already have the right resist extending it to others. Doing so would simply water down the power of their own votes, after all. Such was the history of electoral reform in nineteenth century Britain. In the run-up to the Great Reform Act of 1832, the *Poor Man's Guardian* editorialized, 'We cannot think so ill of human nature as to think that those who will... have gained their own freedom will not aid us to gain ours.' But it was not to be. 'Middle-class people, once given the vote, wanted to conserve institutions which they had formerly been inclined to attack'.³ Having secured voting rights for themselves, they were in no hurry to extend them to others.

So too, today, principled arguments for letting foreigners who are strongly affected by our elections have a say in them are met with something akin to slack-jawed incredulity.⁴ People seem rigidly committed to keeping the franchise just as it is.⁵ Pressed for a principled reason, they sometimes say that (all but only) those people who would be bound by a law should get a say in the making of it. But when it is pointed out that that principle too would imply a far more extensive franchise than at present, people tend to back off that principle quick-smart.⁶ Even benighted ethno-nationalist rationales for expanding the demos meet with the same fate.⁷ In 1887, staunchly conservative A.V. Dicey (backed by the likes of James Bryce, H.G. Wells and Andrew Carnegie) proposed a political union of white Anglo-American peoples worldwide. He was dumbfounded when, despite his recently published book having established him as

³ Brock 1973, p. 319.

⁴ Dahl's (1970, pp. 64, 68) reaction is pretty typical. He begins by calling 'the Principle of Affected Interests... very likely the best general principle of inclusion that you are likely to find', only to conclude four pages later: 'By now you may be troubled by the thought that the principle has unlocked Pandora's box. Very likely it has. For example, it forces us to ask whether there is not after all some wisdom in the half-serious comment of a friend in Latin America who said that his people should be allowed to participate in our [US] elections, for what happens in the politics of the United States is bound to have profound consequences for his country.' Dahl closes by saying, 'Do not dismiss his jest as an absurdity' – but he clearly finds himself troubled by that implication, however logically compelling. For a more extended discussion of the All Affected Principle, see Goodin (2007).

⁵ Others, such as Whelan (1983), simply deny that there is any principled grounds for determining the demos. But that is unsatisfactory, in that it undermines the democratic legitimacy of any democratic enactments. As Whelan (1983, p. 41) admits, 'Doubts may ... arise concerning the validity of democratic procedures when it is considered that, however impeccable democratic decision-making may be within a given community, the outcomes are in a sense determined by the previous and inescapably undemocratic decisions that defined the community in the first place.'

⁶ That has been my experience, anyway, in discussions of my paper showing that the All Subjected Principle would also imply substantial expansions of the franchise (Goodin 2016). Other times people connive more-or-less disingenuously to reformulate the All Subjected Principle so as to avoid that outcome, sometimes by pure stipulative fiat (see Goodin and Arrhenius, *infra.*, and examples there discussed).

⁷ Which Waldron (2005; 2009) aptly dubs the Principle of Affinity.

the preeminent legal public intellectual of his generation, that proposal gained absolutely no traction.⁸ The bottom line seems to be this: principles be damned, people insistently want to keep the electorate just as it is.

It is not unduly cynical to suspect that what is actually at work behind all those reactions is protection of existing privilege, just as it was in nineteenth century Britain. But I think we can, and should, try to do better than that on behalf of those opposing our principled reasons for expanding the franchise.⁹ I think there *is* (or anyway once was) a respectable principled reason for having a geographically delimited franchise of just the sort to which people still cling so persistently. That is the Principle of Proximity.¹⁰

In exploring what that principle might have to be said for it, I shall conclude that proximity was only ever really just a proxy for other things that morally matter. I go on to observe that, in earlier days, physical proximity was indeed a good proxy for those other things, and a geographically bounded franchise was morally broadly justified in consequence.¹¹ But nowadays physical proximity has ceased to be a particularly good proxy for those other things that morally matter, which now warrant extending the franchise beyond traditional territorial boundaries.¹²

⁸ *The Law of the Constitution* (Dicey 1885/1915) eventually went through eight editions in Dicey's lifetime. Reflecting on the failure of his 1897 proposal, Dicey (1898, quoted in Bell 2014, p. 428) conjectured that its timing was simply 'inopportune'.

⁹ Simmons (2016, pp. 69 ff.) offers a penetrating critique of attempts to find 'a [neo-]Kantian moral justification' for what he pointedly calls 'the "conservative solution" to the boundary problem'.

¹⁰ So named by Waldron (2005; 2009; cf. brief earlier statements, 1996, pp. 1555-6; 2003, p. 349), who builds on a snippet from Kant (1797/1965, §42, p. 71). Huber's (2020) more exhaustive analysis of Kant's use of 'proximity' images shows that they also lead Kant to cosmopolitan conclusions, deriving from the fact that we all necessarily live side-by-side with one another on the finite sphere that is the Earth – even if Kant himself eschewed those implications in his later work.

¹¹ Throughout this paper I shall understand 'proximity' as 'being near or close by in space', which the *Oxford English Dictionary* says is 'now the dominant sense'. In Anglo-Australian tort jurisprudence (Dean 1984; Manderson 2006), which some suggest should be extended to international law (Lewis 2016), 'sufficient proximity' is analyzed in terms of the effects of one's acts (or omissions) being sufficiently direct upon someone else that you could and should reasonably have foreseen them, and you should be deemed negligent for not doing so. But in the absence of an independent test of 'directness', this analysis risks circularity: if we define 'proximity' as terms of owing something (a duty of care, or a vote) to someone, then it would be circular to use the fact of proximity thus defined as an argument for why we owe them such a duty (Kramer 2003, p. 75).

¹² For other objections to the neo-Kantian 'proximity' solutions to the 'boundary problem', see Simmons (2016, ch. 3) and Huber (2020).

I. The Status Quo: Geographically Delimited Electorates

It is telling that, when political theorists talk about who should properly be allowed to vote in a state's elections, they reflexively refer to that as 'the boundary problem'.¹³ Boundaries are, first and foremost, lines on the map (and, all too often, fortifications on the ground). They demarcate, first and foremost, territory. They are, first and foremost, geographical concepts. To equate the issue of who should have a right to vote with the issue of where the geographical boundaries should be drawn is to suggest that, first and foremost (if not perhaps exclusively), locational considerations should determine who is included in and who is excluded from the self-governing demos.

Of course, not everyone inside a state's borders is necessarily entitled to vote. Children are not, for one reason; foreigners just passing through are not, for another; aliens who are permanent residents are not, for yet another.¹⁴ And of course some people outside the state's borders are entitled to vote in that state's elections (initially just the state's soldiers stationed abroad, but subsequently pretty much all citizens living abroad).¹⁵ So there is no one-for-one matching of place of residence and right to vote.

Still, those are exceptions that prove the rule. Electorates are, for much the greatest part, geographically delimited. The demos, as much as the state, is defined territorially.¹⁶ From a democratic perspective, the one might seem to follow utterly straightforwardly from the other. Democratic self-government requires that we have a say in how we are governed, and if the state that governs us is geographically delimited then so too should be who is to have such a democratic say in that government. As I shall go on to argue, while that logic may have held good in previous times, it does so no longer.

II. The Rationale: The Proximity Principle

By and large, the people around us are typically like us in various ways that may matter to us. We speak of 'our nearest and dearest', as if the simple fact of 'being near' makes

¹³ Whelan 1983; Miller 2009. Of course, the territorial state itself was arguably just a quirk of history, not the only model on offer and not inevitably the one that would eventually prevail (Spruyt 1994).

¹⁴ Except sometimes in local government elections.

¹⁵ Although both came surprisingly late: in the UK, the first came only with the Representation of the People Act 1918 and the second with the Representation of the People Act 1948.

¹⁶ The state, by the Montevideo Convention: 'The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states' (1934, Article 1).

them 'dear' to us.¹⁷ Were that all there were to the matter, the Proximity Principle might reduce without remainder to the Affinity Principle¹⁸ – i.e., the reason we should make decisions by voting together with people near to us is that we like being together. Of course that is not always true (recall that other old adage, 'good fences make good neighbours'). But maybe it's true often enough to explain away much of the apparent appeal of the Proximity Principle.

That might be part of the story. But there is something else – and in my view something of much greater moral importance¹⁹ – lying behind the Proximity Principle as well. Living nearby to one another has (generally, if not invariably) four salient consequences. Proximity is likely to increase:

- the *frequency* of your interactions;
- the *range* of your interactions;
- the *depth* of your interactions; and
- the *certainty* of your interacting.

Of course, there is no strict necessity in any of that. You might be relatively certain of having frequent, but not remotely deep, interactions with some near neighbours on a wide range of matters. (Relations with the people living next door are often like that.) You might be relatively certain of having only occasional but deep interactions on a narrow range of matters with other near neighbours (your family's mortician, for example). And there may be others who live nearby with whom your interactions have literally none of these features. Conversely, it's perfectly possible for you to be certain of having frequent and deep interactions with distant others on a wide range of matters (your grown children living abroad are like that). So it is just contingently the case that these things are often (but not invariably) associated with, and indeed arise from, living in close proximity to one another. Still, the generalization may be true enough in a wide range of cases.

Now, each of those features is of consequentialistic concern. Each taken separately, and especially all of them taken together, likely makes interactions with those living

¹⁷ For a deflationary account, see Jackson (1991).

¹⁸ So called by Waldron (2005; 2009). Waldron offers the Proximity Principle as a contrast to that, but Klausen (2014) shows that sheer proximity did not historically have the consequences Kant and Waldron hope for.

¹⁹ Just how much moral importance ought we to attach to people's preferences over whom should have a say? Not much, in my books. The fact that the landed gentry preferred that the agricultural labourers on their estates not have a vote just doesn't carry any moral weight at all in determining who should have a say in affairs affecting both groups. Cf. Nozick's (1974, ch. 10) idea of 'utopia' and Wellman's (2008) 'freedom of association' case for immigration restriction with Goodin's (2008) critique of 'clubbish justice'.

nearby generally more important to you in purely consequential terms.²⁰ Again, it's perfectly possible for a one-off, unlikely interaction on some narrow matter (with your oncologist, for example) to be much more important to you, both objectively and subjectively, than other interactions that are more frequent, certain and wide-ranging. So, again, there is no strict necessity in it. Still, it's a relatively safe generalization that interactions displaying these features – which interactions with those living nearby ordinarily do – are ordinarily more important to us, for purely consequentialistic reasons.

A. The 'Mutual Interest in What One Another Does' Rationale

That, in turn, constitutes a *prima facie* case for us making decisions shaping the nature and content of those interactions jointly, in one way or another. That need not necessarily be through explicitly joint decision processes, still less by taking a vote. Nevertheless, if it matters a fair bit to me what you do, and it matters a fair bit to you what I do, then there is likely to be some considerable scope for each of us to improve the outcome from our own perspective by making our decisions at least partially in light of one another's preferences. It may be no more than a matter of realizing mutual benefits through simple coordination, or it may be a matter of gains from trade where we have differing tastes.

The point is simply that, where it matters to us what others do (as it typically does where people in close proximity are concerned) we are likely to want to make something more like joint decisions as to what each of us will do, in the light of the preferences of each for what the others do. One way of accomplishing that is by sharing with one another decisional power (voting rights being one particularly salient form of that) over enforceable rules that shape the actions of all of us.²¹

That is the first broadly consequentialistic argument for thinking that those in close proximity to one another should form a single decision-making body (at least for certain purposes), in which each has a say.²²

²⁰ Some would say that they make the relations morally more important in other non-consequentialistic ways as well, giving rise for example to associative duties. That is an undertheorized category that may or may be morally distinct, however (Goodin 1988). But even those who think that that is true too have no reason to deny that there are also these consequentialistic considerations at work here as well (Scheffler 2018).

²¹ Markets are another way of accomplishing that without any formal joint decision-making – although of course a fair bit of the latter is required to structure markets in the first place and to correct their subsequent failures. Moral codes might be another way of accomplishing a similar task (Gaus 2018).

²² Note that this is an argument *for* giving a say to those to those who have strong and recurring interactions with one another of the sort here in view. But while it gives no positive reason for also giving a say to those who do not have such interactions with one another, neither does it necessarily give any negative reason *against* giving a say to them as well. (That is to say, it rationalizes the 'all' but not the 'only' elements in the standard formula, 'give a vote to all and only' those who meet certain criteria.) Giving a vote to those who would not be entitled to vote on

B. The 'Efficiency Rationale'

The second argument for that proposition builds on the efficiencies of having some regularized procedures for making binding decisions for a set of people who are relatively certain to be recurrently involved in relatively frequent, deep and wide-ranging interactions with one another. The argument here is akin to Coase's theory of the firm and Simon's theory of the employment relationship.²³ The root idea in both cases is that, instead of buying inputs into our production process (including workers) on a spot market, it can sometimes be more efficient to internalize the production of those inputs within our own firm. That provides a rationale for 'hiring rather than buying' in the case of Coase's firm, and for entering into a long-term employment contract with workers (rather than hiring day labourers at the employment exchange) in the case of Simon's employment relationship.

An analogous argument might apply to the case for establishing relations of political authority among people who live in close proximity to one another and, because of that, are relatively certain to have frequent, deep and wide-ranging interactions with one another. Such people could, of course, enter into bilateral negotiations with each of their neighbours on each occasion disputes or opportunities for mutually-beneficial cooperative action arise. But if such occasions recur frequently, it is far more efficient to develop some standing rules for how those situations will be handled that will then be relatively automatically applied on each occasion as appropriate.²⁴ The same reason efficiency argument tells in favour of applying such rules to all those among whom such situations are likely to recur.

This is not yet an argument for whom to give a vote. So far, it is merely an argument concerning the scope of political authority. So far, it says merely that, purely for reasons of efficiency, people who live proximate to one another should be governed by the same political authority, insofar as their living proximate to one another gives rise to relatively certain, frequent, deep and wide-ranging interactions recurring among them that it would be mutually advantageous for them to regulate through some system of rules that is common to all of them.²⁵

But now suppose that we also think, for some other sorts of reasons²⁶, that people

these grounds might be harmless, in the sense that it makes no difference to the electoral outcome insofar as they vote randomly (or do not exercise their right to vote at all) on matters that do not concern them (Goodin 2007, pp. 58-9).

²³ Coase 1937. Simon 1951; see similarly Williamson's (1985) notion of 'relational contracting'.

²⁴ Rawls 1955.

²⁵ And since those local systems of rules will inevitably vary from one another, that gives rise to many of the place-specific rights and duties that Ochoa (2016) observes.

²⁶ Or maybe the same reasons, since tallying votes is a good way of tapping preferences, whose maximally efficient satisfaction is (on this account) the point of setting up a proximity-based system of governance in the first place.

should have a democratic say in the making the rules governing them. Then that, combined with the earlier argument about the scope of political authority, gives rise to the proposition that everyone governed by that authority should have a right to a vote on what laws are enacted by that authority. And insofar as the earlier argument justified extending the scope of that authority only to people who live in relatively close proximity to one another, this argument provides justification only for giving a right to vote on the affairs of that authority to people who live in relatively close proximity to one another as well.²⁷

That is the second broadly consequentialistic argument for the Principle of Proximity.

C. What the Two Rationales Have in Common

These two rationales differ from one another in certain ways, to be sure. But in both cases, the justification for giving a right to vote to people who live geographically nearby to one another hinges on the contingent truth of an empirical proposition about the likely consequences of living in close proximity to one another. The empirical proposition in question is that those who live in close proximity to one another are more likely to have qualitatively different sorts of interactions with one another (more frequent, more wide-ranging, deeper, more certain) than with others living at greater distances.

Where that empirical proposition holds true, those would indeed be good arguments for making decisions together with those living in close proximity to you. But how far those arguments extend depends crucially on whether and to what extent that that empirical presupposition underlying them holds true.²⁸ I shall now go on to argue that, while perhaps it once did, it largely does so no longer.

III. The Waning Significance of Proximity

Imagine a world of closed communities hemmed in by imposing natural barriers that prevent individuals from interacting closely with anyone else living more than 1000 miles away, but suppose that they interact intensively with everyone within that distance. Imagine also that (either in consequence of that same natural necessity or as a

²⁷ Note well, 'it provides justification only for giving a right to vote to people who live in relatively close proximity to one another' – *not* 'justification for giving a right to only them'. That is to say, this argument provides no grounds for *excluding* distant others from a right to vote there; it simply does not *itself* provide any grounds for extending voting rights to them.

²⁸ As Simmons (2016, p. 69) writes, 'that we are special threats to those with whom we are side by side ... is a straightforwardly *factual* claim and must be evaluated as such'.

matter of deliberate policy) the political authorities govern those communities in a completely autarkic fashion, such that nothing that they do affects or is affected by anyone else outside their territory. Think, perhaps, of the Swiss canton of Graubünden during its seventeenth century period as an independent republic: 'its mountains form a natural wall to the outside' to such an extent that 'from the outside, Graubünden appears to be a fortress'.²⁹

In cases like that, the Principle of Proximity, the All Affected Principle and the All Subjected Principle would all point in the same direction. As per the Principle of Proximity, people interacted in the requisite way basically only with people relatively near to them within Graubünden. As per the All Affected Principle, what happened in Graubünden affected basically only people in Graubünden. As per the All Subjected Principle, the laws of the Graubünden applied only to people in that republic. So all three principles dictate that, insofar as Graubünden aspired to be a democracy (which it did for male citizens if not for females), everyone in Graubünden should be entitled to vote in Graubünden referenda. But none of those principles would say that anyone outside of Graubünden should be so entitled.³⁰

A. Globalization and Action at a Distance

Just how empirically realistic is that scenario, however? One might easily imagine it to have been true in some mythic past. One might, until one reflects upon all the great empires of antiquity. One might imagine that things were more like that in the Middle Ages.³¹ But even there, there are clear exceptions. It's not just the Carolingian empire and the Hanseatic League. Even the Vikings ranged from Greenland well into Asia Minor, not just as marauders but also as settlers governed by shared ancestral traditions and norms.³² In short, we are all too often tempted to think that 'everything changed with globalization', and that that happened only within living memory. But globalization of a recognizably contemporary sort can clearly be found much earlier – certainly in the nineteenth century, if not before.³³

²⁹ Barber 1974, p. 83.

³⁰ Again, while none of those principles dictate that they *should* be, it's an open question on some of those principles whether they necessarily *should not* be.

³¹ Hardin (2013, pp. 411; 1999) discusses what sorts of social norms would emerge, and why, in a place like eleventh century St. Germaine, in that period 'a rural parish distant enough from the center of Paris that many of its inhabitants may never have seen Paris. Virtually everything [someone living there] consumed was produced by about 80 people, all of whom he knew well. Indeed, most of what [he] consumed was produced by his own family. Perhaps no one other than these 80 people touched anything he consumed.'

³² British Museum 2014.

³³ For example, 'with the laying of the trans-Atlantic telegraph line in 1866, communications between the major international financial centres became instantaneous. As a result of these linkages, the reliance on overseas investment of European countries and of the newly independent nations of Latin America was greater in 1914

In any case, globalization is now firmly upon us. In myriad ways, we have increasingly great capacity, which is being increasingly utilized, to impact the lives of others far away.³⁴ Interdependence is the order of the day.³⁵ Action at a distance, which Einstein in another context dubbed 'spooky', is now very much a fact of daily life.

The action at a distance that has come to characterize today's globalization may well be driven largely by socio-economic actors. But states, even when they are not the prime movers, are often essential facilitators; and insofar as they are, what one state does affects a great many people outside its borders. Whenever that is the case, the All Affected Principle would dictate that all those worldwide who are significantly affected by a state's policy should have a say in the making of that policy. Add to this all those who are directly affected by a state's policy in waging war, dumping agricultural surpluses, and so on. That is why scholars rightly suspect that, given the realities of the globalized world, the All Affected Principle, systematically applied, would have seriously expansionary effects on the franchise, at least in all the major countries of the world.³⁶

The increased capacity for action at a distance, both on the part of would-be perpetrators of offences against a state and on the part of the state in resisting them, has also given rise to an increasing inclination for states to write their laws in such a way as to apply to people who are neither that state's citizens nor in that state's territory.³⁷ Details vary state-to-state, of course. But most states claim at least some rights to criminalize, within their own legal code, actions of distant foreigners that would undermine the state's security. For a quaint example, states have conventionally claimed a right to prosecute anyone found counterfeiting their currency or their seal, wherever that counterfeiting occurs.³⁸ For a contemporary example, states often now claim a right to prosecute the planning, assisting or carrying out of acts of terrorism by anyone anywhere in the world – generalizing the longstanding right that states

than that of developing countries today' (Quiggin 2001, p. 58). The growth of globalization has hardly been linear since then, however, given the waxing and waning of protectionist trade barriers, particularly in the wake of the Great Depression (Johnson 1935).

³⁴ As Hans Kelsen (1945, p. 183) wrote at the end of World War II, 'Whether it is economic, political or cultural relations we have in mind... it cannot seriously be questioned that people belonging to different states [nowadays] frequently have more intense contact than citizens of the same state...!'

³⁵ Keohane and Nye 1977; 1987.

³⁶ Goodin 2007.

³⁷ It may be an open question whether people abroad are materially 'affected' by such laws, if as the state enacting them has no capacity to enforce them abroad. But insofar as the All Subjected Principle is supposed to be different from the All Affected Principle, that is irrelevant. All that matters in determining whether a person is subject to the law of a state is whether that law purports to bind him, whether he could in principle (however unlikely it may be in practice) be prosecuted in that state's courts for violation of that law. See Goodin (2016) and Goodin and Arrhenius (*infra*).

³⁸ Blackstone 1765, bk. 4, chs 6, 23, pp. 83-4, 310.

claimed to prosecute people of whatever nationality engaging in piracy anywhere in the world.³⁹ Given those facts about state practice – the jurisdictional claims that they make, the range of people they purport to bind by their laws – a great many foreigners abroad should, under the All Subjected Principle, have a right to vote in the making of such a state's laws (at least on *those* laws).

B. Implications for the Proximity Principle

What gives both the All Affected and the All Subjected Principles those expansionary implications for the franchise are new capacities for (and realities of) action at a distance. It simply is no longer necessarily the case, if ever it was, that we are only strongly affected by the actions of people geographically proximate to us. It is no longer necessarily the case, if ever it was, that we are subject exclusively to the laws of the state with authority over the physical space that we inhabit.

Those new realities mean that the empirical assumptions upon which the Proximity Principle rests can no longer be taken for granted. It is simply not true that we are necessarily most certain of being most frequently impacted in the deepest and most wide-ranging way by our interactions with those who are physically proximate to us.

In the Principle of Proximity, as I have said, proximity was merely a placeholder for those other features that are (or, rather, used to be) strongly but only contingently associated with it. Those features, and what follows from them, are what morally really matter; physical proximity, as such, does not. Insofar as proximity has now become disassociated from those other features, and is no longer a good proxy for them, we no longer have any good reason to confine our political jurisdictions or our democratic electorates to people who live physically proximate to one another.

Abandoning proximity as a poor proxy, we are forced back to judging those matters in terms of the features that really matter – the frequency, depth, range and certainty of interactions among people. If we systematically have interactions with distant others of requisite frequency, depth, range and certainty (and if we think our collective affairs should be run in a democratic way at all), then we ought extend a right to vote in our elections to those distant others for precisely the same reasons the Principle of Proximity used to tell us to extend such a right to our near neighbours.

What counts as meeting those criteria to a 'requisite' degree is a matter for judgment. That requires further discussion; there is almost certainly no 'bright line' in any of those matters. How those four dimensions interact, and to what extent shortfalls in one dimension can be made good by overachievement in others, is another matter requiring further discussion. All that I care to claim here is that, for the same reasons

³⁹ The USA Patriot Act, for example, explicitly declared that 'there is extraterritorial Federal jurisdiction over an offence under this [statute]' (18 US Code §2339(B)(d)(2); see further Goodin 2016).

we used to think that the Principle of Proximity was a good way of allocating the franchise in earlier times, we should be prepared to consider extending it under the new, altered circumstances arising from the expanded scope for action at a distance.

It is an empirical question to what extent distant others really are affected in these relevant respects by the laws enacted by any given state. Distant others will of course be more affected in these respects by some laws more than others. But of course the same is currently true of citizens in existing states. Some of them are more strongly affected by some laws than others, but we generally think that all should have a right to a vote – the same vote – on all of the laws of their state. We may well decide to apply the same principle to expanded jurisdictional authorities of the sort I propose, as I shall argue in the next section.

Or again, it may turn out that distant others are not affected in the relevant ways by a *large enough proportion* of a state's laws to justify giving them a right to vote on all the laws enacted by that state.⁴⁰ Even so, there may well be a case for giving the distant others a vote on specific sorts of laws that do systematically affect them in the relevant respects. Federal systems with devolved authority over some matters do that all the time; and there may well be a good case for constructing any expanded jurisdictional authority on the same model, as I shall also go on to argue in the next section.

IV. Normative Principles, Natural Extensions

The Proximity Principle, the All Affected and All Subjected all serve to answer the question '*who* should be governed together with one another, under a common body of laws?' *How* they are to be governed is a separate matter. That must be settled by *other* normative principles.

When extending jurisdictional authority beyond tightly confined geographical spaces, as I have argued we must, we should presumably use same normative principles for determining how that expanded polity is to be governed as we have traditionally used for governing the existing polity. There are three such principles of interest, here. One is the principle, to which I have already alluded, that that authority should be exercised in a democratic manner. Another is the principle of 'limited government', according to which there should be a private realm into which public decisions should not intrude. Third is the principle of decentralization, according to which decisions that can most effectively and efficiently be made and implemented locally should be made locally, and higher levels of government should do only what lower levels of government cannot (or perhaps just will not) do efficiently or effectively.

⁴⁰ Cf. Goodin and Arrhenius *infra.*, section IV.C.

A. Democratic Decision-making

Presumably the expanded polity should be democratic in just the same way and for just the same reasons that the current polity is or should be. Different political theorists will of course want to specify those requirements and reasons differently. Here I need not enter into those disputes. Choose whichever democratic theory you like. All I need to insist upon, for present purposes, is that you should just apply those same democratic principles to the rules of governance for new, extended jurisdictional authority as apply to the current, more restricted jurisdictional authority.

If you opt for the All Affected Principle or the All Subjected Principle for deciding who should get a vote, it might seem natural to suppose that votes ought be apportioned according to the extent to which people are affected by or subject to the law that is being enacted. And insofar as people vary in that latter respect, it is only natural to suppose that their voting power ought to be proportional to their varying stakes in the issue.⁴¹

There are indeed some fancy ways in which that might be done. Schemes for 'point voting' have been devised, for example, assigning each person an identical number of points per year, and allowing people to assign as many of those points as they like as the 'weight' to be attached to their vote on any given proposition.⁴²

That is not what is done in real existing democracies, however. There, the rule is, not one interest one vote, but one person one vote.⁴³ Here is a way to rationalize that practice, notwithstanding the obvious fact that people's interests vary across different issue areas. In representative democracy, people vote on who is to represent them on a range of matters. Some people will have greater stakes in some of those matters, others in others. But everyone will, hopefully, have broadly the same stakes as everyone else aggregating across the full range of matters that will come before the representatives whom they elect. And insofar as that is the case, the much easier and less fiddly practice of 'one person one vote' would be vindicated.

⁴¹ Brighthouse and Fleurbaey 2010. On alternative institutional embodiments of the proportionality principle and their practical consequences see Steiner (1971).

⁴² Hylland and Zeckhauser 1979. Note that that operationalization of the principle preserves the spirit of the democratic rule of 'one person, one vote' in giving each person the same number of points with which to weight their votes each year. A more radical version of the Proportionality Principle would give people who have more interests more votes altogether, so the rich would have more votes than the poor simply because they are richer; but I take it that that clearly flies in the face of democratic equality rather than constituting an implementation of it.

⁴³ It has not always been the case. Under British electoral law, persisting into the early twentieth century, someone who owned estates in two different constituencies could cast votes for the member of Parliament for each constituency, giving them in effect two votes in deciding what party would form the national government. Over 6% of people on the electoral register in 1911, for example, were plural voters of that sort (Blewett 1965, pp. 31, 44-8). But we would surely nowadays rightly regard such practices as an undemocratic way to make domestic political decisions (Goodin and Tanasoca 2014, pp. 748-9). It is however used in other settings – the EU Council of Ministers, the IMF, shareholder meetings and agricultural collectives (Alboek and Schultz 1997).

That is essentially a 'consolidation' strategy. It works because the representatives will be deciding a wide range of matters, some more important to some of their constituents and others more important to others. Were it a special purpose jurisdiction (a school board or a water board, for example), that consolidation trick would not work; and we really would have to figure out some way to apportion or weight people's votes for representatives on that jurisdiction's decision-making body proportionally to their differing interests in the special matter that that specialized body considers.

Furthermore, if there are only a few such special purpose jurisdictions, assigning all voters the same fixed number of points and allowing them to do the weighting for themselves may not work, either. Some voters may have more at stake in *all* of the matters for which there are such special-purpose bodies. But if points are assigned proportionally to stakes, there had better be some good way of independently assessing how great people's stakes really are. Just asking people to say how great their stakes are would simply invite strategic misrepresentation, designed to get more points with which to (over)weight their votes.

From those reflections follows a clear design desideratum for the new extended polity that I am recommending. To avoid the difficulties just discussed, it would be better if can just give every person one vote and leave it at that. And it is justifiable do that, insofar as the new expanded polity has control over a wide range of matters across which people's stakes are likely to vary in a suitably counter-balancing way.

B. Limited Government

Whatever principle we adopt for democratically deciding those things that are to be decided by a vote, there are some things that should not be decided by a vote. Democratic authority is limited authority. Democratic majorities may be sovereign in the public sphere, but there is a private sphere upon which they may not properly intrude.⁴⁴

There are various ways of delimiting and defending that private sphere. Notions of individual rights and autonomy, privacy and dignity, typically come into play there. And some would extend those protections to (at least certain sorts of) associations as well as to natural individuals. For purposes of this paper, I need take no stand on any of those issues.

⁴⁴ Of course, there may be good reasons for deciding matters within a well-defined private sphere group (family, private association or organization, e.g.) by taking a vote among people within that group. But we may well balk at taking some private-sphere decisions by a democratic vote. That is the force of Nozick's (1974, pp. 268-9) counterexample of four suitors wanting to marry the same woman: all of them are affected by the outcome, but we should not give all of them a vote in the matter; by rights, that choice should be the woman's and hers alone. (Note, however, that giving all those affected a vote and deciding the matter by plurality rule would yield the same outcome: assuming each suitor votes for himself, the only suitor securing two votes would be the one the woman herself votes for.)

All that matters for present purposes is this. Insofar as we have good reasons for thinking that political authority should be limited in current polities, then those same limitations should continue to apply as we expand political authorities in light of the new realities of globalization and action at a distance.

C. Decentralization

A final normative desideratum, reflected in current practice virtually everywhere and recommended by political theories of many stripes, is that government should be decentralized. That is to say, there should be various tiers of government, some more localized and others less so, standing in some ordered relation with one another; and matters that can efficiently and effectively be handled at the local level should be handled there, with higher-level jurisdictions being responsible only for matters that transcend local boundaries or cannot be efficiently and effectively handled at lower levels.

This is, of course, precisely the principle of 'subsidiarity' that is familiar from the writings of Althusius and the practice of the European Union.⁴⁵ But that way of describing it makes the principle sound far more arcane than it actually is. Decentralization is the rule pretty much everywhere. Even in notionally unitary states, there is typically a tier of local government that enjoys considerable latitude in deciding matters pertaining to that locale alone.⁴⁶

Over many matters, the Proximity Principle is still roughly right. In many respects, people are still frequently, certainly and wide-rangingly affected by the activities of people physically proximate to them. Decisions governing those activities should still be made by that smaller, geographically delimited set of people, in consequence.⁴⁷ All that I have been saying is that, with globalization and increasing action at a distance, people are in other respects frequently, certainly and wide-rangingly affected by the activities of people at considerable physical distance from themselves. And decisions governing those activities should be made by the larger, more widespread set of people involved in those sorts of interactions with one another.

Notice that we have already recognized that the Proximity Principle needs to be extended in some such way when consolidating and unifying smaller political units into much more extensive polities, sometimes straddling whole continents. But even

⁴⁵ Althusius 1603. Føllesdal 1998. Kersbergen and Verbeek 2004.

⁴⁶ Goodin 2013, pp. 154 ff.

⁴⁷ There is also, of course, a good argument for politicians to get 'closer' to the people, listening to their concerns, rather than remaining aloof from them. In part that is a matter of political style; in part it is an argument for devolution of decisions to lower levels of government where possible. Both were advocated via the rallying cry of 'proximité' in French political debates in the first decade of the twenty-first century (Rosanvallon 2011, p. 169 and pt IV *passim*; Pudel 2004; Lefebvre 2000; 2005).

as we have created larger and larger political units, the smaller and more local units not only remain but also retain some considerable authority to manage their own affairs. My argument is merely that we should follow the same practice, as we move to expand jurisdictional authority yet further.

For the same reasons that we think there should be decentralization of some important powers within states as currently constituted, so too should there presumably be similar decentralization of similarly important powers within any expanded jurisdictional authority created in response to globalization and increasing scope for action at a distance.⁴⁸

D. The Shape of an Extended Jurisdictional Authority

Let us now take stock. What would the new expanded polity look like, assuming it is designed in such a way as to respect those same three normative requirements that we think rightly apply to current polities?

Firstly, it will be a limited government. There will be some things that no government, at any level, will be permitted to do. Secondly, it will be decentralized government with a nested hierarchy of jurisdictional authorities. Higher levels will have authority over only those matters that cannot or will not be attended to effectively and efficiently by lower levels of government. Thirdly, decisions all the way up and down that hierarchy of governments will be made democratically, with everyone within each jurisdictional authority having a right to vote on the decisions of that authority.

Hence, when we are expanding the jurisdictional authority and the democratic demos associated with it for some purposes, we would not be expanding it for all purposes. Matters that are genuinely of purely local concern will still be voted upon purely by members of that more local demos.

The only things that everyone in the extended demos would be voting on are matters that are, indeed, of concern to them all. My proposal for a new expanded polity merely prevents states from doing things that affect others outside their borders, or subject them to their laws, without giving those outsiders a proper say in the making of laws and policies that affect or subject them all.

My preferred strategy for doing that, as I have said, is to create a higher tier of limited authority in which everyone extra-territorially affected or subjected has a vote.

⁴⁸ Assuming the conditions set out are met, each person would get exactly one vote in any jurisdiction in which s/he is entitled to vote at all. Were some people entitled to vote in more jurisdictions than others, on grounds that they were affected by or subjected to the decisions made there, that would introduce a form of proportionality (albeit a 'lumpy' one). It offends ideals of 'democratic equality' in other respects, however (Goodin and Tanasoca 2014).

And assuming that there are sufficiently many and diverse matters with extra-territorial impact of that sort, I would propose that everyone should get a single vote for representatives elected to make laws at that level, just as our current democracies operate according to the principle of 'one person one vote'. There are, as I have indicated in companion papers, second-best alternatives if such arrangements prove infeasible.⁴⁹ But I assume that most of those alternatives would probably prove even more unappealing to those who find themselves aghast at my primary proposal.

V. Conclusion

To recapitulate, I think the Proximity Principle constitutes the best principled defence of a geographically delimited franchise of the sort that we currently have. But proximity was only ever a proxy for what is truly of principled concern; and whereas it may once have been a good proxy, it no longer is. With globalization and the concomitant increase in the capacity for and reality of action at a distance, the same factors that used to tell so strongly in favour of people voting together with those living nearby now tell equally strongly in favour of extending the same rights to distant others who are now similarly affected by and subject to the laws being enacted. As we extend the polity beyond its traditional geographically-delimited forms – extending the right to vote as we do, assuming these new polities, like the old, should operate democratically – we can nonetheless retain traditional constraints of limited and multi-level government.

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⁴⁹ Goodin 2007, pp. 65–7; 2016, pp. 385–6.

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David Miller¹

Reconceiving the Democratic Boundary Problem^{2,3}

The democratic boundary problem arises because it appears that the units within which democratic decision-procedures will operate cannot themselves be constituted democratically. The paper argues that setting the boundaries of democracy involves attending simultaneously to three variables: domain (where and to whom do decisions apply), constituency (who is entitled to be included in the deciding body) and scope (which issues should be on the decision agenda). Most of the existing literature has focussed narrowly on the constituency question, endorsing either the All-Affected Interests Principle or the All Subjected Principle, but neither is satisfactory as a general solution. In particular, the former fails to explain why having interests at stake in a decision necessarily gives you the right to participate in making it, and the latter, although more plausible on that count, assumes that the domain and scope issues have already been settled. To make progress, we need to bring democratic values to bear on the boundary problem. The units we favour should be those that are likely to promote political equality and solidarity among members of the demos. Although this approach will often justify existing territorial states as sites of democracy, it can also generate arguments for making boundary changes along one or other dimension.

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1. The Boundary Problem's Three Dimensions

The democratic boundary problem has loomed large in recent political philosophy, no doubt fuelled by dissatisfaction with taking the nation-state in its current form as the privileged site of democratic politics. Yet despite a fairly extensive literature addressed to the topic, there is no sign of agreement on a solution, or indeed on what exactly the boundary problem *is*. The source of the problem can be quickly explained, however: before a democracy can begin to operate, it needs to have a (formal or informal) constitution – for example there has to be some rule that specifies who is entitled to take part in its proceedings, by voting and so forth. But it cannot self-constitute: in some way or other, the constitution has to be selected in advance. If that task is handed over to *another* democratic body, however, we immediately run the risk of an infinite regress. How are we to decide on the make-up of the second-order body that decides on the constitution of the first-order one (Whelan, 1983, Goodin, 2007, Abizadeh, 2008)? A bounded democracy, it seems, cannot be democratic all the way down.

Some philosophers regard the democratic boundary problem as essentially insoluble, at least philosophically (see e.g. Dahl, 1970, p. 59). We have to concede, they say, that the choice of the units within which democratic decision-making is going to occur is to a large extent arbitrary. But having made this concession, one can then move in two different directions. One is conservative: we should stay with the units that we already have, in particular existing nation-states, even while recognizing that their boundaries are largely a matter of historical contingency. If we try to alter them, we are merely replacing one form of arbitrariness with another. The other is more radical. We must come to understand that the constitution of our democracies is always open to challenge, in particular the challenge that comes from the hitherto-excluded. For example, people outside of the state, but significantly impacted by its decisions, may have a strong claim to participate in making those decisions (Abizadeh, 2008). But this does not point us towards a definitive answer to the boundary problem of the kind that might satisfy a philosopher.⁴ Instead it leaves boundary setting as a matter of political contestation between groups with opposing interests (Näsström, 2011).

Neither of these responses seems wholly satisfactory, however (for a general appraisal of the claim that the boundary problem is insoluble, see Maltais, Rosenberg and Beckman, 2019; for reflection on how an author's preferred philosophical style will determine what she sees as an appropriate response to it, see Donahue and Ochoa Espejo, 2016, pp. 150–152). The first is undermined by the fact that boundaries have in the past been redrawn in ways that are beneficial to democracy, and there is no

⁴ It might be said that it points us towards global democracy: in principle the demos is unbounded (Goodin, 2007, Abizadeh, 2008). But philosophers who take this view immediately go on to concede that there is no way in which this could be realised in practice, so they fall back to the position identified in the text.

reason to think that this process of revision has come to an end. Typically these are cases in which previous boundaries have encircled populations that found it difficult to live together as one people, making collective decisions that applied to them all. By creating new boundaries – either between sub-units within a federal system, or by outright secession – well-functioning democracies can be brought into existence. Conversely, the radical view carries with it the danger that by making all existing boundaries into objects of ongoing contestation, the functioning of democracy itself is put in question, since democracy seems to require a relatively stable demos that can make coherent decisions over time.

These are preliminary observations, intended only to suggest that we have democratic reasons for wanting to find a solution to the boundary problem, if we can. Yet even among those who believe that a solution can be found, there is disagreement about how the problem is best characterised. For some it is about the physical positioning of the boundaries within which a democracy is going to operate: where should we draw the lines of political division on the map, so to speak (see, for example Simmons, 2013). For others it is about who should or should not be included in the constituency of persons who are entitled to participate in making decisions, on the assumption that the boundaries within which those decisions will apply are already fixed. But on reflection it seems that those two issues are deeply interconnected: one cannot (justifiably) set physical boundaries without knowing who is going to be included in the demos that will legislate inside them, and vice versa. I shall call the first issue the *domain* issue and the second the *constituency* issue. And there is yet a third dimension to be considered, namely that of *scope*: what is the range of issues that any given democratic body is entitled to make decisions about? The scope dimension tends to be neglected in discussions of the boundary problem, perhaps because the participants take states as the primary sites of democracy, while at the same time assuming that within their own domain states are sovereign, and thus have unlimited scope to decide. But as soon as we complicate the picture by thinking about multi-level forms of democracy, the scope question comes directly into play. Oxford City Council can make decisions about rubbish collection within the city boundaries, but not about health services, for instance. It is by no means obvious that this is undemocratic, that within its domain the Council (or the people of Oxford that it represents) must be entitled to decide single-handedly about *everything*.

The point, then, is that from a democratic point of view, the ideal case is one in which constituency, domain and scope are perfectly aligned: a given body of people make decisions that apply within the area that they, and only they, inhabit on issues that are legitimately theirs to decide. Conversely, where we find misalignment, as we often will, in principle it can be put right either by altering the constituency (including more or fewer people in decision-making), altering the domain (widening or

narrowing the geographical range over which the decisions apply), or altering the scope (adding to or subtracting from the decision-agenda). This is the point that appears to be missed by those who think that the boundary problem is only about the constituency, or only about the domain. My first proposal for reconceiving the problem, therefore, is that we should think of it as inherently multidimensional in the way just explained.

My second proposal is that to solve the boundary problem, we need to have a theory about the inner workings of democracy. We need to be able to anticipate what is going to happen when a given group of people meet to decide on an issue that concerns them all, though typically not everyone in the same way. To see why this is important, consider the case where a group not currently included in the decision-making constituency is likely to feel the impact of the decisions that are about to be taken. *Prima facie*, this is a case in which the constituency ought to be expanded to include that group. But the unstated assumption here appears to be that their presence will alter the outcome in a way that is favourable to the excluded group, either promoting their interests or advancing their values. Their voices or their votes will count, in the right direction. But why assume this? If the group forms a minority, perhaps the previously-enfranchised majority will continue just as before and vote accordingly. In the worst case, perhaps the inclusion of the group will backfire, as the majority, when challenged by new voices, hardens its position. The point, therefore, is that to justify expanding the constituency in such a case, we need to open up the black box and look at what is going on inside. Solving the boundary problem requires us to have a theory about how democratic systems of different kinds are likely to work, in the sense of translating the interests, opinions, judgements and so forth of their members into collective decisions.

2. The All-Affected Interests Principle

With that framework in place, I now examine some principles that have been applied to solve the boundary problem. Perhaps the most prominent is the All Affected Interests Principle (AAIP). As classically formulated by Robert Dahl this holds that ‘everyone who is affected by the decisions of a government should have the right to participate in that government’ (Dahl, 1970, p. 64).⁵ Notice that this formulation, by

⁵ For reasons of space, I leave aside here the vexed question of what it means to be affected by a decision. Does it mean that your material position is in fact changed, for better or worse, by the decision that is actually taken? Or does it mean that your position might be changed, depending on what decision is reached? The latter interpretation of the principle will have the effect of rapidly expanding the number of bodies in which a person is entitled to participate. For discussion, see Goodin, 2007, pp. 52-55; Owen, 2012, pp. 131-134; Arrhenius, 2018, pp. 112-114.

referring to ‘decisions of a government’, implicitly assumes that the domain question has already been resolved, since by ‘a government’ Dahl clearly intends a body with a fixed territorial jurisdiction. However it is also possible to formulate the principle more abstractly: according to Arrhenius, it is the principle that ‘the people that are relevantly affected by a decision ought to have, in some sense, influence over it’ (Arrhenius, 2005, p. 20). Fung explicitly extends the principle to bodies beyond the state: ‘individuals ought to be able to influence the decisions of a large range of organizations, not just territorial states, whose actions regularly or deeply affect their interests’ (Fung, 2013, p. 240). Nevertheless, the key idea behind AAIP is to solve the boundary problem by identifying the constituency that should be empowered to take decisions whose domain and scope are already known.

What can be said in favour of AAIP? It is usually defended by appeal to two kinds of case in which we find exclusion from democratic decision-making problematic. One is exemplified by the disenfranchisement of women prior to the twentieth century: parliaments were making laws on a wide range of issues that deeply affected women’s interests, but women were given no say in the making of those laws. The other is exemplified by a state that takes decisions that seriously affect people living in a neighbouring state: the decision to build a nuclear power station (or conduct nuclear tests) close to the border is a popular example (Arrhenius, 2018, pp. 100-101). However although these examples appear to support AAIP, they do not entail it, because they can also be accommodated by other principles. For example, the disenfranchisement of women is also condemned by the All Subjected Principle, which I will discuss below. Besides accumulating supporting examples, we need to look more closely at the reasoning behind AAIP. Why should having your interests affected by decisions give you the right to participate in making those decisions?

There seem to be two possible answers. One justifies the right to participate instrumentally. By being allowed to take part in the process that leads up to a decision, a person makes it more likely that the outcome will promote her interests. But as I noted above, there is a missing link in the argument here: for any given individual, or group of individuals short of a majority, their having a voice or a vote may fail to change the outcome in their favour, depending on the way in which the decision is reached – referring here both to the formal procedure, and the bargaining or deliberation that may take place alongside it.

It is also unclear that giving a person some influence over a decision procedure is necessarily the correct way to cater to the interest she may have in the outcome. In some circumstances it is clearly incorrect. Appointment decisions are an obvious example. Selection committees should take the interests of candidates into account by impartially considering each applicant on their merits, but we do not think that the candidates themselves should be co-opted on to the committee. Or suppose that a number

of firms are bidding for a government contract: for the people employed by those firms, a great deal financially may be at stake. Yet we do not believe that the employees in question should play any part in the process by which the award of the contract is decided.⁶

What these counter-examples to AAIP reveal is that, in its instrumental form, the principle has a utilitarian foundation. Letting people take part in the decisions that affect them is often a good way of promoting overall welfare. But when it is not – because the result would be to bias what should be an impartial decision too heavily in their personal favour – they have no claim to take part, no matter how great their interest in the outcome. Something similar applies to those with ‘sinister interests’ – interests opposed to those of the bulk of the constituency they are seeking to join.

There is, however, a second, non-instrumental, way to interpret AAIP. This holds that collective decisions that affect their interests can only legitimately be imposed on people following a justificatory procedure in which they are allowed to participate. This avoids the problem of people who can claim the right to participate but are unsuccessful in getting what they want – at least they had an opportunity to put their demands forward. But on further reflection it seems doubtful that having interests at stake is sufficient to trigger a demand for justificatory access of this kind. In general, if a decision is going to be made somewhere that significantly affects my interests, what I can rightfully demand is that the body taking that decision should give those interests due consideration (Beckman, 2009, pp. 45–46). But, as López-Guerra (2005, p. 223) puts it, ‘being entitled to just treatment by other groups whenever our interests are at stake is quite different from being entitled to participate in the decision-making processes of those groups’. There may be occasions on which my interests are such that I should be given the opportunity to express them directly to the decision-makers through a consultation procedure. In a still narrower range of cases, I may have the right to be included in the decision-making body itself. In general, though, there are other means besides political participation by which to ensure that affected interests are properly considered (Saunders, 2012, pp. 292–293; Owen, 2012, pp. 137–139).

3. The All Subjected Principle

In the subset of cases in which the interests people have at stake are such that they ought to be included in the democratic constituency, the principle that seems to

⁶ Defenders of AAIP might be tempted to deal with these cases by stretching the notion of ‘influence’ (see, for example, Fung, 2013). Certainly candidates for a position should be allowed to ‘influence’ the selection committee by presenting their credentials, and ditto for those bidding for the government contract. But here ‘influence’ has changed its meaning very considerably: it no longer conveys the idea of participating in the decision itself.

capture this best is not AAIP but its main rival (in the constituency stakes), the All Subjected Principle (ASP). Again we find an early formulation of this in Dahl: ‘the demos should include all adults subject to the binding collective decisions of the association’ (Dahl, 1989, p. 120). But what does it mean to be ‘subject’ to a government, or other decision-making body, and why should being subjected create a right to inclusion? As Beckman points out, the term is ambiguous: it could mean being legally bound to follow the laws that the government issues; or it could mean being subject to institutions with the capacity to enforce the law, in other words being coerced to obey (Beckman, 2014, pp. 255–258; see also Goodin, 2016, p. 370).⁷ This distinction will matter in instances where the two come apart. However the standard case of subjection to a government is being required to conform to a battery of laws that will be enforced if necessary by the threat of coercion, and it is the life-shaping character of this subjection that distinguishes it from other cases in which a person’s interests are merely affected in one way or another. The right to be included in the decision-making constituency can then be justified by appeal to personal autonomy. Subjection carries with it the risk of domination, and the ability to speak and vote, directly or indirectly, on the rules that will be applied provides some protection (though never, it should be noted, complete protection) against that risk.

Since ‘being subjected’ to decisions appears to be considerably narrower than ‘being affected’ by them, supporters of ASP argue that it provides a more determinate, and more plausible, solution to the constituency problem than AAIP. Critics claim that in practice this is not so, since states now regularly take decisions and make laws that apply to people outside of their borders, thereby subjecting outsiders to those laws, so ASP too implies that almost anyone might potentially have a right to be included in their decision-making. According to Goodin, ‘anticosmopolitans hoping to rely on the All Subjected Principle to keep the franchise within broadly conventional bounds will be sorely disappointed’ (Goodin, 2016, p. 368). He points out that, acting either to protect themselves against various harms or in defence of their citizens living abroad, states now make laws that criminalise activities such as engaging in terrorism or in drug-trafficking no matter where they occur – and sometimes take steps to enforce them. Yet although in a formal sense this may make large numbers of people world-wide subject to the laws of various states other than their own, it is not clear that this is ‘subjection’ in the sense that motivates ASP. Prior to reading Goodin, few non-Americans will have realised that they would be liable to be criminally charged by the US government for various offences that they might hypothetic-

⁷ Beckman also introduces a third possible interpretation, namely being the subject of ‘power-conferring’ rules, but it is not clear to me why this might count in favour of enfranchisement, once AAIP has been rejected.

cally commit. The subjection that gives rise to a claim for political inclusion is subjection that actually shapes a person's life by opening up (and protecting) options that they might choose while shutting off others, thereby both enabling and potentially threatening their autonomy (for further reflection on why merely hypothetical threats of coercion do not amount to autonomy-threatening subjection, see Miller, 2010, Beckman, 2014)

To be clear, there is certainly reason to be concerned about states exercising their legal powers extra-territorially when this is not essential for reasons of self-defence (such as warding off an imminent terrorist attack). This is where the broader framing of the boundary problem I am recommending is helpful, because these power-exercises can be characterised as democratically unjustifiable extensions of the *domain* of decision-making: states should simply stop making laws with such a wide extension and rely instead on making reciprocal arrangements with other states to control cross-border criminal activity (a solution briefly considered by Goodin, 2016, p. 383).

Although I have presented ASP as in general a better answer to the constituency question than AAIP, I do not claim that taken alone it adequately solves the boundary problem. First, even as an answer to the constituency question, it may in some cases be too restrictive. Suppose the residents' association in the place where I live decides to embark on a campaign to improve the local environment, planting trees, repainting buildings, and so forth. I should surely be allowed to participate and express my views, even though it would be more than a stretch to say that I am being 'subjected' to its decisions, since no legal binding or coercion is involved. To explain my claim for inclusion, we appear to need to invoke AAIP. Second, and more important, ASP assumes that the domain and scope issues have already been settled. Once we have a decision-making body with the power to enforce its decisions over a particular area, we can ask who is and who is not subjected to those decisions and therefore has a right to be enfranchised. But in some cases we might think that from a democratic perspective that is the wrong place to begin. Instead we should be asking whether it is justifiable to have a decision-making body with that domain and/or scope in the first place. Perhaps the political landscape should be divided up differently. We need, in other words, to take a multidimensional approach to the boundary problem.

4. Tackling the Problem by Appeal to Democratic Values: Political Equality and Solidarity

Bringing these other dimensions of the boundary problem out into the open does not, however, tell us how they should be tackled. There are broadly two possibilities. One is to import elements from outside of democratic theory itself. Here we would consider other desirable properties that we want our political systems to have, and

then draw the boundaries so that units displaying these properties are created. For example, we might wish to have units that are capable of being economically self-sufficient; or units that bring together people who share a common identity of some kind, and therefore wish to be politically associated. I have argued elsewhere that a general theory of boundaries must include concerns such as these (Miller, 2016). However critics will claim that this way of proceeding will leave solutions to the boundary problem too open to the contingencies of history, biasing the outcome in favour of the political units that currently exist. From a democratic perspective, they argue, it is unsatisfactory to have to conclude that the outer limits of democratic government will be determined by factors that do not themselves pass the test of democratic legitimacy (see Näsström 2007, Yack, 2012, pp. 148–53; for a critique, see Maltais, Rosenberg and Beckman, 2019, pp. 441–444).

The second option, therefore, is to bring values that form part of democratic theory itself to bear on the boundary problem. What might these be? Elsewhere I have argued that this will depend on the conception of democracy that we favour, on a spectrum that runs between liberal and radical versions (Miller, 2009). Here I focus on two values that both liberals and radicals should embrace: political equality and solidarity; I will finally suggest that they work most effectively in tandem.

Political equality is plainly a core component of democracy. To achieve it, it is necessary, but not sufficient, that the members of the demos should have equal political rights. Beyond this, they should have an equal opportunity to influence the decisions reached (see Song, 2012, pp. 45–46; Erman, 2014, pp. 539–42; for a longer discussion of the role that the idea of equal influence plays in justifying democracy, see Kolodny, 2014). This is a demanding requirement, unlikely to be met fully for obvious sociological reasons (unequal access to some of the resources that can amplify a person's voice, for example). Nevertheless it can be applied to the boundary problem, requiring that decision-making bodies should be constituted in such a way that those who are included in them have as far as possible an equal opportunity to exert influence. This counts first of all in favour of bodies with a stable membership, taking decisions on a variety of issues over time. If we understand influence as the capacity to shift an outcome in the direction that you favour, equality of influence is unlikely to be achievable in the case of a single decision, where the majority view will typically prevail at the expense of the minority.⁸ But over the course of a series of decisions, each member of the demos can expect to be positively influential on a number of occasions, indeed statistically speaking more often than not. Contrast here the

⁸ This is not inevitable. It is possible to imagine a perfect compromise, when everyone can feel that they have moved the outcome a little in the direction that they prefer. And there will be intermediate cases in which the minority manage to persuade the majority to cede a little ground. But normally we should expect winners and losers when single decisions are taken.

approach suggested by AAIP, which, as critics have pointed out, seems to indicate that ideally the decision-making body should be constituted afresh for each new decision, since a different set of interests will be at stake (Whelan, 1983, pp. 18–19; Song, 2012, pp. 56–58).

The argument above would fail in the case where the same majority wins on each occasion that a decision is taken. So, still in the name of political equality, political boundaries should as far as possible be set so that they enclose a group with overlapping and interconnected interests. Christiano expresses this condition in terms of creating a ‘common world...in which the fulfilment of all or nearly all of the fundamental interests of each person are connected with the fulfilment of all or nearly all of the fundamental interests of every other person’ (Christiano, 2006, p.85; see also Erman, 2014, p. 541.) Where basic interests are linked in this way, we have no reason to expect a consolidated majority emerging to dominate the remainder of the demos. Note that ‘interests’ here must be interpreted broadly so as to include not just material interests, but also for instance cultural interests where these are pursued through political channels. A political association in which a majority group uses its political advantage to decide all cultural questions in its favour and without any concession to minorities doesn’t realise political equality and is to that extent undemocratic. So boundaries drawn around that association as a single, undifferentiated unit also fail the test of democracy.

Such cases aside, the political equality argument will often speak in favour of existing territorial states as sites of democracy, since it is within such states that we are most likely to see the interlinking of interests that supports equality (see Song, 2012, pp. 58–62). Yet although this allows historical contingencies to determine where the boundaries are drawn – since it is clearly a somewhat arbitrary matter that existing states have the precise shapes that they do – all the normative work is being done by the fact that they now enclose populations capable of living together as political equals. Where this is not the case, as in the example of the culturally polarised society, there will be an egalitarian case for redrawing boundaries to create new units that are better able to function as democracies.

I turn next to solidarity, which is also an essential component of democracy, though not in this case as a matter of definition but for empirical reasons. Solidarity within the demos matters on two main counts. First, it encourages people voluntarily to comply with laws and other decisions with which they may disagree, out of respect for fellow members who in turn are expected to comply with laws and decisions that *they* dislike. A democracy cannot rely on coercion as the main instrument to enforce its decisions. Second, solidarity encourages participants in the democratic process to reach decisions that are reasonably acceptable to every member, since they will be reluctant to impose policies that are socially or politically divisive. In the case where

policies are made indirectly by elected representatives, they will not support parties standing on platforms that overtly privilege one or more sectional groups (e.g. racist or exclusive religious parties). This is the point at which political equality and solidarity converge: the more solidaristic an association, the more likely it is to be able to approximate equal political influence, because the members will attach value to finding solutions to problems that everyone will find acceptable, which means listening to divergent voices and finding ways to accommodate them.

The implications for boundary drawing depend on what one believes about the sources of solidarity in groups whose members do not meet face to face (for some possible answers, see Miller 2017). The main debate here is between those who hold that potentially any group can develop sufficient solidarity as its members co-operate politically over time, and those who hold that a pre-political identity of some kind – e.g. a shared cultural identity – is also necessary. Its resolution may turn on how much one expects of democracy, in terms of its *modus operandi* and the policies it will produce. The higher one's expectations – for example the closer it should come to reaching decisions by purely deliberative means – the more one will look for pre-political sources of solidarity among the demos, which in turn will mean attempting to draw the boundaries of democracy around groups likely to display that feature.

5. Conclusion

I have argued that the existing literature on the boundary problem has (with one or two exceptions) mistakenly been searching for a single principle that could resolve the problem, such as AAIP. We need instead a broader approach that looks not only at individual claims for political inclusion, but at the collective properties that we want the demos to have, and at the anticipated quality of its decision-making. The issues of constituency, domain and scope need to be taken together, with the general aim of creating (or preserving) units that perform well, by democratic standards. This means that the decisions taken are well thought-out, consistent over time, fair to the different parties involved, etc. If we assume that the boundary question just *is* the question of who is entitled to participate in democratic institutions whose domain and scope are already fixed, we overlook the possibility that no well-functioning democracy can be created within existing boundaries. Instead it may be these other dimensions that need to be changed, for example by allowing a sub-unit to secede and become an independent decision-making body, or by amalgamating two units in cases where interests are intertwined in such a way that neither can make decisions that do not have significant repercussions for the other. Or perhaps the problem is one of scope: decisions in a particular field ought to be shifted upwards or downwards in the hierarchy of decision-making bodies. To say that fishermen ought to have a

voice when fishing quotas are being allocated because of their obvious interest in the outcome does not yet settle which level of decision-making – local, national or regional – is the right one for decisions of that kind.

Equally, we shouldn't assume that only democratically-made rules can be politically legitimate. There may be valuable forms of international regulation, for example, that can be created by negotiation between states, but that cannot be made subject to direct democratic control. Proposals to democratize bodies such as the United Nations may seem attractive until one looks in more detail at what this would involve in practice, and at the content and quality of the decisions that would be reached. Solving the boundary problem also involves asking when democracy is the right answer, and when it isn't.

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The Boundary Problem and Platitudes About Democracy: A Conceptual Argument for the All-Subjected Principle

Who should be entitled to participate in which democratic decision? The two most prominent answers to this question, which is often labelled the Boundary Problem, are the All-Affected Principle (AAP) and the All-Subjected Principle (ASP). According to AAP, a person should be entitled to participate in a democratic decision iff the person is affected by that decision. According to ASP, a person should be entitled to participate in a democratic decision iff the person is subject to that decision. Many proponents of AAP and ASP appeal to the democratic ideals of self-determination or self-government in support of their positions. Some critics of AAP and ASP appeal to other democratic ideals instead, most notably equality and solidarity. Other critics deny altogether that the Boundary Problem can be solved by appealing to democratic ideals. In this paper, I develop and defend an argument for ASP based on the ideal of self-government, utilizing the conceptual ties between democracy and self-government.²

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1. Introduction

In this paper, I develop and defend a conceptual argument for a solution to the Boundary Problem in normative democratic theory. Instances of the Boundary Problem concern, e.g., the voting rights of resident aliens in their host countries and of expatriates in their home countries. The general form is this:

The Boundary Problem (BP)

Who should be entitled to participate in which democratic decision?³

The most prominent solutions to BP in the literature are the All-Affected Principle and the All-Subjected Principle. These principles come in many different versions. For the purposes of this paper, I accept the following definitions:

The All-Affected Principle (AAP)

A person should be entitled to participate in a democratic decision iff the person is affected by that decision.⁴

The All-Subjected Principle (ASP)

A person should be entitled to participate in a democratic decision iff the person is subject to the decision.⁵

Many authors suggest that AAP and ASP can be justified (at least *prima facie*) by appealing to the democratic ideals of (something like) self-determination or self-government. Here is a sample:

³ The problem is called “the boundary problem” by Whelan (1983: 13). Other labels are “the problem of inclusion” (Dahl 1989: 119), “the problem of the unit” (Dahl 1989: 193), and “the problem of constituting the demos” (Goodin 2007: 40). On the voting rights of resident aliens and expats, see Beckman (2006, 2014) and López-Guerra (2005). BP also lies at the heart of controversies regarding the democratic representation of future persons, the legitimacy of border regimes, and the justification of global democracy; see, e.g., Abizadeh (2008, 2010), Agné (2010), Beckman (2013), Miller (2009, 2010), List and Koenig-Archibugi (2010), Tännsjö (2007), Andrić (2017).

⁴ Proponents of (some version of) AAP include Arrhenius (2005, 2018, 2019), Brighouse and Fleurbaey (2010), Cohen (1971: 8), Dahl (1970), Goodin (2007), Shapiro (1999, 2012), and Young (2000). It is controversial if AAP should state affectedness as both a necessary and sufficient condition for inclusion (“iff”) or only as a sufficient condition (“if”); cf. Goodin (2007), Frazer (2014). In my opinion, the “iff” formulation is better for a couple of reasons. To mention just one: the “iff” formulation is less prone to have implications that intuitively seem to be over-inclusive.

⁵ Proponents of (some version of) ASP include Abizadeh (2012), Beckman (2006, 2008, 2009, 2013, 2014), Cohen (1998: 223, n. 1), Dahl (1989), Erman (2014), Habermas (1998), López-Guerra (2005), Miller (2009), and Owen (2012). ASP is often formulated as stating that subjectedness is a sufficient (“if”) rather than a necessary and sufficient (“iff”) condition for democratic inclusion. I choose the “iff” formulation for reasons similar to those indicated in the previous footnote regarding AAP.

[E]veryone affected by the operation of a particular domain of civil society should be presumed to have a say in its governance. This follows from the root democratic idea that the people appropriately rule over themselves. (Shapiro 1999: 37)

[I]f democrats endorse the ideal of self-government, anyone who is subject to the laws of a democratic polity should be included in the citizen body. (López-Guerra 2005: 219)

[T]he all affected principle [...] is perhaps implicit in the phrase ‘government by the governed’ or as Lincoln once expressed it: ‘A government of the people by the same people.’ I think it is fair to say that it is implicit in much reasoning in the democratic tradition. (Arrhenius 2005: 19–20, references omitted)

[The] idea of democratic community [...] implies an extremely strong notion of democratic political autonomy, since it requires that the people be affected only by such decisions as they have participated in making. (Agné 2006: 433–4)

[T]he proportionality principle [a version of AAP] appears to give flesh to the notion of self-government at all scales, from the individual to the whole population. (Brighouse and Fleurbaey 2010: 142)

[T]he all-affected principle draws its normative force from the modern notion of self-rule. [...] The central thrust is that citizens should not be determined by decision-making powers beyond their own control. (Näsström 2011: 122)

[D]emocratic self-rule means that the exercise of political power conforms to the collective will of those subjected to it, and why the scope-condition of democratic legitimacy is that all those subject to the exercise of political power have a right of democratic say. (Abizadeh 2012: 878)

[D]elineating the demos according to affected interests is a required precondition for people to be able to rule themselves at all. (Lampert 2015: 54)

How convincing are these attempts at justifying AAP and ASP? Two fundamental problems can be found in the literature. First, it is unclear why (something like) self-determination or self-government should have precedence, as far as solutions to BP are concerned, over other democratic ideals. Most notably, critics of AAP and ASP have

proposed solutions to BP that are supposed to accommodate democratic ideals of equality (and sometimes solidarity).⁶

The second problem is a persistent scepticism about the method of appealing to democratic ideals at all in order to solve BP. Some authors suggest, in some way or other, that there is no principled normative solution to BP and that the compositions of demoi are eventually to be determined arbitrarily or simply brought about by contingent historical forces.⁷ This suggestion is often combined with the observation that a demos cannot decide about its constitution without already being constituted.⁸

In this paper, I try to solve these two problems by developing a valid deductive argument that takes a platitude – a candidate conceptual truth – about democracy and self-government as its premise and yields ASP as its conclusion. If the argument is sound, then it answers the critics by showing both that BP can be solved “within the framework of democratic theory” (Whelan 1983: 16) and why the democratic ideal of self-government, in virtue of featuring in a conceptual truth about democracy rather than simply being plausible as far as normative intuitions are concerned, has precedence over other democratic ideals. To rebut the argument, critics would have to attack the validity of the argument or show that its premise is, in fact, not a conceptual truth.

Conceptual arguments are less popular nowadays than they used to be, especially in political philosophy. Accordingly, readers might have worries along the following lines: “BP is a normative question, and it is natural to address normative questions on the basis of normative principles rather than putative conceptual truths.” However, it *is* possible to argue for a conceptual solution to BP without begging normative questions: If the concept of democracy commits you to a particular solution to BP, then the claim that democracy is justified commits you to the claim that this solution to BP is justified. It is then not possible for you to hold that democracy and a different solution to BP are justified without contradicting yourself. What you could still say, however, if you think that some solution to BP other than the solution entailed by “democracy” is justified, is that you do not favour democracy but maybe democracy* or quasi-democracy.

With these preliminaries out of the way, let me elaborate on the structure of the paper. Sections 2 and 3 are, by and large, neutral regarding the adjudication between AAP and ASP, which means that, even though I argue for ASP in this paper, proponents of AAP can use the findings of sections 2 and 3 in support of their position. Section 2 systematizes the suggested ideals that I quoted above and identifies the central platitudes underlying those ideals. Section 3 develops the general form of the

⁶ Song (2012), Miller (2009, 2020), Bengtson and Lippert-Rasmussen (forthcoming). Notice that Miller accepts some restricted version of ASP but rejects it “as a general solution” (see Miller 2020, p. 1).

⁷ Schumpeter (1942/1950: 244–5), Whelan (1983), Näsström (2007) .

⁸ For a recent discussion of this problem and further references, see Maltais, Rosenberg, and Beckman (2019).

conceptual argument. Sections 4 and 5 argue for ASP. Section 4 argues against AAP and in favour of ASP by showing that the platitude that supports ASP is considerably more likely to be a conceptual truth than the platitude supporting AAP. Section 5 defends the relevance of the conceptual argument for ASP by dealing with recent criticisms of the ideal of self-government. Section 6 concludes.

2. The Platitudes

The quotes provided in section 1 illustrate that different proponents of AAP and ASP appeal to different democratic ideals: that the people rule or govern over themselves (Shapiro, Arrhenius, Lampert, Brighouse and Fleurbaey), that citizens or individuals are autonomous or determine their own affairs (Brighouse and Fleurbaey, Näsström), that individuals govern or rule over themselves (López-Guerra, Abizadeh), or that the people are autonomous (Agné). My suggestion is that these formulations boil down to two ideals, one favouring ASP and the other AAP. Let me first state the ideals and then explain how they are related to the platitudes:

Ideal of Autonomy (Ideal_A)

A group of persons should be entitled to determine its own affairs.

Ideal of Self-Government (Ideal_G)

A group of persons should be entitled to govern itself.

Ideal_A and Ideal_G are, of course, normative claims. By contrast, I understand the platitudes underlying the ideals as non-normative claims about what democracy is or entails, e.g. “democracy is government of the people by the (same) people” (cf. Arrhenius following Lincoln) or “democracy involves that citizens determines themselves” (cf. Näsström). The exegetical question of whether the quoted authors are best understood as referring to democratic ideals or rather to platitudes about democracy is extraneous to my project.

Why do I focus on Ideal_A and Ideal_G, rather than on platitudes about democracy or some other (or differently formulated) democratic ideals? Notice, first of all, that some platitudes suggested by the above quotes focus on self-rule or self-government and others on autonomy or self-determination. Since I do not see a relevant difference between *self-government* and *self-rule* on the one hand and *autonomy* and *self-determination* on the other, I will use these terms synonymously, respectively: one ideal focuses on self-government or self-rule, the other on autonomy or self-determination.

Secondly, as mentioned, the relevant platitudes are non-normative claims: “democracy *is* self-government of the people”, “democracy *involves* the autonomy of citizens”, etc. Answers to BP, on the other hand, are normative claims: claims about who *should/ought to* be entitled to participate in which democratic decision. An argument that yields answers to BP therefore needs a normative premise. This is why I focus on ideals based on platitudes rather than the platitudes themselves in the argument.

Thirdly, some authors appeal to ideals or platitudes about the people or citizens, others to ideals or platitudes about individuals or persons. I go with the latter suggestion for two reasons. First, phrases like “the people” or “citizens” might seem problematic in the present context to authors who understand BP as a question about who should constitute the people or be a citizen in the first place. These authors might think that platitudes referring to “the people” or “citizens” *presuppose* an answer to BP. Second, we speak of “the people” and “citizens” in the context of state democracies, but BP can come up in other contexts as well (contexts involving democratic firms, families, etc.) and a solution to BP should ideally be applicable in all these contexts.

Finally, it is possible to derive AAP or ASP from Ideal_A or Ideal_G only if the ideals are interpreted in a certain way. Let us begin with Ideal_A, according to which a group of persons should be entitled to determine its own affairs. AAP holds that a person should be entitled to participate in a democratic decision iff the person is affected by that decision, where a person’s being affected is normally understood in terms of the person’s interests being at stake.⁹ Thus, in order to infer AAP from Ideal_A, “to determine a person’s affairs” in Ideal_A needs to be understood in terms of affecting the person, which in turn needs to be understood in terms of affecting the person’s interests.

According to Ideal_G, a group of persons should be entitled to govern itself. ASP maintains that a person should be entitled to participate in a democratic decision iff the person is subject to the decision, where a person’s being subject to a decision is normally understood in terms of the person being bound or coerced by the decision.¹⁰ Thus, in order to infer ASP from Ideal_G, “to govern a person” in Ideal_G needs to be understood in terms of subjecting the person, which needs to be understood in terms of binding or coercing the person.

Side note: While, as mentioned before, this and the next section are basically neutral regarding the choice between AAP and ASP, it seems somewhat problematic and in need of elaboration to understand “to determine a person’s affairs” in terms of affecting that person. By contrast, it is natural to understand “to govern a person” in terms of subjecting – binding or coercing – the person. Since I will eventually defend ASP, the problem regarding AAP need not concern us further.

⁹ See, e.g., Goodin (2007), Whelan (1983: 17–18)

¹⁰ See, e.g., Abizadeh (2012), Beckman (2014), Goodin (2016), Miller (2009).

3. The Deductive Argument

With these elaborations behind us, let us now develop the general form of the conceptual argument that takes a platitude, expressed as Ideal_A or Ideal_G , as a premise and has a solution to BP – AAP or ASP – as its conclusion. Ideal_A and Ideal_G can be formalized as

$$OR(A, B),$$

which is to be read as “ A ought to be entitled to govern/determine the affairs of B ”. A and B designate groups and R designates a relation between them: *governing* or *determining the affairs of*. O designates that the group mentioned in the first place of the relation ought to be entitled to the active role in the relation.

Since answers to BP focus on individual persons – they tell us which person should be entitled to participate in which democratic decisions – we need a formalization of Ideal_A and Ideal_G that features individual persons. This can be achieved by taking advantage of the fact that the ideals concern *self-governing* or *self-determination*, i.e., a relation between two groups that consist of the same individuals. Letting i stand for an individual person, we are now in a position to formulate the first premise of the conceptual argument:

$$(1) \quad OR(A, B) \leftrightarrow \forall i(i \in A \leftrightarrow i \in B)$$

According to (1), a group ought to be entitled to govern or determine the affairs of a second group iff for any individual, the individual is a member of the first group iff the individual is a member of the second group. (1) is just a formal notation of Ideal_G or Ideal_A that assumes that one group governing or determining the affairs of a second group is an instance of self-governing or self-determination iff the two groups consist of exactly the same individuals.

The next step consists in introducing democratic decision-making. Ideal_A and Ideal_G do not mention democratic decisions but self-governing or self-determination. Solutions to BP, on the other hand, state when a person should be entitled to participate in a democratic decision. To derive solutions to BP from the ideals, we need to introduce connections between self-governing or self-determination on the one hand and democratic decision-making on the other. This can be done in a straightforward way. Self-government or self-determination of the kind we are interested in takes the form of democratic-decision making. Since the platitudes are platitudes about democracy, they concern the people governing themselves *by* making democratic decisions,

groups determining their own affairs *by* making democratic decisions, and so on. Hence, according to the ideals, a group should be entitled to make a democratic decision just in case making that democratic decision is an instance of government or determination, respectively, to which the group should be entitled:

$$(2) \quad OR(A, B) \leftrightarrow OD(A, B)$$

D designates democratic decision-making, $OD(A, B)$ is to be read as “ A ought to be entitled to make democratic decisions over B ”. What does it mean to make democratic decisions “over” persons? Assuming the ideals, a group should be entitled to make a democratic decision over somebody iff making that decision is an instance of self-government or self-determination, respectively. The term “over” here functions to distinguish between cases that are instances of self-government/self-determination, where the persons over whom a decision is made are identical with the persons making the decision, and cases where this is not the case.

Therefore, the meaning of “over” in relation D piggybacks on which ideal we take to determine the meaning of relation R . As explained in section 2, proponents of AAP will understand “to determine a person’s affairs” in Ideal_A in terms of affecting that person, and proponents of ASP will understand “to govern a person” in Ideal_G in terms of subjecting that person. Accordingly, on AAP, the relevant notion of making a democratic decision *over* a person is that of affecting that person by the decision, whereas on ASP, the relevant notion of making a democratic decision *over* a person is that of coercing or binding the person by the decision.

We can make a first inference. (1) and (2) together entail:

$$(3) \quad OD(A, B) \leftrightarrow (i \in A \leftrightarrow i \in B)$$

According to (3), group A should be entitled to make a democratic decision over group B iff A and B have exactly the same members. (3) can be affirmed by proponents of both ASP and AAP but will be interpreted in different ways. On ASP, a group should be entitled to make a democratic decision iff the group consists of all and only those persons who are coerced or bound by the decision. On AAP, a group should be entitled to make a democratic decision iff the group consists of all and only those persons who are affected by the decision.

With (3) we have arrived at what can be called a *scope criterion* for democratic decisions: a criterion for which decisions a group should be entitled to make. Many authors have pointed out that the question of which democratic decisions a group should be entitled to make and BP are intimately connected. For example, Dahl writes: “The

demos being given, the scope of its agenda can be determined. The scope of an agenda being given, the composition of an appropriate demos to make decisions on these matters can be determined.” (Dahl, 1989: 119.) According to Goodin, “[o]rdinarily, the ‘all affected interests’ principle is taken to be a standard for defining the scope of membership in the demos. Alternatively, or additionally, it might be used to delimit the scope of the ‘decisional power’ of the demos.” (Goodin 2007: 62).¹¹

By inferring (3) from (1) and (2), we have explained why these authors are right about the intimate connections that hold between answers to BP and scope criteria. However, there are complications (which are noticed by these authors as well). One might think that groups should not be entitled to make democratic decisions about certain issues – such as invasions of privacy or the violation of human rights – even when those decisions affect or subject, respectively, only the group members. Moreover, one might hold that not all groups should be entitled to make democratic decisions, regardless of who is affected or subjected, but only certain groups (e.g., groups that are sufficiently competent in moral and intellectual respects) or groups in certain contexts.

Notice that these complications also cast doubt on the platitudes that we took as the starting point of our investigation. Should the people really be entitled to govern over themselves if, say, the people are vicious or eager to violate human rights? Since the complications concern the platitudes about democracy in the first place, we do not have to worry that something went wrong with our deduction of (3). Nevertheless, we need to get clear on how to handle the complications.

On a theoretical level, we need to understand that Ideal_A and Ideal_G give us scope criteria only *with regard to* democratic inclusion – *pro tanto* rather than *all-things-considered* criteria. As far as democratic inclusion, i.e. providing individuals with entitlements to participate in democratic decisions, is concerned, group A should be entitled to make democratic decisions over group B iff the groups have the same members. On the all-things-considered level, though, it might be the case that group A should not be entitled to make a democratic decision over group B even if the groups have the same members. Considerations other than those concerning democratic inclusion might prevent that a group should be entitled to self-government or self-determination on the all-things-considered level. Examples include considerations of privacy or human rights, or just the idiocy or viciousness of the group members.

As far as developing a valid conceptual argument for solutions to BP is concerned, we can just bracket all these complications by assuming that we are considering only groups whose scope of democratic decision-making should not be restricted as far as considerations other than those concerning democratic inclusion are concerned.

¹¹ See also, e.g., Miller (2009: 215f., 2020) and Arrhenius (2018: 93).

Formally, we could introduce domain restrictions of the ideals (and platitudes) under considerations. But this would clutter the exposition unnecessarily. It is enough to hereby assume explicitly for the purposes of our investigation that considerations other than those concerning democratic inclusion (human rights, competence, etc.) do not justify restrictions regarding which decisions groups should be entitled to make. This assumption will be lifted in the next section.

How do we get from (3) to AAP or ASP? Since AAP and ASP concern individual entitlements to democratic participation, we need a bridge to individual entitlements to democratic participation. This bridge is provided by how *equality* features in definitions of democratic decision-making. As Christiano (2018) explains, democratic decision-making “is characterized by a kind of equality among the participants” and “the equality required [...] may be the mere formal equality of one-person one-vote in an election for representatives” or “it may be more robust, including equality in the processes of deliberation and coalition building”.¹² Democratic decision-making, in short, entails equal participatory rights of each group member.

Before we continue to develop the argument, it is time to take a step back because the claim that *equality* features in the definition of democratic decision-making calls for two clarifications. First, as Christiano describes, the precise nature and demands of democratic equality are deeply contested. Disputed issues include which kinds of civil liberties are implied by democratic equality, whether – and if so, to which extent – democracy requires material equality/ distributive justice, whether – and if so, how exactly – votes of different persons should be weighted differently, whether direct democracy is preferable over representative democracy, and many others. Accordingly, I use “equal participatory rights” as a placeholder, assuming that the contents of these rights need to be determined by further investigation into the nature of democratic equality. Fortunately, though, a placeholder suffices in our context. The second qualification concerns those critics, mentioned in section 1, who attempt to derive a solution to BP by appealing to the ideal of democratic equality. Since I grant that there is a conceptual connection between *democracy* and *equality*, one wonders if a conceptual argument could be based on the ideal of democratic equality (rather than Ideal_A or Ideal_G). However, the point that I just made regarding the severe controversies about the nature and demands of democratic equality will render this project difficult. What would be the relevant conceptual truth? What would the conceptual argument exactly look like? I do not claim that a conceptual argument for a solution to BP primarily based on the ideal of democratic equality is impossible. Rather, I express doubts by pointing out difficulties, and I am happy to leave the challenge of developing such an argument to the critics of AAP and ASP.

¹² For a discussion, including many pertinent references, see Beitz (1989).

Let us continue with the argument. Since democratic decision-making by a group entails equal participatory rights of each group member (whatever the precise contents of those rights may be), a group's entitlement to make a democratic decision goes hand in hand with its members' entitlements to participate in the decision. Accordingly, a group should be entitled to make a democratic decision iff the group consists of all and only those persons who should be entitled to participate in the decision. Letting $OPi(D(A, B))$ stand for i ought to be entitled to participate in a democratic decision made by A over B , we get a criterion for when an individual should be entitled to participate in a democratic decision:

$$(4) \quad OD(A, B) \leftrightarrow (OPi(D(A, B)) \leftrightarrow i \in A)$$

(3) and (4) together entail:

$$(5) \quad (OPi(D(A, B)) \leftrightarrow i \in A) \leftrightarrow (i \in A \leftrightarrow i \in B)$$

(5) entails:

$$(6) \quad OPi(D(A, B)) \leftrightarrow (i \in B)$$

According to (6), a person ought to be entitled to participate in a democratic decision iff the person is a member of the group over whom the decision is made – in short: a person ought to be entitled to participate in a democratic decision iff the decision is made over that person. Recall that, according to ASP, a democratic decision is made over a person iff the person is coerced or bound by that decision. According to AAP, a democratic decision is made over a person iff the person is affected by the decision. Hence, we have developed a valid deductive argument that yields a solution to BP as its conclusion. If we plug Ideal_A into the argument, we get AAP. If we plug in Ideal_G , we get ASP.

4. Adjudicating Between Ideal_A and Ideal_G

Which ideal should we plug into the argument? Let us adjudicate between the ideals. According to Ideal_A , a group of persons should be entitled to determine its own affairs. As explained in section 2, proponents of AAP who want to plug Ideal_A into the conceptual argument need to understand “determining a person's affairs” in terms of affecting the person's interests. According to Ideal_G , a group of persons should be entitled to govern itself. Proponents of ASP need to understand “to govern a person”

in terms of binding or coercing the person. How plausible are Ideal_A and Ideal_G on these interpretations?

I shall argue that when it comes to solving BP, Ideal_G as interpreted by proponents of ASP is to be preferred over Ideal_A as interpreted by proponents of AAP. Let us begin by considering relevant cases:

Economy

State A decides between subsidising either its metal industry or its timber industry. Due to international trade relations, the citizens of state B have a massive economic interest that A subsidises metal rather than timber.

Religion

State A decides about the demolition of an old church in order to build urgently needed living space. The church is considered holy by the citizens of state B and they regularly make pilgrimages to it.

War

State A decides to wage war against state B .¹³

Pollution

State A decides to build heavy industry at the border of state B . The wind flow will carry the pollution to highly populated areas in B .¹⁴

On the face of it, Economy and Religion seem to speak in favour of Ideal_G whereas War and Pollution seem to speak in favour of Ideal_A . According to Ideal_G , state A should be entitled to make the decisions under consideration in the four cases because the citizens of state B are not governed by these decisions, only the citizens of A are. This verdict seems *prima facie* plausible in the cases Economy and Religion. According to Ideal_A , state A should not be entitled to make the decisions because the decisions affect not only the citizens of A but also the citizens of B . This verdict seems *prima facie* plausible with respect to War and Pollution.

Both sides are faced with an argumentative burden. Proponents of AAP need to argue that the implications of Ideal_A are not only plausible with regard to War and Pollution but also with regard to Economy and Religion. Proponents of ASP need to argue that the implications of Ideal_G are not only plausible with regard to Economy

¹³ Cf. Goodin (2007).

¹⁴ Cf. Arrhenius (2005).

and Religion but also with regard to War and Pollution. Can either side make a convincing case?

Let us begin with the proponents of ASP. They have to argue that, against appearances, the implications of $Ideal_G$ rather than of $Ideal_A$ regarding War and Pollution are plausible. How can this be achieved? In section 3, we have seen that $Ideal_A$ and $Ideal_G$ give us *pro tanto* scope criteria: criteria for which democratic decisions groups should be entitled to make *as far as democratic inclusion is concerned*. As explained, these are only *pro tanto* rather than all-things-considered scope criteria because they might be outweighed by other considerations. For example, one might argue that no group should (all things considered) be entitled to make democratic decisions that invade privacy or violate human rights. Now, proponents of ASP can utilize these findings in the present context by pointing out that the verdicts $Ideal_G$ yields regarding War and Pollution are plausible *as far as democratic inclusion is concerned*. This is compatible with the claim that state A should, all things considered, *not* be entitled to make the decisions under consideration. Hence, proponents of ASP can accept the overall judgement that A should not be entitled to wage war against B or pollute B 's territory.

But this is only half of the story. Defenders of AAP will insist in response that the considerations that support the overall judgement that A should not be entitled to make the decisions under consideration in War and Pollution *are* considerations regarding democratic inclusion. They might add that on $Ideal_A$ there is no need to distinguish between what A should be entitled to do as far as democratic inclusion is concerned and what A should be entitled to do all things considered. $Ideal_A$, the defenders of AAP might maintain, explains both at the same time: the *pro tanto* verdict, that A should not be entitled to make the decisions in question as far as democratic inclusion is concerned, and the *overall* verdict, that A should not be entitled to make these decisions all things considered.

However, proponents of ASP have a striking answer to these objections. If the decisive considerations underlying the overall verdict that A should not be entitled to make the decisions under considerations in War and Pollution were considerations concerning democratic inclusion, as the advocates of AAP claim, then the overall verdict would change as soon as considerations of democratic inclusion stopped speaking against A 's being so entitled. However, if we modify the cases such that what AAP claims to be considerations of democratic inclusion stop speaking against entitling A to make the decisions under consideration, it still seems that A should, all things considered, not be entitled to make these decisions. It follows that the justification of the overall verdict, that A should not be entitled to make the decisions under considerations in War and Pollution, does not depend on considerations of democratic inclusion.

Let me elaborate. Assume that in War and Pollution voting rights about the problematic actions by state *A* were also given to the citizens of *B*. Assume further that the population of *B* is much smaller than the population of *A* so that enfranchising the citizens of *B* would not change the results: Since the citizens of *B* are outnumbered, the combined people of *A* and *B* decide by majority vote in favour of *A* waging war against *B* and polluting *B*'s territory. It seems clear that state *A* should, all things told, not be entitled to make these decisions even if the citizens of *B* are included in the decision-making. However, if the citizens of *B* are included, then the considerations that support this overall verdict cannot be the considerations of democratic inclusion that proponents of AAP claim to be decisive.

The upshot is that proponents of ASP can make a convincing case to the effect that Ideal_G rather than Ideal_A is in line with our intuitions regarding War and Pollution. Advocates of Ideal_G can accommodate the overall judgement that state *A* should not be entitled to make the decisions in War and Pollution. And while proponents of AAP who want to derive their principle from Ideal_A are committed to the implausible claim that this overall judgement regarding the decisional power of *A* receives its normative force from considerations of democratic inclusion, proponents of ASP who want to derive their principle from Ideal_G plausibly deny this.

Let me now briefly explain that proponents of AAP cannot tell a similarly convincing story if they want to deny the intuitively plausible verdict that state *A* should be entitled to make the decisions in Economy and Religion. What proponents of AAP can rightly point out is that the interests of *B*'s citizens in Economy and Religion matter and cannot be ignored in a full normative analysis of these cases. All persons matter. When it comes to War and Pollution, proponents of AAP can argue, most people are inclined to admit that much. But there is no good reason, the AAP advocate might say, to treat the interests of *B*'s citizens differently in Economy and Religion.

This suggestion raises two points. One is that the interests of the citizens of *B* in Economy and Religion matter but are not taken into account by Ideal_G. The other point concerns the coherence of judgements: if the interests at stake explain why state *A* should not be entitled to make the decisions under consideration in War and Pollution, why would the interests at stake in Economy and Religion not likewise explain that *A* should not be entitled to make the decisions under consideration here either?

As for the first point, proponents of ASP can agree that the interests of *B*'s citizens matter – in all cases. Ideal_G, as explained, is a plausible scope criterion *as far as democratic inclusion is concerned*. Ideal_G is compatible with other pro tanto scope criteria. And these other criteria can take into account the interests of persons.

As for the point regarding coherence, let us first note that, as far as considerations of democratic inclusion are concerned, proponents of ASP treat all cases alike. As far as the *overall* judgements regarding the decisional power of state *A* are concerned,

there might well be relevant differences. Deontologists might argue that the actions decided about by state *A* in War and Pollution, but not in Economy and Religion, are intrinsically wrong and that this is why *A* should not be entitled to make those decisions. Consequentialists might argue that an international order in which states are entitled to make decisions of the sort featuring in Economy and Religion but not entitled to make decisions of the sort featuring in War and Pollution will, on the whole, have better consequences than any alternative international order, and that this is why *A* should not be entitled to make the decisions in War and Pollution. The point here is of course not to defend the deontological or the consequentialist argument. The point is that both arguments are *prima facie* sufficiently plausible to defend the diverging overall judgements proponents of Ideal_G might want to accept regarding War and Pollution on the one hand and Economy and Religion on the other against the incoherence objection.

In sum, there are good reasons for thinking that the pro tanto scope criterion – the scope criterion that tells us what groups should be entitled to decide *as far as democratic inclusion is concerned* – provided by Ideal_G is more plausible than the one provided by Ideal_A. This suggests that the conceptual argument is more promising when it comes to justifying ASP rather than AAP.

5. Can the Ideal of Self-Government Explain the Normative Significance of Democracy?

So much for the conceptual argument. It is now time to address the objection that self-government lacks the normative significance that many of us ascribe to democracy. This objection, to be sure, cannot prove the conceptual argument false, if it is true that democracy is (a kind of) or entails government of the people by the same people, i.e. self-government. However, there are other ways in which the objection could undermine the conceptual argument. The objection could, if successful, show that what matters (from a moral or normative point of view) is not democracy but some related ideal, which we might call democracy* or quasi-democracy (see section 1). Alternatively, the objection could motivate us to look for other platitudes, maybe platitudes that connect democracy and equality, in order to develop a different conceptual argument (be it for ASP, AAP, or some other solution to BP). This second possible upshot of the objection would, of course, raise some questions. First of all, as mentioned in section 3, it is unclear whether a convincing conceptual argument based on a different platitude, e.g. about democracy and equality, can be formulated at all. Secondly, one would wonder if these other platitudes provide ideals that have the normative significance that we found lacking in the platitudes about democracy as self-government. Thirdly, one would have to explain how the two conceptual arguments

that we would end up with are related to each other as far as the concept of democracy is concerned.

Why might one think that Ideal_G lacks the normative significance that many of us ascribe to democracy, and hence is no good starting point for finding a solution to BP? Firstly, many authors point out that including a person in a demos – by giving the person voting rights, say – falls short of granting control to that person over the democratically decided issues, because there will be many other people with voting rights and one vote regularly does not make a difference for democratic decisions made in sufficiently large democracies.¹⁵ Secondly, individual self-government, in the context of democracy, is normally understood as requiring control of the democratically decided issues.¹⁶ These two points together imply, as Andreas Bengtson and Kasper Lippert-Rasmussen point out, that the ideal of individual self-government cannot convincingly serve as a rationale for a solution to BP: including a person in a demos simply fails to make that person self-governing.¹⁷

In response, one could try to argue that a person's inclusion in a demos promotes that person's self-government vis-à-vis the democratically decided issues to a sufficient degree even though the person does not gain full control over these issues. But I will not try to defend this position. I am myself sceptical regarding the rationale of individual self-control. My response to the worry is, rather, that the kind of self-government relevant with regard to democracy (and particularly BP) is *collective*, rather than individual, self-government. My suggestion is that the relevant bearer of self-government is the group of people that makes democratic decisions. Such a group, as a collective, has self-government if, and only if, all and only the members of that group are subject to the decisions made by the group.

Is the ideal of collective self-government a convincing rationale for answers to BP? Proponents of normative individualism, according to which “the justification of democracy must rest on the interests or claims of individuals” (Kolodny 2014: 209), will be sceptical. According to Niko Kolodny, there are two difficulties:

first, that it is obscure what individual interest is served by a collective's enjoying control. And, second, even assuming that some individual interest is served by a collective's enjoying control, it is not clear why the collective must be democratic.¹⁸

¹⁵ Christiano (1996/2018: 24–8), Kolodny (2014: 208–9), Brennan (2011: 99), Griffin (2008: 247).

¹⁶ Cf. Christiano (1996/2018: 23–5), Abizadeh (2008), Brennan (2011: 99), Griffin (2008: 247).

¹⁷ Bengtson and Lippert-Rasmussen (forthcoming: 10–11).

¹⁸ Kolodny (2014: 209f.). There is also the metaphysical issue of whether collective self-government presupposes the existence of some mysterious “will” of the people (Schumpeter 1942/1950), but I am here concerned only

In response, let us first recall that according to the platitude underlying Ideal_G, democracy simply *is* (a kind of) or *entails* self-government. As explained in section 3, democracy *also* entails some kind of equality. Accordingly, I am happy to endorse an ideal of democratic equality. While I expressed doubts about whether this ideal can provide a solution to BP, I do think that equality plays an important role in the justification of democracy. Accordingly, I am not committed to the claim that the normative significance of democracy exhausts itself in the ideal of self-government. The ideal of equality is also important.

As far as the issue under consideration is concerned, this suffices as an answer to Kolodny's worries. Basing ASP on Ideal_G is compatible with the claim that interests and claims other than those related to collective self-government, in particular those related to equality, are served by democracy. And these other interests and claims favour democracies over other kinds of self-governing collectives.

Finally, note that Ideal_G combined with some democratic ideal of equality seem to be compatible with a wide range of normative theories. It would, therefore, go beyond the scope of this paper to ascertain which interests or claims *exactly* justify democracy. The important point is that, since proponents of the conceptual argument for ASP are not committed to the claim that the significance of democracy is exhausted by the ideal of collective self-government, they have plenty of resources to deal with the difficulties raised by Kolodny.

Let us now turn to a specific problem that Bengtson and Lippert-Rasmussen have presented for attempts to derive ASP from the ideal of collective self-government:

The problem is that to understand self-government in a collective sense makes us incapable of explaining why a given [subjected] individual is entitled to be included since, presumably, the collective would remain self-governing even if a particular [subjected] individual did not partake in the decision-making – the collective would still be in control of the decision-making which suffices for being self-governing – in which case collective self-government cannot be the reason why the [subjected] individual is entitled to be included.¹⁹

The argument by Bengtson and Lippert-Rasmussen, as I understand it, assumes that the predicate “being self-governing”, when applied to collectives, is vague. A heap of sand remains a heap of sand even if you remove one grain. Likewise, Bengtson and

with normative issues.

¹⁹ I have substituted “subjected” for “affected”. Bengtson and Lippert-Rasmussen (forthcoming) discuss the self-governing rationale in the context of AAP. However, as they point out (on pp. 3 and 24), the same criticism applies to ASP.

Lippert-Rasmussen seem to claim, a collective remains self-governing even if you disenfranchise an individual that remains subject to the decisions made by the collective.

Bengtson and Lippert-Rasmussen do not present an argument for their assumption. But an argument is needed, for there are two salient alternatives to their view.

The maximizing alternative: “If you disenfranchise one individual, then the remaining group (i.e., the original group minus the disenfranchised individual) is self-governing, but the original group is not. The original group is, in a sense, *almost* self-governing: since the original group contains the remaining group and the remaining group is self-governing, there is only one individual that would need to be enfranchised for the original group to be self-governing. However, almost being self-governing is like almost winning a tournament: if you are almost self-governing, then you are *not* self-governing.”

The scalar alternative: “If you disenfranchise one individual, then the original group is self-governing to a high degree (depending on the size of the group), but not fully self-governing. In order for the original group to be self-governing to the highest degree possible, the individual needs to be enfranchised. As an analogy, think of the number of questions correctly answered in a written exam. You might provide a larger or a smaller number of correct answers, but in order to answer the questions correctly to the highest degree possible, you need a correct answer for every question.”

Both the binary and the scalar alternative are clearly superior to the vagueness approach put forward by Bengtson and Lippert-Rasmussen. We do not start counting grains in order to decide if the remaining collection of sand still constitutes a heap. But it *is* natural to wonder to what degree, or if at all, a group remains self-governing if one member gets disenfranchised.

There is no need to adjudicate between the maximizing and the scalar alternatives: on either alternative, the ideal of collective self-government speaks in favour of granting participatory rights regarding democratic decisions to all and only those individuals who are subject to the decisions.

The upshot is that, from a normative point of view, Ideal_G is a promising starting point for obtaining an answer to BP. Since endorsing Ideal_G is compatible with the acceptance of some ideal of democratic equality, proponents of the conceptual argument can confidently subscribe to the democratic ideal of collective self-government. And the worry that the conceptual argument fails due to the vagueness of the predicate “is collectively self-governing” is ill-founded: the predicate is not vague.

6. Conclusion

Proponents of AAP and ASP often appeal to the ideals of self-determination or self-government to support their positions. Some critics doubt that any appeal to democratic ideals will yield a solution to BP, other critics favour different ideals. I have elaborated on the ideal of self-government, suggesting that it is rooted in a conceptual truth about democracy, and used it as a premise in an argument for ASP. Central steps in spelling out the argument consisted in systematizing the platitudes about democracy and turning them into ideals, revealing the conceptual connections between these ideals and scope criteria for democratic decisions and revealing the conceptual connections between group entitlements to make democratic decisions and individual entitlements to participate in such decisions. Moreover, I have argued that the ideal of self-determination eventually cannot be turned into an equally successful argument for AAP. Finally, I have addressed normative worries regarding the ideal of self-government.

A full defence of ASP requires more work. In particular, we need to ascertain the best version of ASP. Is “being subject” to be understood in terms of coercion, bindingness, or maybe something else? The challenge remains to find a version of ASP that yields convincing verdicts in all cases.²⁰ However, my hope is that this article will consolidate and increase the support for ASP and inspire new work.

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²⁰ See, e.g., Song (2012: 50–58), Arrhenius and Goodin (manuscript), Andrić (2021).

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Ludvig Beckman¹

Three Conceptions of Law in Democratic Theory²

A fundamental principle in democratic theory is that the subjects of law should presumptively be included in the demos. However, who is subjected to the law depends importantly on the nature of law and where “law” is to be found. This paper examines three distinct views; the state-based conception of law, law as the rules of conduct of institutionalized normative systems and law as social norms. Drawing on insights from legal and democratic theory, the view defended is that “law” should be understood as rules of conduct in institutionalized normative systems. Such rules are made according to rules but are not necessarily either coercive or supported by sanctions. The laws to which the principle of democratic inclusion applies do not, therefore, uniquely belong to the state; they are found in a variety of civic, political and economic associations at the local, regional, national and supra-state level. The point is that the realm to which the democratic principle of inclusion applies is significantly wider than usually recognized.

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Introduction

An influential view in democratic theory is that collective decisions are democratic only if they presumptively include everyone “subject to the law”, also known as the all subjected principle (ASP) (Dahl 1979; Dahl 1989, 120; Benhabib 2004, 215; Beckman 2009; Pavel 2018).³ The ASP holds that the members of the demos – the people entitled to democratic participation – should presumptively include all and only those subjected to the law. This doctrine traces back to the notion that collective self-rule is possible only among people who lives by rules they have created for themselves (Lindahl 2006). Democracy is fundamentally about participation in the making of laws that applies to you.

It is debated if ASP is the correct view of democratic inclusion. Disputed is also the formulation of ASP as well as what follows from it in terms of demos membership and participatory rights (Goodin 2016; Abizadeh 2008; Miller 2009; Valentini 2014; Andric 2020; Arrhenius 2018; Scherz 2013). However, one question that has so far received scant attention is what “law” refers to in the claim that the subjects of law should presumptively be included in the demos. While the nature of the law is a fundamental issue in legal theory, democratic theorists appear comfortable in ignoring it, presumably because they take as evident the context of the *state*. The state-based understanding of the law is reflected in claims to the effect that the ASP applies to the subjects of the “coercive legal system” (Miller 2009, 222). It is similarly reflected in the position that the law implied by the ASP should be understood in “juridical” terms (Goodin 2012). The laws implied by the formula “subjects of the law” are presumed to be the “subjects to a state’s laws” (Lopez-Guerra 2005; Miklosi 2012, 485; Lagerspetz 2015; Goodin 2016, 316).

Yet, democracy is practiced in a variety of associations below and above the state. Democratic procedures for collective decision-making are employed in the associations of civil society, at the supra-national level, by makeshift collections of private individuals and even by corporations. All of these contexts seem to fall beyond the scope of application of the ASP if the “laws” to which it refers are the laws of the state. Given the state-based understanding of the law, standards of democratic inclusion either do not apply in non-state contexts or must be explained by different principles.

The alternative is of course to confront the claim that the ASP is necessarily concerned with the laws of the state. Is there a conception of the law such that the all

³ Principles of democratic inclusion are often believed to supply necessary and sufficient condition for membership in the demos. In the following, I take a different route and assume that principles of democratic inclusion provide *presumptions* for democratic inclusion. A presumption is strong but defeasible reason, leaving open the possibility that the boundaries of the demos cannot be conclusively determined by reference to principles of democratic inclusion alone.

subjected principle applies also to people who are subjected to rules enacted by non-state associations? This is the question examined here. To this end, this paper surveys three major conceptions of “law”: law as the coercive order of the state, law as an institutionalized normative system, and law as social norms. These are familiar in legal theory and the aim of this paper is not delve into the nature of law as such. But, as noted, legal theory is bound to have significant consequences for political theory that are often overlooked, perhaps due to disciplinary boundaries (Hughes 2013). Hence, my purpose is to exploit legal theory for the benefit of democratic theory. Drawing on insights in the concept of law, this paper seeks to advance our understanding about the domain to which the ASP and the democratic ideal applies.

The conclusion is that the state-based conception of law runs counter to important insights about the relationship between coercion and law and should therefore be rejected. By comparison, both the conception of law as social norms and the notion of law as an institutionalized system of norms are plausible from a legal point of view. They are not on a par, however, from the vantage point of the democratic ideal. Only law understood as an institutionalized system of norms coheres with the democratic aspiration that the subjects of law should be included in legal decision-making. The implication is that the democratic ideal does not exclusively apply to the subjects of state law but, more fundamentally, to the subjects of any institutionalized normative system. The law that is relevant to claims for democratic inclusion are rules of conduct that are regulated by rules of higher-order and for whom it is true that a body exists that is tasked with their determination.

Democracy and subjection to law

The term “law” figures in a variety of contexts, not all of which are relevant in the context of democratic participation.⁴ Rights to democratic participation do not extend either to the laws of physics or to the laws of economics: no claim to demos membership follows from subjection to either the laws of gravity or the laws of diminishing returns. Democratic participation is concerned with decisions about rules that do or purport to set standards for behavior that ought to be complied with. A characteristic of the laws to which democratic principles apply is consequently that they are rules of conduct, or norms, not mere regularities of the natural or social world. This is of course consistent with a variety of claims about the additional features necessary and together sufficient for rules of conduct to be considered as “law”.

The laws of the state are evidently among the most important rules of conduct.

⁴ Raz (2004) points out that the general meaning of law is “rules of some permanence and generality, giving rise to one kind of necessity or another”. Accordingly, the regularities shaping the natural world are “laws” in the same basic sense as the rules that shape social and political life.

The laws of the state apply in the jurisdiction of the state and are typically enforced by coercive sanctions. But the state is not the sole source of rules of conduct that claim to be regulative. A diversity of institutions is engaged in the regulation of behavior by complex systems of rules (Raz 2018; Lindahl 2001; Tuori 2018). There is canonical law, Jewish law, Islamic law, Hindu law, and many other institutionalized religious systems of rules. There is international law as recognized and practiced by international organizations and states (Roponi 2016). And there is indigenous law as practiced by a diversity of peoples independently from the state since times immemorial (e.g., Zion & Yazzie 1997).

In addition, a myriad of voluntary associations is engaged in the creation of rules that seek to regulate behaviour. Housing associations, political parties and sport clubs are in the business of making people conform to rules. Of particular interest are the rule-making activities of corporations. Business corporations are not mere structures of incentives but “norm-governed” entities: corporations create rules for employees and they provide institutions tasked with their application (Singer 2018, 133). Thus, voluntary associations and corporations are similar to states in that they create and apply rules of conduct.

But not all rules of conduct are either created or applied by associations. Rules that regulate behavior may derive directly from more or less stable patterns of social interaction or what is sometimes described as social practices. Following the influential argument introduced by Lon Fuller some time ago, the law is basically a set of “stable interactional expectancies” that constitutes a “program for living together” (Fuller 1969). In effect, “the law” is sometimes just the *social norms* of a particular community. These social norms may represent the custom and traditions that regulate every-day situations. Social norms may also be constitutive of traditional law, as in the case of Indigenous peoples, and form the basis of the “common law”, as in Anglo-Saxon legal traditions (Diala 2017). A characteristic of the laws constituted by social norms is that they are not enacted and therefore not created by procedures designed for that purpose.

The multiplicity of rules that potentially constitute “the law” is rarely reflected on by either democratic theorists or by advocates of the all subjected principle. Democratic theory appears largely infected by the assumption that only the laws of the state count as law. Robert Dahl frequently, though not always, refers to the subject of the “government and its laws” (Dahl 1989, 127). This confirms that “the subjects of law” is primarily intended to capture the relationship that obtains between individuals and the laws of the state (Dahl 1979, 116). The view that democratic participation is due to the subjects of the laws of the state is articulated also in the contributions of Hans Kelsen. Kelsen argued that a person is “politically free” only if he is “subject to a legal order in the creation of which he participates” (Kelsen 1949, 284). By the “legal order”

Kelsen invariably understood the laws of the state. No wonder then that the ASP is widely understood as applicable only to the legal relationship that obtains between individuals and states.

The democratic idea is that the subjects of the state should be granted rights to participate, directly or indirectly, in the process of law-making. The fact that *only* the “laws of the state” is mentioned in these arguments indicates that the ASP is premised on an account of “law” that applies exclusively to the state. By the “subjects of law” is understood only collectives and individuals that are subjected to rules made or implemented by the state.

However, as already suggested, the state-centered understanding of the law is not the only possible and legal theorists regularly acknowledge “law” in contexts distinct from the state. In case “law” is a category that is not premised on the distinctive properties of the state, the domain to which democratic ideals apply may be considerably wider than usually acknowledged. The ASP would emerge as a democratic standard for inclusion applicable to non-state associations and beyond. Yet, what rules for conduct should be admitted as instances of “law” depends on theoretical considerations on the grounds for the differentiation of law from other rules of conduct (Gardner 2004; Himma 2018; Koller 2014; Vinx 2016). An account of law that is plausible from the vantage point of legal theory and relevant to democratic theory must be responsive to insights from both disciplines.

Law as coercive order

The claim that “law” is necessarily “state law” is typically informed by the belief that coercion constitutes a defining element of the law and that the laws of the state are necessarily coercive. The laws of the state are distinguished from the rules made by other entities by being coercively enforced; the subjects of the laws of the state are “intermittently subject to coercion” (Miller 2009, 222).

However, the distinctiveness of state law cannot be fully accounted for by reference to coercion. While the state has recourse to coercion, so does a variety of other associations (Vinx 2016). An employer exercises coercion when employees are subject to sanctions for failure to comply with the rules of the workplace. Social clubs and associations engage in coercion when they excluded individuals from membership. International law is enforced by economic sanctions and, in the extreme case, by military intervention. Thus, the claim that the ASP applies to the subjects of state law because they are subject to coercion is no reason to restrict the application of the ASP to the state.

The deeper problem with the claim that coercion is a distinctive feature of state law is that subjection to coercion is not enough to conclude that a person or entity is

subject to a rule at all. This is obvious from the fact that coercion is often employed without the intention to enforce any rule of conduct. To this end, consider a paradigmatic case of coercion - the highway robber that employs threats of coercion in order to make victims comply (Edmundson 1995, 84). The victims of such threats are evidently subjected to coercion, but they are arguably not subjected to rules of conduct. Commands, directives and orders are not *rules*. A defining attribute of rules is that they intend to regulate not just actual behavior but also hypothetical situations (Paulson 1990, 9). Given that laws are rules of conduct it consequently follows that subjection to coercion must be distinguished from subjection to law (Erman 2014; Koenig-Archibugi 2020; Goodin 2016). The conclusion is that coercion neither explains the nature of subjection to the laws of the state, nor why subjection to the laws of the state is distinct from subjection to the rules enforced by other associations. A state-based version of the ASP requires a more elaborate account.

Now, the view that coercion is a defining element of the laws of the state has a long pedigree. In the following I briefly comment on two of the most influential doctrines according to which law is the exclusive privilege of the state.⁵ The first view roughly equals the claim that laws are commands supported by threats of sanctions that achieve wide-spread compliance in society. Only the state is able to establish “law” because only the state is able to make decisions that satisfy this requirement. The second view holds that law is a “technology” for the regulation of coercion. Only the laws of the state count as law, because the laws of the state are uniquely designed to regulate the coercive powers of the state. Following Bobbio (1965), the distinction between these views is that the first takes coercion as a necessary *means* of the law whereas the latter takes coercion as defining the *content* of law.

Law as orders backed by coercion

Following the legal theory developed by John Austin, the uniqueness of state law is due to the presence of two distinct features; coercive sanctions and sovereignty.⁶ In line with predecessors like Hobbes and Bentham, Austin conceived of the law as

⁵ Lamond (2001) distinguishes between three views of the relationship between law and coercion: i) that coercion is a defining element of law, ii) that coercion is the most prominent feature of law, iii) that coercion is one possible feature of law. The two accounts identified here are variations of Lamond’s first category.

⁶ Austin spoke consistently about “sanctions”, not about “coercion”. The distinction is ignored in the following though, strictly speaking, sanctions are imposed only in response to violations of rules and are intended to secure compliance. While the state impose sanctions only in order to secure compliance with rules, the state can employ coercion also for other purposes. For example, coercive measures undertaken in response to pandemic disease are not necessarily premised on violations of the law. A further distinction is that acts are coercive only if they successfully make subjects do what they would not otherwise have done. Sanctions on the other hand can be imposed even if they are not successful. Minor sanctions arguably are not coercive. See Oberdiek (1976) for a helpful analysis.

“commands” backed by threats of coercion (Postema 2001, 471). The core claim defended by Austin is that only the commands made by the sovereign count as law. Though others may make “commands” only the sovereign is able to induce habitual obedience in the “bulk” of the population (Postema 2001; Schauer 2016; Bix 2011). The implication is that the laws of the state are distinct not just because they are coercive but also because only the sovereign has the power to establish wide-scale “habitual obedience”. This is in end why Austin thought that the laws of the state are distinctive.

From this vantage point, the state-based reading of the ASP is unmysterious. The democratic principle of inclusion applies only to the subjects of the state because only the state is able to establish law. However, there are well-known issues with Austin’s conception of law, the most serious being that it fails to recognize the law as rules for conduct. Following Austin, laws are but commands to which subjects comply in order to avoid the “evil” of sanctions (Eleftheriadis 2011, 444). The law is little different from the raw force exercised by bandits, except that the state is able to wield coercive force on a larger scale. Indeed, as famously noted by Hart (1962), the laws of the state appear equivalent to the “highwayman writ large” following Austin’s view. The victims of the highway robber are as much subject to the “law” of the robber as the tax-payer is subject to the “laws” of the sovereign. The only distinction between them, from Austin’s viewpoint, is that the sovereign is able to establish habitual obedience in the general population.

Legal theorists from Kelsen to Hart and later have virtually unanimously rejected Austin’s conception of the sovereign. Not everyone rejects Austin’s insistence that the laws of the state are distinctively coercive, however. The raw force of the laws of the state is particularly emphasised by Frederic Schauer. What separates the state from the coercive activities of other agents is that subjection to the “evil” of the state is inescapable. Subjection to the coercive sanctions of the state is “for most people nonoptional” (Schauer 2016, 167).

The point that the state is coercive and non-optional is of course reason to conclude that the state is of particular normative significance. The state’s claim to monopoly on legitimate coercion places a heavy burden on the justification of the state. But even if conceded that the laws of the state are both coercive and non-optional, it does not follow that “subjection to the law” is nothing but subjection to coercive sanctions. If the law is a set of rules for conduct, there must be more to the law than the fact that it is coercively enforced. And if there is more to the law than coercive sanctions, it might be that other entities are able to make law as well.

Law as instructions for coercion

Hans Kelsen offers a distinctive argument for the claim that “all law is state law”.⁷ Kelsen depicts a legal system as a hierarchy of norms where the *Grundnorm* has replaced the sovereign as the ultimate source of legal validity. Any organ of the state with supreme or unlimited legal authority is empowered as such by the legal system. Sovereignty is not the basis for the legal system, as Austin thought, but a construct of the legal system (Bobbio, 1998, 436; Vinx 2007, 177ff.; Eleftheriadis 2010).

Kelsen nonetheless saw coercion as a defining element of legal systems and one that separates it from other social systems (Oberdiek 1976, 72). Coercion is a characteristic of law because the purpose of law is to regulate the coercive acts of public officials. The law is a particular technology for the regulation of coercion (Bobbio 1965).

Kelsen is thus able to recognize the distinction between subjection to the law and subjection to coercion in a way that Austin did not. Public officials are subjected to the law conceived of as a normative system whereas the general population is subjected to the coercive acts of public officials that are legally regulated (Green 2016; Vinx 2013).

Based on Kelsen’s conception of law, the all subjected principle of democratic inclusion should consequently be read as applicable to the subjects of legally regulated acts of coercion. This image represents a significance advance compared to Austin’s view as it does not reduce the legal system to the “highwayman writ large”. In contrast to the victims of bandits, the subjects of the state are targets of coercive acts that are regulated by a hierarchy of norms.

Yet, Kelsen shares with Austin the conviction that law is essentially duty-imposing. The subjects of law are subject to legal “oughts” according to which they must avoid behaviour that qualifies as conditions for the imposition of coercive sanctions by officials. But as noted by Hart and Raz, this is to ignore the fact that law is not exclusively concerned with the management of obedience (Hughes 2013, 235). Legal systems do not merely define duties but also grants permissions, confers powers, and identify immunities – none of which are duty-imposing. The laws of marriage is a case in point. Legal norms that regulate the conditions for marriage do not regulate coercion but define the conditions for the legal power to establish a particular legal relationship (Lamond 2001; Oberdiek 1976).

For Kelsen, the legal duties conditions the imposition of coercive sanctions. But laws that define legal duties do not always conform to the explanation offered by Kelsen. It seems clear that a person can be subject to legal duties that do not depend

⁷ Hans Kelsen, *Staatsrecht* (1928) quoted in van Klink (2008, 80). In later writings Kelsen conceded that not all law is state law by observing that “primitive” societies can be governed by legal systems even if they lack public officials that apply the law by coercive acts (Kelsen 1997, 99; Mac Amhlaigh 2020).

on instructions for coercive sanctions. Raz (1970, 152) argues convincingly that such legal duties do exist. For example, the law regularly define legal duties to comply with the legislative procedures for the members of the parliament. Yet, the members of parliament are typical not subject to prosecution and coercive sanctions for failure to comply with those duties.

In sum, Kelsen's claim that subjection to the laws of the state can be fully accounted for by reference to the conditions for legally authorized coercion is a distortion of the nature of legal systems. The claim that the laws of the state are legally regulated acts of coercion and that the laws of the state are therefore distinct from other rules of conduct should be rejected. That coercion is not a defining element of the law is arguably well recognised in legal theory, while less so in democratic theory that instead remains under the spell of either Kelsenian or Austian conceptions.

Law as institutionalized normative system

If coercion does not differentiate the law from other rules of conduct, some alternative explanation is needed. The alternative account is bound to identify the law with features that are not unique to the state, leaving open the possibility that the subjects of law are not necessarily subjects to the laws of the state. But whereas "laws" may be found in domains that are distinct from the state, not just any rule of conduct merits the epithet of "law". It consequently appears unsatisfactory to argue that democracy is a property of "rule-governed relations" (Ceva and Ottonelli 2021). There may be rule-governed relations that are nevertheless not regulated by laws and that consequently fall beyond the remit of democratic principles.

On the present account, the law describes rules of conduct that belong to a system of rules – a normative system. Rules that regulate conduct are part of a normative system if and only if they are themselves regulated by rules. The rules that regulate rules of conduct have a distinctive purpose; they determine how to create, revise and abolish rules of conduct. Hart (1962, 249) named the former "primary rules" and the latter "secondary rules" and argued that a "distinctive feature" of law is that it represents a system of rules in the precise sense of creating a "union" of primary and secondary rules. Law are thus rules of conduct that are themselves governed by rules of a particular kind. By this account, rules that are mere habits, conventions or unilaterally declared instructions, do not qualify as law. They are not legal rules because they are not the product of normative systems.

While rules of conduct must be part of a normative system in order to be law, it is unlikely that this condition is sufficient to establish the existence of legal rules. An additional condition is the *institutionalization* of the system of rules. A system of rules

is institutionalized only if some agent is tasked with “ensuring conformity” and “dealing with deviations” from the rules (Raz 2009a, 52). According to MacCormick, the mark of an institutionalized normative order is procedures for “settling and finalizing disputes” about rules (MacCormick 1996, 1058; MacCormick 1999).

Why must normative systems be institutionalized in order to count as “law”? The answer is that the law exclusively refers to rules that are practiced and that institutionalization separates normative systems that are practiced from normative systems that are not. For example, an extinct legal system is not practiced although it may still be a normative system if the primary and secondary rules of that system can be reconstructed from the archives. Yet, dead legal systems do not provide rules of conduct that are laws, and the reason why is that they are no longer institutionalized.

Existing and well-functioning states do have institutions with the capacity to resolve legal disputes and to enforce legal judgments. However, not all legal institutions associated with the state are strictly speaking necessary for institutionalized normative systems. Following Raz only “primary institutions” tasked with the “authoritative determination of norms” are necessary (Raz 2009b, 110). The point is that the capacity to authoritatively determine norms is distinct from the capacity to enforce norms. “Norm-enforcing institutions” are not necessary for the institutionalization of a normative system.

In the context of the state, courts of law represent the primary institution par excellence though other public institutions are also involved in the determination of the law. Taxes are determined by tax authorities, social benefits are decided by various welfare authorities, and so on. Other normative systems provide their own peculiar mechanisms for the determination of rules of conduct. The board of the University department decides about the internal rules of the department; the CEO determines the rules that apply to the corporation; the board and ultimately the annual meeting is the final arbitrator of the rules that apply to the housing association, and so on. They are all “primary institutions” of normative systems that are distinct from the state. Moreover, though some of them include “norm-enforcing institutions” it is not necessary that they do. This is yet another illustration of the point that institutions with the capacity to enforce norms are not necessary for the existence of an institutionalized normative system. “Law” is possible even in the absence of bodies that enforce rules by coercive means.

The implication is that the legal system of the state is not the only association that is governed by law. There are institutionalized systems of law also in sport associations, social clubs, educational institutions, trade unions, and so on. As observed by Raz, “the features of legal systems... are not peculiar to legal systems” (Raz 1999a, 123; Mac Amhlaigh 2020).

There’s but a minor terminological difference between Raz’s conclusion and the

claim defended by Brennan and colleagues according to which clubs and associations are “non-legal formal systems of rules” (Brennan 2013, 42). Though they prefer “non-legal” Brennan and colleagues are keen to identify corporations, voluntary associations and so on as formalized normative systems that make rules applicable to their members.⁸

The subjects of law are on this view to be found in a variety of contexts beyond the state. Given that democratic claims are triggered by subjection to the law, we must therefore conclude that the scope of democratic principles such as the ASP should be extended to include every association that qualifies as a normative system of institutionalized rules of conduct.

Institutionalized system of rules are found also in voluntary associations that are not part of “civil” society. Even pirates and other outlaws may be equipped with legal systems (Casey 1992). The rules among pirates are normative systems to the extent that they apply to conduct as well as to the making and revision of these rules. The normative systems of pirates are institutionalized to the extent that they create mechanisms for the authoritative determination of the rules that apply to them.⁹

An objection to this wider understanding of “law” is that it fails to acknowledge the normative significance of the laws of the state. The laws of the state differ from other institutionalized normative systems by the claim to *comprehensive* authority. The laws of the state claims for itself the right to regulate all normative systems within its domain. In the words of Raz (1999a, 150), the legal system of the state does not “acknowledge any limitation of the spheres of behaviour which they claim authority to regulate”. The laws of the state are of special normative significance because their authority is virtually inescapable. We might thus imagine an argument to the effect that democratic claims only apply to the laws of the state even though other institutionalized normative systems exist.

The premise of that objection is that the scope of the ASP depends on the normative significance of the laws governing us. The ASP applies exclusively to the laws of the state because only the laws of the state are sufficiently important. But the notion that normative considerations determine the scope of democratic principles is likely to be mistaken.

The question whether democratic principles apply to an entity or not is dependent

⁸ Brennan and colleagues emphasize the systemic part of associational rules but pays less attention to their institutionalization. “Non-legal formal system of rules” are institutionalized only if they provide for what Raz calls the “authoritative determination” of rules. Though this requirement is ignored by Brennan and colleagues, there is every reason to think that associations are institutionalized in that sense.

⁹ This is controversial however. For Raz, it is part of “our” concept of law that it claims legitimate authority. A normative system that makes no pretence of claiming legitimate authority might for this reason be considered as something else than law.

on conceptual rather than on normative considerations. This follows from the fact that any claim according to which an entity *ought* to be democratic is valid only on the presupposition that the relevant entity *can* be democratic. The point is that conceptual considerations are logically prior to normative assessment. Hence, the claim that the ASP applies exclusively to the state because only the laws of the state are sufficiently important is conditional upon conceptual reasons to believe that the state is an entity to which such normative considerations apply.

Law as institutionalized normative system represents a conceptual benchmark for the type of entities to which democratic principles apply. The ASP holds that presumptions for democratic inclusion apply to the subjects of law. If the institutionalization of a normative system is a necessary and sufficient condition of law, it follows that the ASP applies to any association that qualifies as such. Thus, the presumption for democratic inclusion readily applies to any non-state associations with an institutional system of rules applicable to conduct.

Law as social norms

The previous section introduced a wider account of law than the traditional state-based conception. Yet, even the wider account might be considered overly narrow. Law can be construed as to refer to rules of conduct grounded in conventions or mutual expectations. So understood, the law permeates all social contexts where human behavior is ruled by normative standards and it comprises rules that regulate every-day practices such as eating, saluting and dressing. In fact, social norms are not merely regulating every-day practices but also behavior in business and politics. A normative standard of behavior constitutes a social norm to the extent that it is reflected in more or less stable and shared attitudes within some particular social cluster.

Following writers in the tradition of “legal pluralism” there is no reason why social norms should not also be considered as “law”. The term “law” should be used to include “any set of observed social norms” (Woodman 2001, 30). This view traces back to Eugen Ehrlich who famously called for the study of the “living law” by which he meant the rules of conduct that are recognized as binding by participants in any social context. The law of social norms is embodied in “shared practices” and are not necessarily written down in law-books or enacted by formal decisions (Nelken 2008). Refusal to recognize bodies of norms as “law” just because they are not codified is to mistake a particular technique of law-making with the object itself.¹⁰

The claim that social norms are law is of course controversial. The immediate

¹⁰ Other anthropologists go further and conceptualize “law” as any linguistic practice that makes general categories to bear on aspects of human society. E.g., Pirie 2013, 14; cf. Roberts 2004.

objection is that they are not enforced, and that “law” should be reserved for norms that are. The contrast between law and social norms is reflected in the distinction between “enforced norms” and “lived norms” (Tamanaha 1995, 523). Social norms are “lived norms” and while they constitute standards of conduct they are not enforced and therefore not “law”.

It is unclear whether social norms are necessarily un-enforced, however. Behavior that violates established conventions in social life is typically subject to negative attitudes. Someone who, for example, ignores the rules of etiquette in a restaurant is likely to face rebukes from others or at least frowning eyebrows. In case of gross violations of rules of etiquette, the agent may in fact be expelled and denied entry.

However, it is possible to concede that while restating the argument that social norms is not law by appeal to the nature of sanctions practiced in legal systems. Though social norms can be enforced, social norms are not correlated with “tangible” sanctions (Brennan 2013; Biccheri 2006). The argument against counting social norms as “law” is consequently that law is necessarily linked to more substantial forms of sanctions.

The correctness of the claim that social norms are not associated with “tangible” sanctions is unclear, however. Evidently, it depends on what tangible refers to. On one plausible reading, a sanction is “tangible” if it has the capacity to inflict substantial costs to the victim. But if so, it appears that non-compliance with social norms can indeed be tangible, as is illustrated by the fact that social norms is regularly sanctioned by “naming and shaming” and forms of social ostracism intended to exclude human beings from social community. There is no reason to expect that exclusion from community is experienced less severely by the victim than other forms of punishment. Adam Smith is known to have said that “compared to the contempt of mankind, all other evils are easily supported” (quoted in Elster 2011, 201).

But perhaps this reading of tangible sanctions is mistaken? On a different reading, sanctions are tangible only if they involve physical punishment. This view is consistent with the familiar axiom that the state monopolizes legitimate forms of violence. Yet it appears that violations of social norms can also be subject to physical sanctions. Harsh punishment against what others perceive as “socially deviant” behavior is well-known (McAdams 1997, 351). The merits of the argument that social norms is not “law” because the sanctions for social norms are not tangible is in other words dubious.

A final objection against the notion that social norms are law is that legal sanctions are necessarily imposed according to rules. Legal sanctions are governed by rules (Kantorowicz 1958, 74) and executed by “specialized enforcers” (Elster 2011). By contrast, the sanctions that are associated with violations of social norms, such as when people behave in socially unacceptable ways, is always unstandardized. Sanctions that apply to the realm of social norms are haphazard and thus unpredictable.

It is certainly correct to observe that sanctions pursuant violations of social norms are not regulated. Yet, this observation represents an objection to the claim that social norms count as law only on the premise that law must necessarily be associated with sanctions. In case sanctions are not necessarily part of the meaning of law, no basis exists for the claim that *regulated* sanctions is a defining mark of the law. As noted earlier, the rules of institutionalized normative systems need not depend on sanctions but are nevertheless recognized as law. Consequently, the unregulated nature of sanctions cannot be the basis for denying social norms the title of law.

Social norms are of course different from the laws of institutionalized normative systems exactly because social norms are neither regulated by secondary norms nor amenable to authoritative determination. These differences are obvious in the case of rules of etiquette. The norms that regulate how to eat in public spaces are not made according to rules, not interpreted according to rules and not revised according to rules. Nor are rules of etiquette institutionalized as is evident from the fact that no agent has the authority to finalize judgements about their content and application.

These remarks are sufficient to re-affirm the distinction between institutionalized normative systems and social norms. Yet, it is unclear that it justifies the conclusion that social norms should not be recognized as “law”. Advocates of “legal pluralism” insist that clusters of social norms can legitimately be studied as articulations of law even if they are neither systemic nor institutionalized. Indeed, they would dispute the claim that the laws of the state – or those of any other normative system – can ever be fully accounted for by reference to rules of that system alone. Social norms are hence taken as endemic to rules that do or claim to regulate conduct (Woodman, 1998).

A democratic conception of law

So far, the conclusion is that there are two distinct and ultimately incompatible understandings of the law: the legal pluralist view according to which the law comprises social norms that are rules of conduct, and the legal positivistic view that reserves the “law” to rules of conduct that are part of institutionalized normative systems. These distinct views have implications for the realm to which the ASP applies.

In case the ASP refers to the subjects of social norms, it follows that principles of democratic inclusion apply across the board of social relations. The scope of claims to democratic inclusion is more limited if the ASP refers to the subjects of institutionalized rules of normative systems. Following the latter view, claims to democratic inclusion apply solely to the subjects of rules that are enacted by collective decisions. The “law” pertinent to democratic claims cannot be both and we consequently need to assess the validity of these rival conceptions of the law. It may be that social norms

is an equally plausible conception of “law” as that of institutionalized normative systems. But from the vantage point of democratic theory they are not equally relevant, or so I shall argue in this final section.

A defining attribute of democracy is that it applies to procedures for collective decision-making. Of course, there is disagreement on how such procedures are to be characterized in order to qualify as “democratic”. Also, it is not entirely clear that democracy can be defined exclusively in terms of procedures. Yet, it is widely agreed that procedures for collective decision-making are among the necessary preconditions for “democracy”.

Democratic procedures may be conceived in broad terms as the set of rules for the making of collective decisions that confers “rights, liberties, and resources sufficient [for a people] to participate fully, as equal citizens, in the making of all the collective decisions by which they are bound” (Dahl 1989, 175). Or, democratic procedures may be conceived in narrow terms as “just a system in which rulers are selected by competitive elections” (Przeworski 1999, 23). The point is that, whether broadly or narrowly conceived, democracy is a potential attribute of the rules that regulate how collective decisions are made in a particular situation or context. Thus, if democracy is necessarily a *property of rules* that regulate decision-making, and if claims to inclusion are among the requirements for such rules to be democratic, it follows that democratic inclusion can only be an attribute of decisions regulated by rules. Therefore, claims by appeal to ASP are viable only among subjects of rules that are created by rules.

From that standpoint, it appears clear that social norms are neither democratic nor undemocratic as they are not the kind of object to which the concept of democracy applies. Social norms reflect normative attitudes internalized among participants in particular social settings; they emerge spontaneously as a result of social interactions. That is, social norms are not the product of procedures for collective decision-making. As they are not, there are no rules regulating the making of social norms. And since no rules regulating decisions of social norms exist, the property “democracy” does not apply.

Consider again rules of etiquette. These are norms that regulate conduct that depend on attitudes sustained by social practices among people. To the extent that rules of etiquette are practiced, others are of course also subjected to them; people can be subjected to rules of etiquette just as they can be subjected to the laws of the state. Nevertheless, it makes little sense to claim that people subjected to rules of etiquette should be able to participate in their making since people can only be entitled to participate in the making of rules for which it is true that they are in fact created by collective decisions. If rules of etiquette are social norms, they are not products of collective decisions and there are consequently no “decisions” made on rules of etiquette.

It is entirely plausible of course to insist on the creation of procedures by which social norms are to be established. Once rules that regulate the decision-making process have been created, it appears that people can be subjected to rules to which democratic claims for inclusion apply. Imagine the following example: the guests at a dinner party discover that they all behave according to different and conflicting standards of etiquette. They wish to reduce confusion and to coordinate themselves by making a decision on what norms of etiquette to comply with. In order to make that decision, they must first agree on how the decision should be made, however. That is in effect to establish rules regulating the making of collective decisions. Once such rules are created, they have shifted the context from one governed by social norms to one governed by rules of a normative system. In so far as they also identify some agent with the authority to determine the norms of that system, they have created a rudimentary institutionalized system of norms. At that point, the guests are able to pose questions about the democratic credentials of the rules that apply to them. In case they find reasons to believe that decisions should be democratic, they are bound to include everyone subjected to the rules of etiquette in the process of decision-making. The ASP now applies to decisions about rules of etiquette because these rules are part of an institutionalized normative system. The point however is that once rules of etiquette are enacted by procedures for collective decision-making, they cease to be mere social norms. Rules of conduct established by an institutionalized normative system are no longer social norms but instead laws in the sense relevant for democratic theory.

It is tempting to conclude that the relevant conception of “law” is equal to what is commonly referred to as positive law. Democratic claims apply to rules of conduct that are “positive” in the sense of being part of institutionalized normative systems. This restatement of the position defended here is not without merits but should nevertheless be treated with suspicion. The notion of “positive” law is regularly used to denote both rules of conduct that are made in the sense of being “laid down” by means of a procedure, and rules of conduct that are arbitrary such that any rule of conduct could potentially be law (Murphy 2005). But the extent to which any rule of conduct could be “law” is controversial. Though there may clearly be laws that are morally deficient and illegitimate, it is controversial that morality does not set any limits to enacted rules of conduct applicable to human beings.¹¹ The best we can say then is that the laws that trigger democratic claims are rules of conduct that are positive in the sense of being made, while we shall remain agnostic on the extent to which they are also arbitrary.

¹¹ Contemporary legal positivism is either “inclusive” or “exclusive”, where inclusive positivism is the thesis that the rules of recognition – the final criteria of valid law – can be moral and exclusive positivism is the thesis that the rules of recognition cannot be moral.

Conclusions

What the law is and what the law is not, turns out to be critical for democratic theory. This is particularly evident if democratic rights to participation depend on “subjection to the law” (ASP). This paper has re-examined the problems associated with a state-based conceptions of law and defended the claim that the laws to which democratic claims apply are best understood as the rules embodied by institutionalized normative systems. The principle that subjects are presumptively entitled to inclusion in decisions about laws that apply to them extends to the subjects of rules of conduct that are regulated by rules for the making and revision of such rules, and where these rules are subject to determination by some agent.

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Robert E. Goodin¹ and Gustaf Arrhenius²

Giving Those Subject to the Law a Vote³

The All Subjected Principle says that everyone who would be subject to a law ought to have a vote in the making of that law. This paper scopes out the many different options for fleshing out who, exactly, is 'subject' to the law. While the menu of options is large, all of them prove problematic in one way or another. All of them have 'counterintuitive' implications judged against existing state practices, which is the critical standard that advocates of the All Subjected Principle set for themselves.

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I.

According to one familiar view, everyone who would be subject to a law should have a vote in the making of that law.⁴ For ease of back-reference we define the All Subjected Principle as follows:

All Subjected Principle: All and only the people who would be subject to a law ought to have a vote on the enactment of that law.⁵

'Would be subject to the law' should here be understood to mean 'would be, if it were to be enacted'.⁶ In its canonical form, the All Subjected Principle equates being subject to a law with being 'bound by' it.⁷

The All Subjected Principle can be grounded in the thought, familiar from Rousseau and Kant, that autonomous agents must give laws to themselves. It resonates with the venerable democratic ideal that people, and peoples, should be 'self-governing'. 'Governing' is a rule-based notion. 'Self-governing' entails an identity between rule-makers and rule-takers.⁸

Advocates of the All Subjected Principle also importantly claim that it is more 'realistic', in that it tracks existing practice better than the competing All Affected Principle. The latter, they think, is unduly expansionist in giving a vote to everyone who would or could be affected by an enactment, regardless of their citizenship or

⁴ For convenience of exposition, we here assume a direct democracy where all laws are enacted by referendum. But all the same issues arise, at one step remove, in an indirect democracy where the question is 'who should have a vote in the election of those who have a vote in the enactment of laws?'

⁵ For an early statement of the All Subjected Principle see Dahl (1979, p. 116): 'Every person subject to a government and its laws has an unqualified right to be a member of the demos'; he subsequently revised that to read, 'The citizen body in a democratically governed state must include all persons subject to the laws of that state except transients and persons proved to be incapable of caring for themselves' (Dahl 1989, p. 122). See similarly: Dworkin 1996, p. 155; López-Guerra 2005; Miller 2009, p. 222; and Abizadeh 2012.

⁶ The subjunctive formulation gets around the circularity involved in an indicative formulation. We cannot say that 'people who *are* subject to a law ought to have a vote on its enactment', because no one *is* subject to a law until it has been enacted – and on the indicative formulation of the All Subjected Principle there is no one therefore who ought to have a right to vote on a law until that law has already been enacted. For an analogous issue with the All Affected Principle see Whelan (1983, pp. 13–16, 22–4, 29–31, 41–2); and for a similar solution there see Goodin (2007, p. 43) and Arrhenius (2018), pp. 104, 113.

⁷ Lafont 2020, p. 168. For us, like Beckman (2014, p. 257), being "'bound by the law" refers to anyone to whom the law ascribes legal duties'. Cobbett (1830/1980, ¶ 337, p. 317) invoked the All Subjected Principle, thus understood, to justify denying votes to the certifiably insane: 'Insane persons are excluded, because they are dead in the eye of the law, because the law demands no duty at their hands, because they cannot violate the law...; and, therefore, they ought to have no hand in making it.'

⁸ We are grateful to Vuko Andric for this observation.

residence.⁹ The All Subjected Principle, in contrast, seems to restrict the franchise much more nearly to the sorts of people who currently enjoy a right to vote in most existing democratic polities.¹⁰ That may well be a false impression.¹¹ Still, its 'apparent congruence with actual practice' seems to be an important source of the All Subjected Principle's appeal.¹²

For purposes of the present discussion we follow the convention in the existing literature of drawing a sharp distinction between the All Subjected and All Affected Principles. Notice, however, that the All Subjected Principle is arguably simply a special case of the All Affected Principle, with 'subjected' being just one particular way of being 'affected'. Morally it may be a very special way of being affected; extreme supporters of the All Subjected Principle may claim that only morally relevant way of being affected. Nevertheless, the All Subjected Principle can still be seen as merely a subset of the more encompassing All Affected Principle. This is a thought to which we will return in our conclusion

Our project in this paper will primarily be to catalogue the many different options for fleshing out who, exactly, is 'subject' to the law. While the menu of options is large, all of them prove problematic in one way or another. All of them have 'counter-intuitive' implications judged against existing state practices, which is the critical standard that advocates of the All Subjected Principle set for themselves.¹³

⁹ Fraser (2009, pp. 64–5) protests that 'everyone is affected by everything'. Dahl (1970, p. 67), is 'troubled by the thought that' the expansionary tendency of the All Affected Principle 'has unlocked Pandora's box'.

¹⁰ See e.g., Miller 2009, p. 224.

¹¹ Arrhenius 2018; 2019. There are many examples of non-nationals being subjected to the extra-territorial application of laws of states where they had no right to vote on those laws (Goodin 2016). There are also examples of people having rights to vote on laws to which they would not themselves be subject. One example is that of expatriates who retain a right to vote in their country of origin even if they are no longer subject to the laws it enacts (Lopez-Guerra 2005). Other examples to which we return at the end of the paper are those of: (i) ethnic Hungarians living in Romania who were given the right to vote in Hungary without themselves being subject to Hungarian law; and (ii) apartheid-era South Africa where only non-black people were allowed to vote on laws that applied exclusively to black South Africans.

¹² Saunders 2011, p. 71.

¹³ Miller 2009, pp. 213–8. The rationale for fixating on existing state practices in this way typically has to do with protecting and supporting 'historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life' (Walzer 1983, p. 62; see similarly Christiano 2006, pp. 85–9; 2008, ch. 3; Song 2012). Dahl (1970, p. 67) implicitly agrees, when saying that his biggest worry with the All Affected Principle is that it would imply that people in Latin America 'should be allowed to participate in our [US] elections'.

II.

What is it to be 'subject' to a law? That is a surprisingly underdiscussed question in the literature.¹⁴

A.

Following the *Oxford English Dictionary* definition, to be 'subject' to a law is to be under an obligation imposed by that law.¹⁵ A natural first cut at explicating that notion would be as follows:

Legal Subjectedness I: You are subject to a law if you would be liable to prosecution were you to act in a way contrary to that law.

'Liable' here doesn't mean 'likely' but rather 'legally answerable' in the sense of being categorically eligible to have the law applied to you by the courts of that jurisdiction.¹⁶

It may be thought that 'have the law applied to you' should be neutral as between duty-imposing and power-conferring laws, in a way that the above allusion to 'prosecution' is not.¹⁷ If so, a more general formulation covering both cases would be:

Legal Subjectedness II: You are subject to a law if you would be liable to the law being applied to you were you to act contrary to a duty-imposing law or in accordance with a power-conferring law.¹⁸

¹⁴ Historically, anyone 'born within the dominions of the crown' was deemed to be a 'subject' of the crown and to owe perpetual allegiance and faithful obedience to it (Blackstone 1765, bk. 1, ch. 10). Traces of that usage persist to this day, which might go some way toward explaining why people so often employ the concept without feeling the need to provide any extended analysis of it.

¹⁵ A 'subject' is 'a person who ... owes obedience to another' person or government (*OED*, qv. 'subject, n.: 1.1.b).

¹⁶ 'Likely' would be the All Affected Principle's way of reading 'liable'. The All Subjected Principle must read it differently (as 'legally answerable') in order to achieve the critical distance from the All Affected Principle to which it aspires.

¹⁷ An example of a 'power-conferring law' is the law governing the writing of binding wills (Hart 1961, ch. 3). Arguably, however, the All Subjected Principle need not apply to power-conferred laws. It might seem unproblematic, or at least less problematic, to have laws that confer powers on people who have no say in making these laws; and it is only when a law constrains someone that that person must have had a say in making that law. If so, Legal Subjectedness I would suffice, and Legal Subjectedness II would simply be an innocuous but unnecessary generalization of it.

¹⁸ In the case of a power-conferring law like that governing the making of a will, the 'law being applied to you' would amount to the will being treated as legally binding so long as you had done as the law specified when

B.

Who would be liable to having a law applied to them depends upon two things. One is over whom and what the state in question claims *legal jurisdiction*. The other is to whom and what the *content of the law* says it applies.

There are sometimes matters over which a state claims 'universal jurisdiction'. Those laws apply to everyone in the world without any jurisdictional scope restriction. Traditionally, for example, pirates have been deemed *boftis humani generis* (enemies of all mankind) and subject to prosecution in any state's courts.¹⁹ The USA PATRIOT Act of 2001 likewise prohibits anyone anywhere in the world from giving 'material support' to terrorists.²⁰ More typically, a state makes more restricted jurisdictional claims, typically based on territory or citizenship but sometimes based on other considerations as well.²¹

Other scope restrictions are written into the content of the law itself.²² Again, there are some laws that have no further scope restrictions, beyond the jurisdictional ones. The law against theft, for example, applies without any further conditions to everyone within the jurisdiction.²³ But again, most laws have further scope restrictions built into their content. Those restrictions are based things on such as the nature of the activity or the subject's age or gender.

There are two different ways in which each of those sets of scope conditions can be specified, with implications for how the All Subjected Principle should be understood.²⁴ A 'narrow-scope' specification is:

Narrow Scope: For all x , if y : then Ox

making that will (had it witnessed by the requisite number of people, etc. [Hart 1961, p. 28]). In the case of a duty-imposing law, the 'law being applied to you' would (at the very least) amount to your being deemed as not having complied with the law, even if nothing further follows from that fact. Often something will, but there are some laws that carry no legal fines, such as the one against jaywalking in Sweden (Kronborg 2007, p. 10) or against carrying durians on Singapore buses (Singapore 2019).

¹⁹ Blackstone 1765, bk. 4, ch. 5. The phrase is from Coke (1644, ch. 49).

²⁰ 18 US Code § 2339(A). It explicitly applies to non-nationals and those outside US territory; the 'extraterritorial jurisdiction' is explicitly claimed to exist under (§ 2339(B)). For analysis see Doyle (2010, esp. p. 21).

²¹ Dickinson 1935; Oxman 2007.

²² Among the key elements in a law, or a 'mandatory norm' more generally, is the specification of 'the norm subjects, namely the persons required to behave in a certain way', along with what they are required to do and under what circumstances. In this, Raz (1975, p. 50) is following von Wright (1968, ch. 5); and Raz is followed by Dan-Cohen (1984, p. 628) in turn.

²³ Of that law, Dan-Cohen (1984, p. 628) remarks: 'it has the general public as its norm-subject and the (forbidden) act of stealing as its norm-act'.

²⁴ The distinction between wide-scope and narrow-scope restrictions is familiar within deontic logic (Broome 2013, ch 8). For previous applications of the distinction to the ASP see: Andric 2021; and Abizadeh forthcoming.

where x is the person subject to the law, y are the scope restrictions (in terms of jurisdiction or the content of the law), and Ox is the obligation the law imposes on x . A 'wide-scope' specification is:

Wide Scope: For all x : then Ox if y

where again, y ranges over both jurisdictional scope restrictions and such further scope restrictions as are written into the content of the law itself.

To illustrate, take the case of the 1917 US law authorizing conscription during World War I. That law stipulates, in part, that:

all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President; and upon proclamation by the President ... it shall be the duty of all persons of the designated ages... to present themselves for and submit to registration under the provisions of this Act.²⁵

There the content-of-law scope restrictions are 'male and between the ages of twenty-one and thirty'; and (if only implicitly) the jurisdictional scope restrictions are 'residents of the US'. Or for another example, consider the UK legislation governing road use. It stipulates, among other things, that:

where a child under the age of fourteen years is in the front of a motor vehicle, a person must not without reasonable excuse drive the vehicle on a road unless the child is wearing a seat belt in conformity with regulations.²⁶

There the content-of-law scope restrictions are 'driving a motor vehicle on a road with a child under age fourteen in the front seat'; and (again, if only implicitly) the jurisdictional scope restriction is 'in the UK'.

Suppose both of those sets of scope conditions were narrow-scope in form. Then the US conscription law would impose legal requirements only on people in the US of the age and gender specified – and on the ASP, they and they along should get a vote on that law. The UK road law would impose legal requirements only on people in the UK who drive motor vehicles on the road with someone under fourteen in the

²⁵ Selective Service Act of 1917, *Statutes at Large*, 65th Congress, Sess. 1, ch. 15; available at <<https://www.loc.gov/law/help/statutes-at-large/65th-congress/session-1/c65s1ch15.pdf>>.

²⁶ UK Road Traffic Act of 1988, sec. 15; available at <legislation.gov.uk/ukpga/1988/52/section/15>

front of the vehicle – and on the ASP, once again, they and they alone should get a vote on that law.

Suppose, instead, that both of those sets of scope conditions were wide-scope in form. Then the US conscription law would impose legal requirements on everyone whatever their residence and whatever their gender or age. Those requirements would be conditional in form, to be sure; and people not meeting the conditions of residence, age and gender would not have to do anything further to comply with those legal requirements. Still, if the law were wide-scope in form, literally everyone everywhere would be subject to it and hence (by the ASP) entitled to vote on that law. Likewise, *mutatis mutandis*, with the UK road law.

Insofar as this wide- versus narrow-scope distinction has been noticed by previous commentators on the ASP, they have uniformly favoured a narrow-scope reading of laws. They have done so, saying that a wide-scope reading would lead to such a radical widening of those entitled to a vote as to constitute a *reductio ad absurdum* of the ASP.²⁷ Now, of course, if 'fidelity to existing practice' is going to be the criterion for evaluating the All Subjected Principle as a normative theory, it is circular also to use 'fidelity to existing practice' to define subjectedness.²⁸ Furthermore, while a narrow-scope construal of jurisdictional conditions yields broadly the 'realistic' result that advocates of ASP want, a narrow-scope construal of the content conditions would 'unrealistically' result in the ASP denying a person a vote on many laws on which he presently has one. Take the Swedish law requiring drivers to wear seat belts, for example: on a narrow-scope interpretation of the content of that law, people who never drive would not be subject to that law; and hence, by the ASP, they should not have a right to vote on that law, whereas presently of course they do.

One way for the advocates of the ASP to have the best of both worlds would be for them to opt for a 'mixed-scope' approach. That would involve construing jurisdictional scope conditions in a narrow-scope way and content scope conditions in wide-scope in fashion. More formally,

Mixed Scope: For all x , if yj : then Ox if yc

where yj are the jurisdictional scope conditions and yc are the further scope conditions built into the content of the law. Here as before, construing jurisdictional requirements as narrow-scope in form simply assumes what advocates of ASP were supposed

²⁷ Andric 2021; Abizadeh forthcoming. These concerns arise from the fact that, on a wide-scope reading of the laws' jurisdictional requirements, everyone in the world would be subject to (and, by the ASP, entitled to vote on) US conscription laws and UK driving laws.

²⁸ As Whelan (1983, pp. 22–4) points out, this just smuggles the state-as-we-know-it in through the back door.

to be proving, when they claim ASP more realistically tracks existing practices of enfranchisement. But at least the wide-scope construal of content requirements provides them an avenue for giving everyone who currently has a vote on laws a vote on them.

That mixed-scope formulation seems to hold out the best hope for bringing the ASP broadly into line with current practices surrounding enfranchisement. Construing jurisdictional conditions as narrow-scope makes everyone in the jurisdiction in question (but only them) subject to that law. Construing the content of the law as wide-scope in form makes everyone in the jurisdiction at least conditionally subject to the requirements of the law. So if laws were construed in this mixed-scope fashion, the ASP would dictate that all and only people in the jurisdiction should have a right to vote on all laws there. That does not quite succeed in bringing the ASP into line with current state practice, insofar as there are some laws with universal or anyway extra-territorial application which apply to people who do not all have a vote on them. But it comes much closer than does either of the alternative ways of construing law's scope conditions.

C.

In another distinction that will be important for our discussion, the norm-subjects can be specified timelessly or in terms of a point-in-time. For an example of the latter, the US Coronavirus Aid, Relief and Recovery Act of 2020 mandated individual stimulus payments to those who had filed a 2019 US federal income tax return.²⁹ Another stimulus package may be enacted entitling future taxpayers to a further subvention; but future taxpayers will not be eligible for payments under the 2020 enactment. More typically, however, a law's norm-subjects are specified in a timeless fashion. Go back to the examples of laws concerning theft and conscription. Those laws apply to people timelessly, until and unless they are amended or repealed. People will be subject to those laws whenever they are, or come to be, within the specified scope of the law, be that wide or narrow.

The All Subjected Principle's injunction to give a vote to those who will be subject to the law is well-defined in the point-in-time case. There, it just means give a vote to all and only people who satisfy the specified condition at the particular point-in-time. With laws that specify their norm-subjects in timeless fashion, however, further work needs to be done to specify what it means to say that someone 'will be subject' to the enactment. Among other things, we need to specify just how soon, and just how certainly, someone will be subject to the law in order to qualify for a vote on it. If the answer is 'immediately and with absolute certainty', far fewer people than at present

²⁹ US CARES Act of 2020, sec. 2101; available at <<https://www.congress.gov/bill/116th-congress/senate-bill/3548/text?q=product+actualizaci%C3%B3n#toc-idC62A2A4676F44E44B6A0D677C490FD17>>.

will be entitled to vote on the law. If the answer is 'sooner or later, with some likelihood', far more people than at present will be entitled to a vote under the All Subjected Principle.

D.

To foreshadow, our argument is going to be as follows. If we construe the scope restrictions built into the content of the law as being narrow-scope in form, then the All Subjected Principle would give people a vote on only a (potentially very small) subset of the laws on which they are currently entitled to vote. Under various other circumstances the All Subjected Principle would give far more people than presently have a vote a right to vote on laws. That would be the case if jurisdictional claims were either unrestricted or wide-scope in form or if laws were timeless in broad form. None of those outcomes would be in keeping with the All Subjected Principle's aspiration to 'realism' in closely tracking present practice. On a mixed-scope specification of the law, the All Subjected Principle comes closer to giving a vote to more nearly the same people as presently have a right to vote. But even on a mixed-scope specification of laws, particularly broad timeless ones, the All Subjected Principle would still require us to give a vote to substantially more people than presently have a right to vote.

III.

A.

Imagine a law is proposed in Sweden that would prohibit anyone living there from operating an on-line betting website.³⁰ Suppose, now, that you live in Sweden. Then you clearly would be subject to that law, jurisdictionally at least; and on that basis it might seem that, on the All Subjected Principle, you should therefore get a vote in the making of that law.

That would be true whether or not you currently operate an on-line betting website, on a wide-scope reading of the content of the law. But even if the content of the law had a narrow-scope remit, making only those operating on-line betting websites subject to it, you would be subject to it in prospect given that the law's timeless nature. You would be liable to prosecution should you ever engage in that activity.³¹ And that would arguably be enough to give you a right to a vote on that law, on the All Subjected Principle.

³⁰ This would be a rather unusual way of phrasing a law, to be sure. We come to more standard phrasings later, after making some basic points with the aid of this one.

³¹ Goodin 2016, p. 371.

B.

Suppose now however that you live, not in Sweden, but rather in Australia. Then, on the face of it, there is no reason deriving from the All Subjected Principle that you should have a vote on the proposed law prohibiting anyone living in Sweden from operating an on-line betting website, because you do not live in Sweden. You are outside the jurisdiction of Swedish law. You simply would not be subject to that law. It does not purport to impose any obligations on you. The proposed law says 'living in Sweden'; you live in Australia; end of story.

Or is it? As argued above, a person living in Sweden who is not currently operating an on-line getting website would be subject to the law, because they might in the future do so. Why not say the same about someone not presently living in Sweden? They might in the future do so. Even if the jurisdictional scope of the proposed law is narrow-scope, applying only to people living in Sweden, the proposed law would still be timeless in form.

Maybe the difference is this. People not currently living in Sweden are not currently subject to a law that would apply only to people living in Sweden. That law does not purport to impose any obligations on them. Were they to move to Sweden, of course, they would *then* become subject to that law. But at present they are not; that law simply does not, as yet, jurisdictionally apply to them. If it were the case that we should give a vote in the making of laws only to people who would be subject them immediately and with certainty, there is no reason to give people not presently living in Sweden a vote in the making of that particular law. (Notice, however, that 'immediately and with certainty' may be too high a bar: we return to discuss that in Section VI below.)

Not only is there 'no reason' within the All Subjected Principle for giving such people a vote on such laws. There is arguably a positive reason *against* giving people a vote on laws that apply only to people elsewhere, merely on the grounds that they might in future move there. Consider this analogy. Tort law contains a doctrine of 'coming to the nuisance'.³² If someone builds a factory that emits noxious fumes next to your house, he has inflicted damage on you for which he must compensate you. If, on the other hand, it is you who build your house next to his factory, you have no such claim. Why? The factory was there first. You built your house there, knowing of the hazard; you could have avoided the known hazard by not building your house there. Now, of course tort law does not govern the allocation of voting rights, but the analogy might still hold. A person who runs on-line gambling websites and moves to

³² ALI 1965, § 496A.

Sweden, knowing there is a law in Sweden against living there engaging in that activity, could have avoided liability to that law simply by not moving there.³³

C.

Suppose, however, the proposed law has no jurisdiction scope restrictions and would make it a criminal offence under Swedish law to operate an on-line betting website anywhere in the world, *urbi et orbi* to recall a phrase from papal blessings.³⁴ That law, if enacted, would purport to apply to everyone in the world. And since they would all be subject to that law, everyone in the world seemingly ought on the All Subjected Principle be entitled to a vote in the making of that law.³⁵

Of course, what a law 'purports' to do is one thing.³⁶ What it actually does may be quite another. A norm-giver might purport to impose obligations on someone upon whom it has no normative authority to impose obligations. There may then be no need to give such people a vote on what law is enacted, since that norm-giver's actions will not *actually* (as opposed to purportedly) do anything to alter their normative status. Still, a complaint of sorts may well be lodged even in that case: presumptuous as it is to purport to impose obligations on people over whom we have no normative authority to do so, it is doubly presumptuous to purport to do so without giving them a vote on laws purporting to do so.

In more purely practical terms, it may be unusual for anyone not physically present in Sweden ever to be prosecuted in the Swedish courts for violation of that law.³⁷ But just as people can be genuinely subject to a law without there being any likelihood

³³ Miller (2009, p. 222) invokes a similar principle (albeit without reference to the tort analogy) in justifying tourists being subject to laws over which they have no vote: 'when people enter the... territory as visitors... they are immediately obliged to obey most of the laws that apply to citizens. In normal cases we do not regard such coercion as problematic because we assume that visitors give their consent to the existing body of law when they arrive in the territory.'

There will of course be tricky borderline cases. Assume that you are just about to move your on-line betting operation from Australia to Sweden and that there are currently no laws in Sweden prohibiting such activities. However, Sweden now calls a referendum on the issue. Should you have a vote? Or assume that you have gotten all the permissions to build your house and are about to start and then I start emitting noxious fumes from my factory next to your planned house. We take up such issues in Section VI.

³⁴ Among the statutes often taking such an expansive form are ones dealing with crimes against humanity, terrorism, bribery of government officials and child sexual abuse.

³⁵ This would be true even if the content of the law is narrow-scope in form, just so long as the law is also broadly timeless in form.

³⁶ To 'purport' is 'to intend', 'to profess or claim...', be intended to seem, appear ostensibly to be or do something' (OED, qv. purport, v., 2, 1b).

³⁷ Unusual, but not impossible: people can be subject to extradition or trial *in absentia*, for example.

of violating it, so too can they be genuinely subject to a law without there being any likelihood that they will be prosecuted if they do violate it.³⁸

D.

Suppose the law is phrased more modestly simply saying, 'No one is allowed to operate an on-line betting site in Sweden'.³⁹ Yet suppose the law claims jurisdiction over such activities on its territory, regardless of where those undertaking them might be. Then if someone in Australia decided to open an on-line betting site based in Sweden, they could be prosecuted for violation of the law in Sweden. Since they are subject to the law of Sweden in that way, should everyone in Australia therefore have a right to vote in Swedish elections?

The same problems arise with power-conferring rules, such as the law of contract. When an Australian author signs a contract with a British book publisher that contains the clause, 'This Agreement and all matters arising out of it shall in all respects be governed by the Laws of England and Wales', they become subject to the laws of England and Wales at least in respect of that specific contract. Should that fact give them a right to vote on all laws in the UK, or even just all laws pertaining to contracts in England and Wales?

Maybe such cases put pressure on the All Subjected Principle's argument that you should be given a vote in the making of all the laws to which you would purportedly be subject. But if we want to stick with the principle that everyone who would purportedly be subject to a law should have a vote in the making of it, then everyone in the world should have a vote on proposed legislation in any country that would apply to everyone in the world.⁴⁰ Needless to say, that is precisely the sort of expansionary implication, more ordinarily associated with the All Affected Principle, which the more 'realistic' All Subjected Principle was supposed to avoid.

IV.

Is there an understanding of legally subjected that would avoid this expansion of who should have a vote?

³⁸ Thus, for example, the Obama Administration announced in 2012 that people brought to the US illegally as children who meet several other criteria would not be prosecuted as illegal aliens or expelled from the country (Napolitano 2012). Those people were nevertheless still subject to the US immigration law, even though as a matter of prosecutorial discretion they would not under that policy have been prosecuted under it. (That policy was rescinded under Trump, of course.)

³⁹ This is a perfectly ordinary expression of 'territorial jurisdiction', which is 'everywhere regarded as of primary importance and of fundamental character' (Dickinson 1935, p. 445; see similarly Oxman 2007).

⁴⁰ And empirically there are rather a lot of them (Goodin 2016).

A.

One way of avoiding expansionist conclusions that many find tempting is to analyze subjectedness as follows:

Legal Subjectedness III: You're subject to a law if you would be exposed to the coercive institutions enforcing the law were you to violate the law.⁴¹

This doesn't seem to help very much, however, since we then have to ask what it means to be 'exposed to the coercive institutions enforcing the law'. Clearly the Australian opening a betting website in Sweden would be exposed to the coercive institutions of Sweden enforcing the law just envisaged. At the very least, he would be liable to the coercive authorities shutting down his betting operation in Sweden, even if the Swedish authorities might not be able in practice to enforce fines on him or throw him into jail.⁴² Or, again, were you to go to South Africa, even as a tourist, you would be exposed to the coercive institutions of that country. So we get the same expansion here as we got with Legal Subjectedness II.⁴³

Perhaps we should rather think of all these case as akin to Australians in the earlier example who would become subject to Swedish law only once they moved to Sweden. This interpretation of the All Subjected Principle would, however, have an odd implication for laws with narrow-scope content conditions. Non-sausage-making Bavarians – not, on this analysis, being subject to narrow-scope laws applying only to sausage makers in Bavaria – shouldn't have a vote on the sausage laws in Bavaria, despite being consumers, or potential consumers, of the sausages. Would we really want to say the same in other analogous cases? Do we really want to think, for example, that only polluters, and not those drinking the water they pollute, should have a vote on laws regarding pollution?

Of course followers of the rival All Affected Principle would say that the answer to those questions is clearly 'no'. People eating sausages, as well as people making

⁴¹ This line of analysis can be traced back to Bentham (1786), who writes, 'An individual can be subject to a sovereign no farther than the physical power which that sovereign has of hurting him, or his afflictive power as it may be called, extends.' See latterly: Abizadeh 2008; 2010; Miller 2010.

⁴² It has been suggested to us that you would be properly said to be 'coerced' only in the latter case but not the former. But that cannot be correct. In contract law, for example, if your 'assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by' you through the courts; and threatening to seize your property is included among the things that contract law considers to be such an 'improper threat' (ALI 1981, §§ 175 and 176(1)(a)).

⁴³ The same holds for the recent suggestion that the All Subjected Principle should be interpreted as including both requirements; i.e., a person is subjected in the relevant sense if and only if the person is both subject to legal duties and coercive institutions (Beckman 2014, p. 257; cf. Goodin 2016, p. 372, n. 19).

them, are affected by laws governing the making of sausages. Likewise, people who might have their water polluted, as well as people who might pollute it, are affected by laws governing pollution. And on the All Affected Principle, being affected should entitle all those people to a vote in the making of those laws. But the All Subjected Principle confers voting rights only on those who would be subject to the laws; and it is not at all clear how, in those terms, sausage consumers and potential victims of pollution could acquire a right to a vote in the making of laws governing those activities. That seems to be a serious embarrassment for the All Subjected Principle.

Advocates of that principle could get around these difficulties by construing the law's content conditions in wide-scope fashion. But that would have the ASP giving consumers but not producers of Bavarian sausages a vote for the wrong reason – not because they might be poisoned by badly made sausages, but instead because they might someday become Bavarian sausage makers. In any case, the jurisdictional conditions at least had better be construed in narrow-scope fashion, as imposing obligations on all but only those in the country. Otherwise there will be the hyper-expansive implications for the franchise that arise from laws with wide jurisdictional scope. And even if the law is mixed-scope in that way, it would still have moderately expansive implications for the franchise. For a start, it would certainly require enfranchisement of all residents in the state even if they are not citizens.⁴⁴ And if the law is broadly timeless in form, then anyone who is not currently resident but might become so would be at least provisionally subject to the law and perhaps entitled under the ASP to a vote.

B.

Sometimes a narrow-scope interpretation is the more natural way of construing the content conditions of a law. Consider the case the law in Iran requiring women to wear the modest dress in public, or of the old law in Saudi Arabia prohibiting women from driving cars.⁴⁵ It seems most natural to construe the content conditions in those laws in a narrow-scope way and say that men in those countries were not subject to those laws. Likewise, it would seem most natural to construe the UK's law that previously required aliens resident in Britain to register with the police in a narrow-scope way, and to say that British citizens were not subject to it.⁴⁶ Or take the Swedish law regarding general conscription that used to apply explicitly only to men of a certain

⁴⁴ It would have that implication, provided the law is based on 'territorial jurisdiction' and applies to anyone on the territory, which is the principal basis on which states claim jurisdiction (Dickinson 1935, p. 445; Oxman 2007).

⁴⁵ It was revoked by royal decree in June 2018 (BBC 2018). But suppose for the sake of the example that the law had been enacted and repealed by popular vote in a referendum.

⁴⁶ UK Government 2016.

age; and it would seem most natural to construe that as a narrow-scope law and say that Swedish women were not subject to it.

Construing the content conditions of those laws in such a narrow-scope way would sometimes have implications, under the All Subjected Principle, that some might welcome as intuitively correct (albeit not in line with current practice, thus frustrating the principle's aspiration to 'realism'). Only women, and not men, should have a vote on modest-dressing laws in Iran and driving laws in Saudi Arabia that apply to women alone. Only men, and not women, should have had a vote on Swedish conscription laws that apply to men alone. Other times, the upshot seems less intuitive. Under the All Subjected Principle, only aliens and not citizens should have had a vote on the law requiring aliens to register with the police in Britain.

C.

Consider now, however, the case of men in the US under the age of 18. Are they subject to the law there that requires men over that age to register with the Selective Service System? There are two ways of thinking about that, which lead the All Subjected Principle to yield different conclusions concerning enfranchisement.

US men under 18 might be thought of as akin to non-sausage-making Bavarians on our earlier analysis, as being subject to a law with wide-scope content that requires something of all Americans. Looking at the situation in that way, under-18 US men would be subject to the wide-scope content of the Selective Service law and the All Subjected Principle would therefore dictate that they be given a vote in making that law.⁴⁷

Alternatively, those under-18 US men might be thought of as akin to Australians who would become subject to Swedish law only once they moved to Sweden, which they have not (yet) done. On that analysis, the under-18 US men would not be subject to a Selective Service law with narrow-scope content; and they would not, under the All Subjected Principle, have any right to a vote in making that law.

But even if we regard the content of the Selective Service law in that narrow-scope way, so under-18-year-olds are not (yet) subject to it, the point remains that that is a timeless law. American men who are currently 17 may not be subject to its narrow-scope content just yet – but (unless they die or move away or have a sex-change operation) they will inevitably be subject to that law within the year. Should that not entitle them to a vote on the law to which they are certain so soon to be subject? Furthermore, if per the All Subjected Principle all and only those who are currently subject to the law should have a vote on it, does that mean that we would have to

⁴⁷ Assuming the general voting age is, e.g., 16. Notice that the All Subjected as well as the All Affected Principle may have expansionary implications for age-based restrictions on voting.

revote on the Selective Service law every time someone new turns 18 and comes within its narrow scope, or someone turns 31 and falls outside its narrow-scope content?⁴⁸

The same issue arises with all sorts of other timeless power-conferring laws. Take the case of the law empowering the US president to declare a region a disaster area, in which case people living there will be eligible for federal assistance. Anyone within the US might end up being subject to that law, if a disaster strikes their region and the president makes the requisite declaration. But until the president makes the requisite declaration, no one is presently subject to its provisions. Does that mean, on the All Subjected Principle, that no one should have a right to vote on the disaster relief law? Surely the more reasonable interpretation would be that the All Subjected Principle gives a right to vote on the disaster relief law to everyone who might end up being subject to that law because a disaster of one sort or another has befallen their community. But then why not say the same about the Australian betting website operator who might, with similar probability, move to Sweden?

V.

The All Subjected Principle is supposed to be 'more realistic' than the All Affected Principle, tracking more closely the actual practice of whom is allowed to vote.

In practice, enfranchisement is ordinarily an all-or-nothing matter.⁴⁹ If you are entitled to vote on one matter that is put to a vote in a polity, then you are ordinarily entitled to vote on all matters that are put to a vote in that polity.⁵⁰ A common objection against the All Affected Principle is that it does not obviously justify that practice.⁵¹ If people are affected by some but not all laws that are to be enacted, then it would seem on the face of it that the All Affected Principle would require that a different electoral roll be compiled for different decisions.⁵² If true, that would be, needless to say, wildly impractical – and needless to say, it is radically contrary to the actual practice of real world polities.

But notice that the All Subjected Principle may have difficulty in avoiding that

⁴⁸ Jefferson (1816) wrote, similarly, that 'every constitution ... and every law, naturally expires at the end of nineteen years', on the grounds that a majority of those alive at the time of the initial enactment would by that time have died. Here Jefferson was arguably following Condorcet (McLean and Hewitt 1994, pp. 58–9).

⁴⁹ In any given polity, although people may have different (or different numbers of) votes insofar as they are entitled to vote in different polities. Whether they should have is a separate question, beyond the scope of this article; but see Goodin and Tanasoca 2014.

⁵⁰ Likewise in representative democracy, everyone with a right to vote on their representative indirectly has a vote on all the legislation the representative has a vote on, whether or not they would be subject to all those specific enactments.

⁵¹ Miller 2009, pp. 216–7.

⁵² Whelan 1983, p. 19. Cf., however, the discussion in Arrhenius 2018.

outcome as well, at least as regards laws with narrow-scope content. If a person is subject to *some* but *not all* laws of the polity in question, then the All Subjected Principle surely likewise says that that person should have a vote on only some but not all laws of that polity. Recall, for example, the former Saudi law prohibiting women (but only women) from driving.

A.

There are two obvious ways around that problem, both of which are obviously non-starters. One is to give a vote on all laws of the polity only to those people who are subject to *all* laws of the polity. The other is to give a vote on all laws of the polity to anyone who is subject to *any* law of the polity.

The first solution is a non-starter because it is so wildly underinclusive, by the All Subjected Principle's own standards. People who would be subjected to some but not all of the laws of the polity will be wrongly denied a vote over all those laws to which they would be subject, merely because there are some other laws to which they would not be subject.

The second solution is a non-starter because it is so wildly overinclusive, by the All Subjected Principle's own standards. People who are subject to some but not all of the laws of the polity will be wrongly given a vote over many laws to which they would not be subject, merely because there are some laws to which they would be subject.

B.

A third solution, proposed by David Miller, is that the All Subjected Principle should give a vote to all and only those who are affected by 'a significant proportion' of the laws of the polity.⁵³ This is in effect a 'threshold' proposal. Another variation on the 'threshold' solution would focus not on particular laws but rather on the legal system as a whole. The idea here is that you are subject not just to this law and that but, rather, to the legal system imposing those laws.⁵⁴ The All Subjected Principle would then be understood as dictating that you should have a vote on the laws of any particular legal system if you would be 'sufficiently subjected' to that legal system.⁵⁵

⁵³ Miller (2009, p. 222, emphasis added) supposes that outsiders would be 'subject to coercion' and presumptively entitled to a vote 'if a demos decides to apply its laws, or a *significant portion of them*', to those people.

⁵⁴ Nagel (2005, p. 130) employs a similar move in saying that justification is required, 'not act by act, but for the system as a whole'; see similarly Christiano (2006, p. 88). Pavel (2018, p. 10) says that '[s]ubjection to laws requires a systematic, pervasive, and ongoing relationship between the subjected and the political authority'.

⁵⁵ 'Regularly and deeply', in the terms Fung (2013, p. 247) deploys for very different purposes.

'Sufficiently subjected' might then be spelled out in various ways. It might be analyzed in terms of how many laws you would be subject to at a given time, or what proportion of the system's laws you would be subject to at a given time. It might be analyzed in terms of over what period of time you would be subject to its laws. Or 'sufficiently subjected' might be analyzed in terms of the importance (objectively, or to you subjectively) of the laws of the system to which you would be subject. Or 'suitably subjected' might consist in a suitable combination of all or several of the above.⁵⁶

Reasoning along some such lines, the non-sausage-making Bavarians would be subject to the legal system of Bavaria since they would be subject to a sufficient number or proportion of laws in Bavaria.⁵⁷ Hence, they should have a vote on the Bavarian sausage laws since they are part of a legal system to which the non-sausage-making Bavarians would be subject. Contrariwise, people living in Australia would not be subject to sufficiently many Swedish laws to be subject to the Swedish legal system and hence shouldn't have a vote on the Swedish laws regarding, e.g., on-line betting sites.

This might also help to explain why tourists and very temporary or very intermittent residents would not be sufficiently subject to the system of laws to be entitled to a vote over its contents. They are just not there long enough for those laws to have much impact on them.⁵⁸

As is ever the case with threshold proposals, however, the crucial issue is how to justify the threshold. Surely 'significant proportion' – a sheer count – of the laws to which you are subject cannot be the right way of calibrating any such threshold. For a start, there is no straightforward way to individuate laws. They do not form a 'natural kind'. Exactly the same legal obligations can be imposed by a single omnibus enactment with multiple separate clauses or by multiple separate enactments each containing exactly one of those clauses.

Neither is the sheer number or proportion of laws applying to you what morally matters in deciding whether 'enough' of them apply to you to entitle you to a vote. Maybe only a small proportion of a polity's laws apply to you, but they are all the ones that carry the heaviest penalties or they are the ones that are most likely to bear on the things that you want to do. In that case you would surely be 'significantly subject'

⁵⁶ We need some moral reasons of this sort for drawing the line one place or another. Even if fine-grained line-drawing is inevitably arbitrary at the margin, it cannot be completely arbitrary who gets to vote. Neither of course can we simply say that 'where we draw the line is inevitably arbitrary, so we should just decide politically on some line' – for we need first to decide where to draw the line to know who gets the right to a vote in settling things politically in our community (Whelan 1983, pp. 13–16, 22–4, 29–31, 41–2; Goodin 2007, p. 43).

⁵⁷ Wide-scope and narrow-scope ones combined, of course.

⁵⁸ The traffic laws apply to them immediately upon hiring a car, perhaps. But other laws – like those governing starting up a business perhaps – are of no practical importance to someone only in a place temporarily.

to the laws of that polity, and should presumably be entitled to a vote on them under the All Subjected Principle, even if you would not be subject to a 'significant proportion' of them.

Notice what is happening as we try to flesh out a more credible threshold test, however. In judging what counts as being 'significantly subject' to the laws, we have fallen into talking in terms of whether the laws significantly affect you. That threatens to infuse into the All Subjected Principle considerations of affectedness, to which it was supposed to offer a contrast, of course. But we cannot see any other way of cashing out what the 'significantly subject to the laws' threshold might involve. If you want to avoid that, you had probably better abandon the attempt to contrive a threshold test for what proportion of the laws needs to apply to you in order for you to be entitled to a vote on those laws.

C.

A final solution is to reconsider one of the options we initially dismissed as a non-starter: drop the 'and only' clause in the All Subjected Principle, and hence to be relaxed about overinclusion (i.e., giving a vote on some laws to people who would not be subject to those laws).

One way the All Affected Principle can avoid the inconvenience of a different electoral register for each piece of legislation is by deeming over-inclusion to be of no consequence.⁵⁹ The reason given is this: if people vote purely on the basis of their interests (a big 'if', but assume for the sake of argument it is true), then those who would not be affected will either not vote or will vote randomly; and hence, in aggregate, they will make no net difference to the outcome.⁶⁰

Can the All Subjected Principle avoid the inconvenience of decision-specific electoral rolls by similarly turning a blind eye to any risks of over-inclusion? If so, then on both the All Affected and All Subjected Principles, while over-exclusion is problematic, over-inclusion is not. In that case, neither of the leading principles for constituting the demos would provide any reason whatsoever for keeping anyone out. It might further follow that, if we are operating under any uncertainty as to whether someone ought to be included (as we almost always are⁶¹), then we ought to include that person – which would lead to a very radical expansion of the demos indeed.

⁵⁹ Another is as discussed above, namely, through a threshold in terms of being significantly affected by the whole legal system. As we pointed out, this route is not available for the All Subjected Principle, which wants to avoid considerations of affectedness. But that is of course no problem for the All Affected Principle.

⁶⁰ Goodin 2007, p. 58. Likewise for the fair distribution of influence over the outcome; see Arrhenius (2005; 2019) and Brighouse & Fleurbaey (2010) for this justification of the All Affected Principle.

⁶¹ Jackson & Smith 2006.

It may seem that the All Subjected Principle cannot as easily turn a blind eye to overinclusion as can the All Affected Principle, however. The autonomy interests of someone else who *is* subject to the law gives me a reason to give them a vote in making the law, even if that comes at a cost to my own autonomy in having a vote in matter that as well. But giving others who *are not* subject to the law a vote in its making compromises my own autonomy interests without furthering anyone else's.

For that sort of reason, we rightly baulk at the electoral arrangements of apartheid-era South Africa, in which only non-blacks were entitled to vote on the contents of laws that governed only black South Africans. For that same reason, we rightly baulk at giving expatriates a right to vote in their countries of origin even when they are no longer subject to the laws made there.⁶² For the same reason, we look askance at Hungary conferring voting rights on ethnic Hungarians in Romania who would not be bound by any laws made in Hungary.⁶³

Maybe, however, there is a broader reason for thinking that, while autonomy in a collective choice setting requires that you have a vote in the making of laws that will bind you, your autonomy is not actually compromised by others who would not be subject to or affected by a decision having a vote in that decision.⁶⁴

This argument would work by equating your autonomy with your power to determine the laws to which you would be subject and by which you would be bound. As in the parallel argument in relation to the All Affected Principle, let us suppose that people vote in accordance with their interests and those interests are determined strictly by the way in which they will be affected by the law to which they will be subject. Just how plausible that supposition is may be open to question. But supposing it to be true, people who would not be subject to the law and whose interests would therefore be unaffected by it, if given a vote over that law, either will not vote or will vote randomly. Then, in the aggregate, the random votes of those who would not be subject to the law will cancel one another out and the vote of those who would be subject to the law will be decisive. If playing a consequential role in the making of laws to which they would be subject is what autonomy requires, and if what autonomy of that sort is what the All Subjected Principle seeks to protect, then the All Subjected Principle therefore can indeed afford to turn a blind eye to overinclusion.

⁶² Lopez-Guerra 2005.

⁶³ Bauböck 2007; 2010.

⁶⁴ As argued in Goodin 2016, p. 369.

VI.

As our discussion of 'threshold' tests has foreshadowed, 'subjectedness' actually seems to be a graded notion. Here we shall discuss various ways in which that is so.

The 'degrees' point is usually made as an amendment to the All Affected Principle. There, the suggestion is that if you would be only slightly affected you maybe you should just get a right to petition (write a congressman), whereas if you would be more affected you should get a right to vote on the matter.⁶⁵

'Subjectedness', in contrast, is usually not spoken of in degrees. Instead it is more typically treated as a binary. Either you would be subject to the laws of some jurisdiction (i.e., they would impose duties or confer powers on you) – or you would not be.⁶⁶ But here we shall offer various ways in which 'subjectedness' arguably should itself be seen as a graded notion. If so, people would seemingly be more-or-less entitled to a vote (or entitled to more or less than a vote) accordingly, on the All Subjected Principle.

A.

One easy way in which to see 'subjectedness' as being graded is temporal. Someone who would be subject to the law for a shorter period of time is, in some sense, 'less subject' to the law than someone who would be subject to it for a longer period of time. And those 'less subject' to the law in that sense might well, under the All Subjected Principle, be less entitled to a vote in the making of that law, accordingly.⁶⁷

That is a natural way to handle the case of tourists who are in the country only temporarily, for example. They are undoubtedly subject to the laws of the country they are visiting.⁶⁸ If they park next to a fire hydrant they can be fined; if they kill someone they can be tried, convicted and imprisoned. But despite the fact that they would be subject to the laws of the country they are visiting, they have no vote in the making of those laws (even if they happen to be visiting there on election day). Strictly speaking, that violates the strictures of the All Subjected Principle. The justification

⁶⁵ See, e.g.: Fung 2013, p. 254 ff.; Arrhenius 2018.

⁶⁶ See, e.g., Beckman 2008, p. 360.

⁶⁷ In practice, 'temporary migrants' are most typically given a 'partial citizenship' that takes the form of social rights but not civic rights to vote (Bauböck 2011). But our topic is the All Subjected Principle and what it implies in these cases for enfranchisement.

⁶⁸ In Blackstone's (1765, bk. 1, ch. 10) terms, they owe only 'local allegiance' to the king 'for so long time as he continues within the king's dominion: and it ceases the instant such stranger transfers himself from this kingdom to another'.

often given, however, is that the tourists are subject to the laws too briefly and too episodically to warrant giving them a vote.⁶⁹

Tourists may seem like a very special case. But that principle may well generalize to various other cases. Imagine someone with family ties to South Africa. But let us now vary the frequency and duration of her visits there. If she visited for just a week or two every few years, she (like the tourist) would seem to be subject to the law too briefly and intermittently to be entitled to a vote in the making of South Africa's laws. But the more regularly she visited and the longer she stayed, the more subject to the laws of South Africa she would be and the more entitled to a vote she would seem to be under the All Subjected Principle. If she spent fully six months every year in South Africa, for example, it seems hard to deny that she would indeed be subject to the laws of South Africa in a way that should under that principle give her a vote in the making of those laws.

The issue that this example poses is not so much 'where to draw the line' as to how much time in country is 'enough' to justify being given a vote there. (We have argued against that sort of 'threshold' thinking about such issues above.) The point of this example is not to illustrate the 'need for a threshold' but, rather, the 'fact of a continuum'.

Depending upon how long you spend in a country how often, you would be more-or-less subject to the laws there. And on the face of it, those different 'degrees of subjectedness' should, under the All Subjected Principle, be reflected in different 'degrees of control' over the laws. But that of course clashes with the aspiration of the All Subjected Principle to reflect the practices of real existing democracies, which allocate votes to people in a much more lumpy fashion. And when real existing democracies allocate rights to other lesser forms of 'having a say' – rights to free speech and to write letters petitioning legislators, for example⁷⁰ – they do so much more indiscriminately than the All Subjected Principle, if extended to those weaker forms of having a say, would prescribe. Your right to speak or petition is nowhere conditional on the fact that you would be subject to a proposed law.⁷¹

B.

'Subjectedness' also seems to be a graded notion in terms of the different sorts of counterfactuals that might be involved in determining whether a person is subject to a law.

⁶⁹ Thus Dahl (1989, p. 122) excludes 'transients' from the scope of the All Subjected Principle.

⁷⁰ See Fung (2013, pp. 254–9), Arrhenius (2018, pp. 107–9), and Macdonald (forthcoming) on 'lesser' forms of influence.

⁷¹ Maybe listeners or legislators would not take your input particularly seriously, but 'having input' and 'your input being especially effective' are wholly separate issues.

Recall the following cases, already discussed:

1. Every Bavarian would arguably be subject to a timeless law, even one with narrow-scope content, prohibiting Bavarians from making sausages in a certain way, despite the fact that they are not currently doing so, because there is a counterfactual world in which they might start making sausages in the prohibited way.
2. Everyone in Sweden would arguably be subject to a law, even one with narrow-scope content, prohibiting anyone from running an online betting website in Sweden, despite the fact that they are not currently doing so, because there is a possible world in which they might open an online betting website there.
3. Everyone in the world would arguably be subject to a jurisdictionally narrow-scope Swedish law prohibiting anyone living in Sweden from running an online betting website there, even if they are not currently living in Sweden or running an online betting website there, because there is a possible world in which they might both move to Sweden and open an online betting website.

But notice that we might say that same about men in Iran and Saudi Arabia being subject to laws requiring women to dress modestly or not to drive cars:

4. Men would arguably be subject to those timeless laws that apply only to women, even if those laws have narrow-scope content, because there is a possible path by which men in could become women; namely, viz., they could have a sex change operation.

That is to say, we might say not merely (i) that men in those countries *would* become subject to those laws once they had the operation but, rather, (ii) that they *would be* subject to those laws, here and now, precisely because of the existence of that possible path by which they might become women and hence subject to those laws.

We may well be tempted to try to draw a line between some of those examples and others (particularly, perhaps, the last), saying that in some of those cases people would genuinely be subject to the law here and now because of the possible paths in question whereas others would not. And drawing a line somewhere along that continuum may indeed be the correct response, in some sense or another.

What we here want to point out, however, is not so much the possibility of drawing a line as the existence of the continuum. People might be more (or perhaps better, 'more nearly') subject to a law in a counterfactual way, the 'nearer' that possible world is to the actual world. Nearness relations among possible worlds is a vexed topic which we cannot resolve here. But, intuitively, the possible worlds in scenarios 1 and 2 (starting to make sausages or opening an online betting shop) are nearer the actual world than is the possible world in scenario 3, which also involves your moving countries. And all of those scenarios involve possible worlds nearer the actual world than is the possible world in scenario 4, which involves a sex change operation.⁷²

C.

If 'nearness of alternative possible worlds' seems too mysterious for the present purposes, here is another version of broadly the same thought that might be less so.

In the cases we describe above as involving 'more distant possible worlds', there are two distinct steps that are required in order to fall afoul of the law. Take the case of the Iranian law requiring women to dress modestly. For a male in Iran to violate that law, he must (1) first have a sex-change operation and then (2) venture out in public without being modestly dressed. For someone who started out as a woman in Iran to violate that law, in contrast, only one of those two steps is required, namely, venturing out in public without being modestly attired. Arguably, people who would be subject to the law only as a result of a two-step process would be 'less subject to the law', in some sense, than those who would be subject to the law through a one-step process.

D.

There is another distinction we might make among possible worlds depending not so much on nearness as on the nature of the transition that would be involved in the shift from this world to that. Specifically, in some cases the transition requires some volitional intervention on the part of the person for that person to become subject to the law in question.⁷³ In the first instance whether or not a volitional intervention is required looks like a binary distinction; but given that some volitional interventions require more effort than others, perhaps that distinction is in the end graded.

Return to the case of the law requiring US citizens to register for the military draft

⁷² As David Lewis (1973, p. 52) similarly says in explicating the 'nearness' relation among possible worlds, 'It is more possible for a dog to talk than for a stone to talk, since some worlds with talking dogs are more like our world than is any world with talking stones.'

⁷³ Or a volitional act on one's part (such as changing one's citizenship) to avoid being subject to the law.

when they turn 18 years old. US citizens who are currently only 17 years old would arguably be currently subject to that timeless law, even if it has narrow-scope content, because it will 'automatically' come to apply to them when they turn 18. No volitional acts on their part are required for that to happen.⁷⁴

Contrast that with the case of men in Iran or Saudi Arabia, who will become subject to timeless, narrow-scope laws there that apply only to women only if they have a sex change operation. That requires some volitional acts on their part (assuming the sex change is indeed voluntary, of course). And precisely for that reason, we may be more hesitant to say that, here and now, they actually would already be subject to those laws.

This approach seems to give the wrong result for the Bavarian non-sausage-makers, however. A volitional act on their part is required to become Bavarian sausage-makers and hence to become subject to laws with narrow-scope content that apply only to Bavarians making sausages. Yet there seem to be grounds for thinking that, even on a narrow-scope reading of the content of that law, Bavarian non-sausage-makers would be more nearly so than Germans living in other *länder* (Saxony, for example).⁷⁵ And there seem to be good grounds, derived from those considerations (along with various others, of course), for thinking that non-sausage-making Bavarians should be given a vote on even timeless laws with narrow-scope content governing sausage-making in Bavaria.

E.

If 'subjectedness' is indeed graded in any of those ways, a problem arises for the All Subjected Principle. Presumably those who would be less subject to the law should, according to it, have less of a claim to a vote in making the law than would those who would be more subject to it. But how to accommodate that fact within the All Subjected Principle is an open question.

One solution would be to specify a 'threshold' for what counts as 'subjected enough' to qualify for a vote. But that approach runs in the difficulties discussed above. Another solution would be to give people who would be 'less subject to the law' less of a say in the making of that law. However, that runs counter to the All Subjected Principle's aspiration to track real existing democratic practices. There, people either have a vote on all of a polity's laws or on none of them. And insofar as they have rights to 'less of

⁷⁴ Beyond of course the volitional acts required for them to stay alive. But arguably those do not count (not as heavily anyway), perhaps because they are more 'ordinary' and less 'special' volitional acts, or perhaps because they require less effort.

⁷⁵ On a wide-scope reading of the content of the law, they would of course be fully subject to the law already.

a say' than a full vote – rights to give speeches or write letters to legislators or newspapers, for example – those rights are in practice enjoyed by everyone, whether or not they would be subject to the proposed legislation.

VII.

The upshot of this discussion is, at the very least, that being 'subject to the laws' is not a straightforward primitive notion that can be invoked casually without further elaboration. 'Subjectedness' comes in several variants, with importantly different implications for who should be given a vote pursuant to the All Subjected Principle.

But each of those variants has 'counterintuitive' consequences, judged by the standard (to which the All Subjected Principle's 'realism' aspires) of the practices of real existing democracies. On some analyses of 'subjectedness', the All Subjected Principle would end up extending the franchise well beyond its current limits. On some other analyses, it would end up giving someone a vote on some but not all laws of a polity; or it would end up giving some people a vote on some laws and other people a vote on other laws. Each of those outcomes negates claims of its advocates that it is more 'realistic' in better tracking existing practice compared to the competing All Affected Principle.

Those are 'internal' challenges to be resolved within the All Subjected Principle. And, as we have said, each of the available solutions seems to pose problems that are themselves problematic in ways that are internal to the All Subjected Principle and its aspirations toward 'realism'.

There are also other challenges that are somewhat more 'external' to the All Subjected Principle. Notice that one sense of 'subject' is 'exposed or open to, prone to, or liable to suffer from something damaging, deleterious, or disadvantageous'.⁷⁶ One can in this sense be subject to many decisions of one's state – going to war, exiting a treaty regime, declaring a state of emergency, closing borders or whatever – that do not involve enactment of any legislation.⁷⁷

This seems rather embarrassing for proponents of the All Subjected Principle, understood as it ordinarily is in terms of giving people a vote in the making of laws. People ought presumably have democratic control over those decisions for the same reason that they ought have democratic control over the making of laws. But the sense in which they are 'subject to' those decisions is clearly different.

What seems to be involved in those sorts of cases it is more a matter of 'being

⁷⁶ *Oxford English Dictionary*, q.v. 'subject (adj.)', definition 4.a.

⁷⁷ At least in the first instance: down the track, going to war might require legislation for conscription, taxes, etc.; but people's right to a vote over that further legislation hardly exhausts the reason for thinking they should have a vote over the decision to go to war.

affected' by policy decisions than it is of 'being bound' by a law. Such thoughts lead us once again to suppose that the All Subjected Principle probably is best seen as a subset (albeit perhaps a particularly important subset) of the All Affected Principle.⁷⁸

For purposes of this paper, we have tried as far as possible to proceed as if the All Subjected Principle were a wholly freestanding principle. But at various points we have found ourselves driven toward, at the very least, supplementing it with the All Affected Principle. Seeing the All Subjected Principle as a (perhaps very special) subset of the All Affected Principle might in the end be the best way out of the conundrums we have encountered in trying to explicate a defensible notion of what it truly is to be 'subject to the law' in the ways that matter for electoral enfranchisement.

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⁷⁸ Cf. Arrhenius (2018), pp. 106–7.

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Forced Emigrants and Homeland Politics: The Stakeholder Principle²

This paper examines the political influence of forced emigrants in their countries of origin, in particular the political influence they wield informally and outside electoral politics. After considering two prominent principles of inclusion that might be used to assess the legitimacy of this influence—the all-affected interests principle and the all-subjected principle—it argues for and adapts the 'stakeholder principle': those with a stake in the flourishing of a political community are entitled to a proportionate say in relevant decisions. The paper then examines, through illustration, the different types of interests that forced emigrants have at stake in their countries of origin, the decisions in which they are therefore entitled to have a say, and the relative degree of say to which they are entitled. It concludes by identifying key tensions between different sets of stakeholders.

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² This work is adapted from Ashwini Vasanthakumar, *The Ethics of Exile: a political theory of diaspora* (Oxford University Press, 2021). Parts of the relevant research was supported by the Marcus Wallenbergs Stiftelse [MMW 2015.0084] and presented at and written in the Institute for Futures Studies in Stockholm.

Diasporas have a well-documented impact on homeland politics. They are instrumental in founding nation-states and instigating civil conflicts, but also in the more prosaic politics of election campaigns, development funding, and foreign policy-making. In this paper, I explore the political influence of exiles in their countries of origin and assess the legitimacy of such influence.

I define exiles as individuals forced to flee their homes but who retain an orientation towards their countries of origin.³ Consider, for example, the Sri Lankan Tamil diaspora. From 1983 to 2009, the Sri Lankan government was engaged in a civil war with the Liberation Tigers of Tamil Eelam (LTTE), a secessionist armed group that sought to create an independent nation-state, *eelam*, in the northern and eastern provinces of the island. The armed conflict, one of the longest running in South Asia, led to more than 100,000 casualties and prompted hundreds of thousands of mostly Tamil civilians to flee the country. Nearly a million Sri Lankan Tamils have settled outside Sri Lanka since the conflict began and have established large exilic diasporas in North America and Europe.

The Tamil exile community proved instrumental in supporting the LTTE, publicizing the Tamil nationalist struggle, and sustaining the secessionist war. They lobbied host governments and international organizations to criticize the Government of Sri Lanka and fed information to international media outlets to expose human rights abuses. Many also provided financial support and diplomatic cover to the LTTE through legitimate businesses operating as fronts, donations, and a 'tax' levied on businesses and individuals – which involved no small amount of coercion. During this armed campaign, the LTTE, among other things, assassinated Tamil dissidents in Sri Lanka and abroad, recruited children into its forces, and ethnically cleansed Muslims from the territories under its control.⁴

The Sri Lankan Tamil exile community exemplifies the modern, conflict-created diaspora, some members of which seek to realize their political aspirations through nation-building from afar. In these respects, it is similar to the Kurdish, Eritrean, Sikh, and Irish exilic diasporas, among others. These conflict-created diasporas are often accused of instigating and sustaining conflicts the bloody consequences of which they are spared; on this reading, exiles are 'armchair revolutionaries' engaging in the morally hazardous politics of 'long-distance nationalism.'⁵ Many members of these

³ For an elaboration of this definition, see Vasanthakumar, *The Ethics of Exile* (2021).

⁴ See, e.g., Daniel Byman et al., *Trends in Outside Support for Insurgent Movements*, (RAND Institute 2001); Human Rights Watch, *Funding the 'Final War': LTTE Intimidation and Extortion in the Diaspora* (March 15, 2006) Available at <http://www.hrw.org/en/node/11456/section/1>. International Crisis Group, *The Sri Lankan Tamil Diaspora after the LTTE* (February 23 2010) Available at <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/186-the-sri-lankan-tamil-diaspora-after-the-ltte.aspx>.

⁵ Benedict Anderson. 1998. *The Spectre of Comparisons: Nationalism, Southeast Asia, and the World*. London: Verso.

exile communities, however, see things somewhat differently. They claim to be participating as members, and on an equal footing, with those who remain behind. Whether or not Tamils should seek national independence and statehood, should engage in an armed insurgency to that end, and should support the LTTE in that struggle – on this view, these were all questions that Tamils abroad had the standing to answer, in virtue of their identity and irrespective of differences in their position or perspective.

Indeed, exiles have formally been included in referenda deciding these questions. The South Sudanese independence referendum, held in 2010, enfranchised on an equal footing the several hundred thousand South Sudanese living in the diaspora, including in Australia, Canada, the United States and Europe.⁶ Perhaps more significant than formal inclusion are the informal ways in which exiles influence the homeland. They can be influential in electoral politics even when they don't have a vote. Croatians abroad donated \$4 million to Franjo Tuđman's presidential campaign in 1990, helping to secure his victory.⁷ The Armenian diaspora has been credited with the electoral defeat of President Ter-Petrosian, who advanced policies with which they disagreed and which potentially served to undermine their influence.⁸ And outside electoral politics, exiles continue to exert substantial influence. They can sustain armed conflict by raising funds and providing political cover for armed insurgents. Without resorting to arms, exile communities can vocally criticize and embarrass the homeland regime, denouncing its human rights violations; they can influence the homeland's foreign and trade deals, for example by pressuring their host governments to impose embargoes or sanctions; and they can inform collective memory by funding the construction of memorials in the homeland that honour the victims of atrocities many in the homeland are eager to forget.

Similar such interventions are routinely made by foreign governments, humanitarian agencies, human rights organisations, professional bodies, and journalists. Exiles, however, do not claim to be concerned outsiders or well-meaning professionals. They claim that in spite of their physical absence from the homeland, they remain insiders entitled to shape its collective life. I defend this claim, albeit in limited form.

⁶ More than 99% of those who voted in the referendum, part of the 2005 peace agreement between the Sudanese government and Southern Sudan, voted for independence. Even though the diaspora vote might not have been outcome-determinative, commentators from Sudan urged the diaspora to vote, insisting that "it is your right and your destiny that is being decided...." Dau Reng, "Diaspora votes have no significant impact in South Sudan Referendum: Southern Sudan Diaspora Votes have No Significant Impact on the Referendum Results," *Sudan Tribune* (30 November 2010).

http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=37104.

⁷ See "Diasporas: a world of exiles" in *The Economist*, January 2, 2003. Available at http://www.economist.com/node/1511765?story_id=1511765.

⁸ See Yossi Shain, *Kinship and Diasporas in International Affairs* (University of Michigan Press, 2007): 145–150.

I argue that in virtue of their identification with the homeland, exiles belong, no matter where they reside, to what Rainer Baubock calls a ‘stakeholder community,’ which centres around the homeland but spills out beyond its territorial boundaries. As stakeholders, exiles are entitled to participate in those collective decisions, actions, or developments in which they have a stake and to the extent they have a stake. The degree of influence to which exiles are entitled in any given issue in the homeland therefore depends on the nature of the interest they have at stake in that issue, and the degree to which it is at stake.

An important implication of this argument is that exiles’ identification with the homeland suffices to give them *some* say. Their perspectives and preferences can systematically diverge from those prevailing in the homeland *without* undermining their validity in collective deliberations. Exiles can pursue political goals and ideas irrespective of their relationship or resonance with those in the homeland. This raises the spectre of ‘armchair revolutionaries’ and revives Michael Walzer’s concerns about disconnected critics and the violence and domination their politics can engender. Walzer seeks to mitigate these dangers by policing the boundaries of who has adopted alien values and attitudes. As I argued elsewhere,⁹ policing this boundary is a misguided enterprise; moreover, it misdiagnoses the salient point of disconnect as one of identity when it is in fact one of interest. As I apply it, the stakeholder principle addresses Walzer’s concerns by restricting *how much* of a say exiles should have without denying that they have one. An expansive basis of membership is thereby tempered by a restrictive entitlement to influence.

In what follows, I situate the question of exile influence in the broader question of who is entitled to participate in collective decision-making more generally. I then develop the stakeholder principle advanced by Rainer Baubock, who addresses the question of expatriate voting, to the case of exile influence more generally. I argue that the stakeholder principle admits of a hierarchy of stake and say and focus on three types of interests or stakes exiles have in homeland politics. I outline what comparative say these stakes entitle them to, a framework which helps assess the informal influence that exiles exert back home, guides third parties who are often instrumental in enabling exile influence, and informs what institutional mechanisms might be appropriate if exile influence is to be formalised. The risk of exiles interfering in or otherwise dominating homeland politics arises not because of *what* they say, but because some exiles have too much of a say in some issues – and risk drowning out the voices of others other exiles and of those left behind.

⁹ Vasanthakumar 2021.

Principles of Inclusion

Who is entitled to a say in collective decision-making is a foundational puzzle in democratic theory: the boundary problem.¹⁰ It refers to the challenge of deciding, democratically, who should take part in collective decision-making given that in the first instance, recourse to democratic decision-making is itself unavailable. Instead, some principle of inclusion is needed.¹¹ Principles of inclusion serve two functions: they operate as a normative ideal that can be used to *assess* existing arrangements and practices, and they operate as a practical decision method that can be used to *design* institutions from the ground up.¹² For the most part, I will look to principles of inclusion as normative ideals and focus on assessing political influence rather than designing the institutions that enable it. This is appropriate in the context of exile, given that exile influence is rarely institutionalised; in fact, because exile politics often arises in opposition and as a corrective to extant political institutions, it resists institutionalisation. As a normative ideal, principles of inclusion speak equally to the question of who should be *excluded* and apply equally to non-democratic polities. And because I am assessing the effect exiles have on the homeland, often informally, I understand 'having a say' as exerting influence rather than participation.¹³

There is a burgeoning literature on the 'boundary problem.'¹⁴ I will provide only

¹⁰ Various referred to as the 'boundary problem', the 'problem of inclusion', and the 'problem of constituting the demos', the question of who ought to participate in collective decision-making is seen as a fundamental anomaly of democratic theory. As Robert Goodin notes, "Logically, constituting the demos – in the very first instance, at least – cannot itself be a product of ordinary democratic decision making." Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives" in *Philosophy & Public Affairs* Vol 35 (1): 40–68, 43.

¹¹ The boundary problem has become all the more acute in the context of globalisation: existing collectives are inadequate when issues arise that transcend boundaries and require more broad-based collective action; when, due to greater integration, the actions of one collective have far-reaching consequences for others; and when—perhaps most relevant to the instant inquiry—members of a collective leave but remain involved.

¹² Gustaf Arrhenius, "The Boundary Problem in Democratic Theory" in Folke Tersman (ed) *Democracy Unbound: Basic Explorations I* (Filosofiska institutionen, Stockholms Universitet, 2005): 14–29

¹³ On some conceptions, participation may be more demanding in that it requires participants to see themselves as engaged in a joint endeavour, requires some minimal epistemic resources, and calls for responsiveness amongst participants.

¹⁴ See, e.g., F.G. Whelan, "Democratic Theory and the Boundary Problem", in Pennock, J. R., and Chapman, J. W. (eds) *Liberal Democracy* (New York UP, 1983); David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37 (2009): 201–228; Hans Agne, "A Dogma of Democratic Theory and Globalization: Why Politics Need not Include Everyone it Affects," in *European Journal of International Relations* 12 (2006): 433; Gustaf Arrhenius, "The Boundary Problem in Democratic Theory" in Folke Tersman (ed) *Democracy Unbound: Basic Explorations I* (Filosofiska institutionen, Stockholms Universitet, 2005): 14–29; Sofia Nasstrom, "The Challenge of the All-Affected Principle," in *Political Studies* 59 (2011): 116–134; Lars Bergstrom, "Democracy and Political Boundaries," in Folke Tersman (ed) *The Viability and Desirability of Global Democracy*, (Filosofiska institutionen, Stockholms Universitet, 2007); Ben Saunders, "Defining the demos," *Politics, Philosophy and Economics* 11(2012): 280–301; Sarah Song, "The Boundary Problem in Democratic Theory: why the demos should be bounded by the state," *International Theory* 4(1): 39–68 (2012).

an overview of these discussions in order to better situate the argument from the stakeholder principle. Two candidate principles of inclusion are prominent in discussions of the boundary problem: the ‘all affected interests’ and the ‘all subjected’ principles. The ‘all affected interests’ principle holds that those affected by some decision are entitled to a say. ‘All affected interests’ has immediate intuitive appeal but can seem to generate implausible outcomes: for example, that when multiple suitors propose marriage to the same individual, they are all entitled to vote on any final selection since it will affect them all;¹⁵ when a trade union is contemplating strike action, employers are entitled to participate in its deliberations,¹⁶ and in the context of political decision-making, everyone in the world, including future generations, are entitled to vote in a political community’s decisions.¹⁷ These putative outcomes arise from vagueness about what it means to be affected and about what it means to have a say. As Gustaf Arrhenius has noted, how expansive the ‘all affected interests’ principle will be depends, ultimately, on what it means to be affected: on the nature of the interests that must be affected; on the extent to which they must be affected; on whether beneficial as well as detrimental consequences count; and on whether they must be possibly, probably or only actually affected. These outcomes also arise from the assumption that ‘having a say’ mimics a vote, in that everyone has an *equal* say at a *single* moment of decision-making. Since different decisions will implicate different individuals’ interests, political boundaries would presumably need to be redrawn with each decision to include only those affected; and, because these individuals’ interests will be implicated to different degrees, they would be entitled to cast differently weighted votes. Because the ‘all affected interests’ principle admits of a hierarchy of stake and say, it seems unequal to the task of setting the stable boundaries of a political community within which individuals deliberate and decide as equals over a period of time.

The ‘all subjected’ principle putatively avoids some of these problems. Under the ‘all subjected’ principle, only those who are *subject* to a collective’s decisions are entitled to participate in its decisions – typically those who are within a collective’s jurisdiction. At its heart is the intuition that “an elementary difference exists between being affected by the decisions of a state and being governed by the laws of that state.”¹⁸ For,

¹⁵ Robert Nozick dismisses the ‘all affected interests’ principle as implausibly over-inclusive. He presents the hypothetical example of a woman whom four suitors wish to marry. He notes that whom the woman decides to marry will significantly affect her life, the lives of the four suitors, and the lives of the women these men would otherwise marry. And yet, he concludes, it seems absurd that all of these putatively affected individuals are entitled to a say in the woman’s decision. Robert Nozick cited in Arrhenius, “The Boundary Problem,” at 10–11.

¹⁶ Lars Bergstrom notes that employers and customers are potentially affected by a trade union’s decisions, but this does not seem to entitle them to participate in the trade union’s deliberations over what actions to take or demands to make. Lars Bergstrom, “Democracy and Political Boundaries,” at 12.

¹⁷ Goodin, “Enfranchising”, at 56.

¹⁸ Claudio Lopez-Guerra, “Should Expatriates Vote?” at 224.

to be governed by the laws of a state is to be subject to the use of coercive force, and unless those who are so subject can see themselves as the authors of those laws, their autonomy is violated. According to its proponents, coercion undermines autonomy, distinguishes being bound from merely being affected, and calls for greater justification through inclusion.¹⁹ On its face, then, the ‘all subjected’ principle is less expansive than the ‘all affected interests’ principle; it counsels for the political inclusion of long-term residents, but otherwise does not challenge existing boundaries to the same extent.²⁰ Ultimately, however, the ‘all subjected’ principle can also underwrite expansive and fluctuating boundaries. For one, extra-territorial jurisdiction increases the number of individuals subject to a state’s coercive power, potentially grounding far more expansive participation.²¹ Moreover, a collective’s actions are not exclusively legal in form. Although the coercive force of law undermines individuals’ autonomy in a particularly acute and visible way, it does not exhaust the ways in which their autonomy is undermined. If the coercive use of force calls for participation, the ‘all bounded’ principle must account for the ways in which a collective’s decisions undermine the autonomy of outsiders who stand beyond the reach of its laws but not its actions. And then it, like the ‘all affected interests’ principle, is more or less expansive depending on what conception of coercion or autonomy it operates with. To my mind, the ‘all subjected’ principle collapses into the ‘all affected interests’ principle, where being subject to coercion is a particular conception of what it is to be affected. Indeed, on many accounts the implications of both overlap.²²

There are variations within these principles and others besides. I only want to highlight a few features of these discussions to better situate my arguments about exile participation. First, many discussions of the boundary problem tend to treat a principle of inclusion as both a normative ideal *and* a practical decision method, eliding the differences between the two. As a result, a principle of inclusion is called on to identify the morally salient basis for inclusion *and* be practically feasible – even though

¹⁹ Miller, “Democracy’s Domain,” at 221. Coercion may have other features that call for special justification. For example, an action that undermines another’s autonomy may be coercive only when the actor intentionally and deliberately undermines another’s autonomy. Or, an action may need to be directive in content in order to be coercive. *Id.* at 220.

²⁰ There are other reasons that the boundaries of a demos may coincide with the territorial boundaries of the state. See Song, “The Boundary Problem,” and Ben Saunders, “Defining the Demos,” *Philosophy, Politics & Economics*, 11(3) 280–301 (2011).

²¹ Bob Goodin, “Enfranchising All-Subjected, Worldwide,” *International Theory* 8(3): 365–389 (2016).

²² The implications of the ‘all affected interests’ and the ‘all bounded’ principles overlap substantially: those who will consistently and comprehensively be affected by a polity’s decisions – who are bound by those decisions—are entitled to vote, and those who are affected by these decisions are entitled to participate through non-electoral mechanisms. Both principles typically prohibit the exclusion of individuals who are long-term residents, can call for some degree of participation from those who outside the polity, and exclude tourists.

these have different criteria of success and may even operate at cross-purposes. Furthermore, the question of political participation is often reduced to the question of who is entitled to vote in general elections, both because this remains the preeminent form of political inclusion and is a useful heuristic device. As a result, however, principles of inclusion are sometimes hampered by the logic of voting: an equal say at a single moment of decision-making. A principle of inclusion is therefore tasked with identifying the morally salient feature so as to design actual decision-making methods, where what counts as practically feasible is conflated with familiar electoral practices. Much turns, then, on policing the conceptual boundaries of being affected or being subjected, since these are taken to be threshold conditions after which individuals are entitled to an equal say.

As a normative ideal, however, a principle of inclusion is not beholden to the logic of voting nor indeed to the exigencies of institutional design. And even if it were, the focus on voting is myopic. Even formal political processes contemplate several points of influence on collective decision-making, from public deliberation, to special interest lobbying, to campaign financing. And in democratic deliberation, groups that have particular interests at stake in some decision may claim that they have a perspective that should be given particular weight, and to which representative decision-makers should give particular attention.²³ Our existing democratic practices allow for far greater variability and nuance than countenanced by the logic of voting. In any event, the focus on voting is beside the point for our purposes. Exiles typically cannot rely on the state to formally include them, and in any event, may not wish to work within state institutions. Where exiles pursue informal avenues of influence, assessing, rather than institutionalising, this influence is the central task.

Exiles as Stakeholders

In the context of expatriate enfranchisement, Rainer Baubock advances the ‘stakeholder principle’: those whose individual autonomy and wellbeing are linked to the collective self-government and flourishing of a particular polity are entitled to a say in its affairs.²⁴ By focusing on electoral rights, Baubock aims to make sense more generally of transnational citizenship, and in particular whether it can be legitimated with norms of inclusion and equality. And Baubock limits his inquiry to the participa-

²³ For example, in debates about policies that will disproportionately affect some group – women and laws regarding reproductive rights—we might think that particular constituents were entitled to have their perspectives given greater weight either because of the nature of the interest or the degree to which it is at stake.

²⁴ Rainer Baubock, “Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting,” *Fordham Law Review* 75: 2393 (2007).

tory rights of *citizens* settled abroad; in this regard, his inquiry is more narrowly focused than mine. However, in order to assess the legitimacy of expatriate voting, Baubock considers the more general question of who is entitled to a say. After surveying a number of different approaches including republican citizenship, territorial residence, contribution, and ethno-national community, Baubock proposes that citizenship be understood as “stakeholding in a self-governing polity,” whereby members’ “circumstances of life link their future well-being to the flourishing of a particular polity,” and they have an interest not only in political outcomes back home but also in participating itself.²⁵ Under this principle, Baubock offers a qualified defence of expatriate voting.²⁶

I take Baubock’s insights on expatriate voting and extend them to exile participation more generally, expanding the scope of the ‘stakeholder principle’ to those who are not citizens and to consider modes of political influence other than voting. In brief, I argue that exiles belong to a stakeholder community that centres around the homeland, that includes citizens, residents, and others, and are entitled to a say in homeland affairs. The ‘stakeholder principle,’ however, admits of variability and means that different stakeholders are entitled to a different say in different decisions. In particular, it highlights the variability amongst exiles, and allows us to assess discrepancies between how much relative influence they are entitled to and how much they actually wield. By way of illustration, I examine three types of interests exiles have at stake in the homeland: identitarian interests; tangible interests, such as property and familial ties; and an interest in political status itself. These interests will be at stake in different types of decisions and to different degrees, and will generate correspondingly varied entitlements to influence. These interests are not exhaustive, but I focus on them because they illustrate the range of interests exiles can have, the relative weight to be given to different stakeholders, and the potential conflicts between different types of stakeholders. My aim here is only to provide a framework for assessing the legitimacy of exile influence, and to illustrate how that framework can diagnose and resolve conflicts between different stakeholders. In assessing exile influence, I consider only the relationship between exiles and the homeland, even though these arguments might equally speak to the political inclusion of exiles in their communities of exile.²⁷

Recall that exiles are defined as those who were compelled to leave their homes but who retain an orientation towards the homeland. By definition, the homeland is

²⁵ *Id* at 2422.

²⁶ See, also D. Owen, “Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem,” *Ethics & Global Politics* 5(3): 129–152 (2012) and K. Angell, “A Life Plan Principle for Voting Rights,” *Ethical Theory and Moral Practice* 23: 125–139 (2020).

²⁷ See, e.g., Ruvi Ziegler, *Voting Rights of Refugees* (Cambridge University Press 2017).

or contains ‘constitutive communities’ in whose flourishing exiles’ wellbeing and autonomy are tied up—albeit to varying degrees.²⁸ The identification with a collective that generates special duties also generates an interest in that collective. Call this the identitarian interest and exiles with this interest, identitarian stakeholders. Exiles’ identitarian interests give them a stake in the continued viability of the community, in participating in it, and in advancing a particular conception of its collective identity and values. Thus, exiles might be entitled to a say in those questions that range from the very existence or autonomy of the community to questions relating to the care of sacred sites or objects; to questions of whether a community should seek independence or settle for autonomy to questions of how a war memorial should be designed. Typically, participating in collective decision-making is only instrumentally related to protecting or promoting individual interests; with identitarian interests, having a say is intrinsic to the interest.

Given its subjective nature, many are sceptical of identitarian interests. Claudio Lopez-Guerra argues that

nationalistic feelings cannot serve as the basis for enfranchisement. In fact, emotions of no kind are sufficient. Some genuinely humane people, for instance, could be *deeply* affected (perhaps even to the point of suffering psychological and physical sickness) by events throughout the world such as war or violations of human rights. But it would be ridiculous if they were to proclaim themselves, for that reason, ‘citizens of the world’ and demanded the right to vote all over the planet.²⁹

Baubock agrees that nationalist sentiments will not suffice to be get a vote, insisting that the interests that make one a stakeholder, on his account, cannot be ‘purely subjective.’³⁰ Identification may not entitle one to vote in elections. And the occasional bout of nationalism, empty pronouncements that are little more than exercises in vanity and self-aggrandisement, may not entitle one to any say at all. There is no shortage of nationalists in exile who revel in the poetics of suffering and loss in entirely self-serving ways. But I want to resist the idea that interests should be dismissed simply because they are intangible. To do so misunderstands the nature of the identitarian interest. It is not merely that exiles are emotionally affected by events back home, or

²⁸ Yael Tamir, *Liberal Nationalism* (Princeton University Press 1993).

²⁹ Claudio Lopez-Guerra, “Should Expatriates Vote?” *Journal of Political Philosophy* 13(2):216–234, 231–232 (2005).

³⁰ Baubock insists “an interest cannot be purely subjective. Emotional attachments or nationalist sentiments do not suffice for qualifying as a voting citizens.” It’s worth noting here that the form of influence under consideration are equal voting rights. Baubock 2007, 2421.

that they have a cultural affinity to the homeland. These would only be members of the diaspora. Exiles, on the other hand, have their wellbeing implicated in communities back home because of the nature of their identification. In short, an identitarian stake is entailed by identification, properly understood.³¹ Indeed, for exiles this stake is especially acute.³² Unlike other emigrants, exiles were forced to leave – departing the homeland is not a *part* of their individual narrative but a disruption of it. And this forced departure often comes on the heels of being denied standing as a member by others back home. And although they have different social roles and identities available to them in exile, they may be less able or willing to step into them. Exiles' identification with the homeland is especially fraught and their identitarian interests especially weighty.

Second, some exiles retain tangible interests in the homeland, such as real property and business interests. Call these exiles the property-holders. These are often cited for grounding a right to participate for non-residents generally.³³ These interests bear special relevance to exiles in two related senses. First, exile is often a pretext for seizing property. The state, or other powerful groups such as corporations or dominant ethnic groups, persecute a group to leave, treat their property as abandoned, and seize it to make way for, say, development projects or to change the demographic composition of a region. And second, their homes and livelihoods are essential for exiles' ability to return and re-establish their lives. On this basis, exiles would be entitled to influence those policies or decisions that impinge on their property interests. Precluding them from doing so would thwart their ability to return and would perversely reward those who use exile to effect land grabs and alter, irreversibly, the cultural identity of a region whilst undermining the continued viability of that identity.

Finally, some exiles have an interest in political membership and regularised status; call them the basic stakeholders. If it is a cliché to describe citizenship as the 'right to have rights' then it is one for a reason: the security and reliability that political membership provides enables individuals to form settled expectations and pursue plans,

³¹ A version of Lopez-Guerra's 'genuinely humane' individual might be the individual who has very particularistic ties to a community without having any contact or apparent membership in it. Consider Wannabe Sven, an individual born and raised in Canada with no connection to Sweden, who has never visited Sweden, and who does not know any Swedes, but who cultivates a strong interest in Sweden, learns Swedish, listens exclusively to Abba and Ace of Base, and avidly follows the news in Sweden. Would this improbable individual, who likely only exists in the fevered imagination of the philosophy seminar qualify as an 'identitarian stakeholder'? As per the dialogical account of identity I develop elsewhere, without more, Wannabe Sven cannot experience the world as a Swede; he may be affected by events in Sweden but his flourishing and wellbeing, properly understood, cannot be implicated. Wannabe Sven would be entitled to express views about events in Sweden and might even have epistemically superior views relative to others, but he does not have a stake.

³² See, also Guerra, 'Should Expatriates Vote?', 231.

³³ See, e.g., *Frank v. Canada (Attorney General)*, 2019 SCC 1.

and ideally, also protects them against arbitrary violence and discrimination. Individuals have a basic interest in political membership, which remains a prerequisite for them to enjoy robust political, social and economic rights, and for them to formulate different conceptions of the good and pursue various life plans. In this regard, an interest in political status can be understood as an interest in having interests. Many in exile live in a state of political and legal limbo. Indeed, the majority of the world's refugees – more than 15 million or 78 % of the global refugee population – are in a protracted refugee situation.³⁴ This limbo is exemplified in the refugee camp or the detention centre, where exiles are physically isolated, but also when they live, undocumented, in the shadows of the communities into which they have fled. Exiles lack robust rights and remain vulnerable to sudden arrest, detention or deportation by the state, or to exploitation by others. Given this vulnerability, exiles' lives are suspended, as they are unable to engage in social and economic relations, practice their professions, enjoy family life – they are unable to conceive of and pursue any life plan. This suspension illustrates the basic interest that individuals have in membership in a political community. Indeed, the standard solution for long-term exiles has been to find membership in some community: through integration into the political communities in which they presently reside; through resettlement to a third country; or through repatriation. The challenges to each of these is several. Exiles whose lives remain in limbo thus have very fundamental interests at stake in resolving the circumstances that led to their expulsion so that they may return and resume their lives. In this respect, they are roughly speaking on par with residents in the homeland.

I have outlined three types of interests that exiles can retain in the homeland: identitarian interests, property interests, and basic interests in political status. The stakes these interests create range from the relatively circumscribed, such as a house, family farming plot, or business, to ones that encompass individual and collective identities, to the very conditions that enable individuals to lead decent lives. How the stakeholder principle applies to these interests will call for a case-by-case analysis, but I can make a few general points. Even though there may be a hierarchy of stakes – basic interests are more weighty than identitarian ones – there is no logical priority between them. An exile with no basic interests at stake may still be an identitarian stakeholder; in those decisions that implicate identitarian and basic interests, she would be entitled to some say in decisions that implicate the basic interests of others, albeit a lesser say.

³⁴ UNHCR, Global Report 2018 at 22. The UNHCR defines these as a situation where at least 25,000 refugees from a single country of origin have been in the a given host country for five or more consecutive years. The UNHCR's figures exclude Palestinian refugees, who fall under the mandate of UNRWA. According to UNHCR, this is "a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile." UNHCR, *The State of the World's Refugees – 2006*, Available at <http://www.unhcr.org/publ/PUBL/4444d3c829.html>. See Fig 5.1 for a list of UNHCR-designated 'protracted refugee situations', defined as a period of exile that exceeds five years.

These interests can be mutually reinforcing and so lead to variability within a class of stakeholders, when some exiles have multiple interests at stake, and the existence of one amplifies the other. For example, insofar as exiles' interest in their property back home is partly tied to its importance in enabling their ability to return, property-holders with no intention to return simply have less at stake than those who are basic stakeholders who must return home.³⁵ And for those exiles whose dispossession is also an exercise in engineering demographic change, identitarian interests may also be at stake.

In the next section, I elaborate on the say that stakeholders are entitled to, in what decisions, and to what degree – and how to resolve conflicts between stakeholders. Before I do so, I want to address – and dismiss – two other bases for influence that exiles might advance. Exiles, and emigrants more generally, might point to their contributions as entitling them to a say. Remittances from emigrants, as a whole, to developing countries exceeds US\$500 billion, which is three times the amount of official development aid and which amounts to more than 10% of the annual GDP of 25 developing countries.³⁶ 'No vote, no banknote' was a rallying cry from Mexicans abroad when they demanded secure rights to retain citizenship status and voting rights.³⁷ Beyond general remittances, exiles can point to support they provide to political movements and organisations back home: they provide funds, diplomatic cover, and lobby for political support. In many cases, resistance movements are sustained by those abroad. These contributions, exiles might claim, entitle them to a say. There are, however, two problems with this line of argument. First, one cannot purchase a say: economic contribution is widely recognised as a morally indefensible basis for influence and one that violates the fundamental commitment to democratic equality.³⁸ But even setting this aside, funding and political assistance are the ways in which exiles wield influence; arguing that that these *justify* exiles' influence is an exercise in circularity. At issue is precisely whether exiles' economic contributions and political support are legitimate interventions in homeland politics—and importantly, understanding when they are impositions, sustaining political movements that are creatures of exile and find no resonance back home.³⁹

³⁵ This is not to deny that they have a stake, but only that they have a lesser stake. It also suggests the possibility of compensation as a substitute for a say. See Saunders, 'Defining,' 2012.

³⁶ Leveraging Migration for Development: A Briefing for the World Bank Board (September 2019), 14–19.

³⁷ López-Guerra, 'Should Expatriates Vote?', 229.

³⁸ López-Guerra, 'Should Expatriates Vote?', 230.

³⁹ An exile's economic contributions matter only insofar as they are proxies for the exile's identitarian interests in the homeland. By themselves, these contributions do not legitimize the influence the exile wields in the homeland, and an exile cannot purchase a stake that then entitles her to a say. Additionally, these contributions may be an imprecise proxy: they may be a function of the resources available to the exile, and may be motivated by private concerns, such as assisting family members, rather than associative duty.

Conversely, exiles might claim that it is precisely the *absence* of interests that warrants their input. As disinterested individuals, the argument goes, exiles' judgment is impartial and their participation untainted: including the *unaffected*, Michael Frazer argues, can improve the quality of a collective decision and thereby benefit those who are actually affected by it.⁴⁰ First, it's important to note that if exiles' participation is sought because of their impartiality, expertise or judgment, then exiles are not being invited to participate *qua* exiles but rather *qua* experts. At least in some cases, exiles would be thus entitled. Perhaps they have become academics whose research focuses on politics back home, or they are now researchers with international NGOs who focus on the region relevant to the homeland. Their status as an exile may account for why they developed expertise in an area, but it is this expertise that gives them standing and not their status as exiles – the claim under scrutiny here. As it happens, exiles are rarely disinterested, impartial observers. They are unwilling outsiders, have faced violence or mistreatment at the hands of powerful actors back home, and regard their well-being as tied up with the fate of those left behind. At most, exiles can claim that they do not face the immediate consequences of certain decisions, and can therefore pursue long-term goals undeterred by short-term costs. Exiles will not give up long-cherished aspirations precisely because they do not pay the price, and will ensure that a group or political movement stays the course. Because exiles do have vested interests in the homeland, however, this is less a recipe for impartiality and more for a morally hazardous politics, a worry that is especially acute in the context of conflict.

Having a Say

A political community can thus be conceived of as forming the heart of a stakeholder community, which spills over its territorial boundaries and beyond the reach of its jurisdiction, and as containing several smaller stakeholder communities. These stakeholder communities admit of variability both amongst exiles and between exiles and residents: in which issues they have a stake, how much of a stake, and how much of a say they are thereby entitled to. This variability is especially acute in a stakeholder community that includes residents in the homeland, exiles whose basic interests are at stake, and exiles whose well-being is implicated in the flourishing of their home communities. They are all stakeholders entitled to a say in homeland politics, but in different decisions and to different degrees. Inevitably, this will call for case-by-case analysis, but the following rules-of-thumb may be useful: exiles with only identitarian

⁴⁰ Michael Frazer, "Including the Unaffected," *The Journal of Political Philosophy*, Volume 22(4): 377–395 (December 2014).

interests will have a stake in a wider range of decisions but generally a lesser say relative to others; exiles with property interests have a stake in a much more circumscribed set of circumstances, although these stakes can be enhanced when interrelated with other interests, such as identitarian or basic interests; and exiles with basic interests at stake are generally on a similar footing as those who remain back home. It might seem unwieldy, but this variability can be given some institutional effect. More important, it allows us to assess informal political influence, to diagnose deficits and excesses, and to resolve conflicts between different types of stakeholders – potentially guiding the conduct of third parties, such as international organisations and foreign governments, who are often essential for enabling exile influence.

By way of illustration, let us return to the context I opened with: conflict-created diasporas whose relevant stakeholder community includes residents living at the frontlines of a civil war, internally displaced persons avoiding that frontline, exiles living in refugee camps or with precarious status, and exiles settled in North America, Australia and Europe. The Sri Lankan Tamil stakeholder community, for example, includes Tamils living as refugees in India, including about 60,000 in refugee camps and 25,000 children born in India, who have precarious status;⁴¹ Tamils who are settled in the global North; and Tamils living in the North and East of Sri Lanka. Simplifying, we can say that all three groups have identitarian interests; Tamils living in India and Sri Lanka also have basic interests at stake; and some within each category will have property interests at stake. Suppose there are discussions on how to resolve competing property claims in the North and East following the war. We could imagine the following stakeholders: property-holders; those whose basic interests are tied to these property claims, either because they live in Sri Lanka or must return from India; and those with only identitarian interests, because restoring the title of Tamils and Muslims maintains the distinctive regional identity of the North and East.

I focus on two sets of decision-making: decisions relating to the resolution of conflict, and decisions relating to memorialisation after conflict. These do not exhaust the collective decision-making exiles are entitled to be involved in, but they illustrate some of the features of exile inclusion and the application of the stakeholder principle. Consider ceasefire agreements or peace talks where the creation of an autonomous region – as opposed to an independent state – is proposed as a settlement to a long-running civil conflict. Such a decision implicates a range of interests. Some stakeholders, such as those residents in the homeland and in refugee camps, will have basic interests at stake; others will have only identitarian interests at stake. Based on

⁴¹ This precarity has been exacerbated by the recent Citizenship Amendment Act, which expedites the citizenship of some persecuted groups living in India but notably excludes Sri Lankan refugees, sparking fears that they will be repatriated. “Missing from India’s Citizenship Law: 100,000 Sri Lankan refugees,” Reuters (December 25 2019).

what I have argued so far, the latter group of stakeholders with only identitarian interests should have the least say relative to others. In the stylised Tamil stakeholder community I discussed earlier, those settled in the global North would be entitled to the least say, and those in the North and East and India, the most.

This is at odds with claims often made by exiles, including those in the global North. Addressing the 2010 symbolic referendum held on Tamil nationalist aspirations, the Tamil Youth Organisation insisted that all Tamils were entitled to an equal say, irrespective of where they were born and where they live.⁴² In principle, this means that second-generation Tamil exiles who have never set foot in Sri Lanka are entitled to an equal say as someone who has never left the North of Sri Lanka. In order to counter the hierarchy I have established, identitarian stakeholders could make three claims, which combine backward and forward-looking considerations. First, they could point to *past* sacrifice and suffering. Exiles may have sacrificed a lot for the dream of independence, they have suffered a great deal in conflict, and they have lost loved ones. They might claim they are entitled to a say in how to resolve a conflict in virtue of the suffering and sacrifice it has caused them. They are affected in virtue of the past.

Second, exiles can point to the involuntary nature of their departure and, in effect, the wrongful deprivation of their stake. To deny them a say would not only unfairly penalise them for this wrongful deprivation, but it would reward states who engage in such conduct. Among other things, it would create perverse incentives for states: so long as they can exclude members for a sufficiently long time, they can forever deprive them of a voice. Or put another way, this penalises exiles for seeking and attaining a modicum of security after fleeing the homeland, forcing them to choose between securing their basic interest and building flourishing lives in exile and relinquishing their claim to the homeland.

And finally, exiles could claim that exiles with only identitarian interests at stake might assert a version of the argument from unaffectedness, claiming that it is precisely because they lack a material stake that their voice is so crucial. Stakeholders tired of the conflict or eager to leave refugee camps may be willing to accept any settlement, even if it makes inadequate concessions. Those who have less basic interests at stake, on the other hand, might be better able to judge the merits of a peace proposal and ensure that core values and commitments – say, to independence – are not forgotten.

⁴² “[R]egardless of where we were born or raised or to which citizenry our passports say we belong, in the face of genocide, all Tamils are equal. British Tamils therefore have a rightful place in the Tamil struggle, alongside Tamils in the homeland.” “Referendum on *Eelam* is our Right and Responsibility,” Tamil Youth Organisation – United Kingdom, February 5th, 2010. Available at <http://www.tyouk.org>.

On this account, these exiles' voice should be attended to *precisely because* they do not have basic interests at stake: their judgement is not clouded by their desperation, they are more alive to identitarian interests and commitments, and they can thus adopt a long-term view.

All three claims fail to ground an equal say for identitarian stakeholders. They conflate acknowledgement and redress of a wrong with participation in decision-making, and they confuse a lesser say with having no say at all. Take the claims grounded in past suffering and sacrifice. These certainly call out for acknowledgement and redress. They might entitle exiles to an equal say in decisions relating to memorialisation, which I discuss later. They might call for compensation and redress in reconciliation processes. Similar arguments apply to the wrongful deprivation of membership and its attendant rights. This past suffering may call for acknowledgement, compensation, and might underscore decisions by the state to restore exiles' membership and their attendant rights of residence, even several generations on.⁴³ But, unless and until exiles' more fundamental interests are thereby affected – because they do or must return – they are not entitled to an equal say in collective decisions going forward. It is the interests that individuals have at stake in present decisions that entitles them to a say in a decision;⁴⁴ not the past injustices of how those stakes came to be. To be clear, those past injustices matter, as do the perverse incentives they can create. But, the appropriate response to them is not forward-looking enfranchisement. For one, having a say is not an adequate remedy for, or a deterrent to, wrongful deprivation of membership and residency rights; restoration of these is.⁴⁵ Moreover, granting those with a lesser stake a greater say than they are entitled to only wrongs other stakeholders because it over-includes—in effect, it dilutes their voice. What past suffering and sacrifice and the wrongful deprivation of membership *do* underscore, however, is the importance of the identitarian interest and the fact that it is not mere nationalist bluster. Past wrongs, therefore, entitle exiles to various forms of acknowledgement and redress, and they make acute their identitarian interests, entitling them to *some* say in collective decisions. The solution to all manner of wrongs and harms is not inclusion in collective decision-making.

This brings me to the third claim: that it is precisely because identitarian stakeholders have no basic interests at stake that they can more impartially assess different options. They might know to reject a peace proposal that precludes the possibility of future independence; to agitate for international recognition of genocide when those

⁴³ In 2015, Spain offered citizenship to the descendants of the Sephardic Jews expelled in 1492.

⁴⁴ Future generations may be enfranchised because they will have interests implicated in decisions today; present decisions, however, cannot affect interests in the past.

⁴⁵ See López-Guerra, 'Should Expatriates Vote?', 230–1.

in the homeland are keen to build relationships with its perpetrators;⁴⁶ and to insist that collective claims to land not be relinquished for the exigencies for peace. First, the other two claims based on past wrongdoing might seem to illustrate the opposite of impartiality; the desire to correct past wrongs might, for example, make some exiles recalcitrant, blinded by their grievances to the present suffering of others. But even if their judgment is not clouded, there is an inherent tension between stakeholders with basic interests at stake, who may be more willing to compromise and negotiate, and stakeholders with primarily identitarian interests at stake, who are more willing to stand on principles the price for which they do not pay. As I suggested earlier, this is the basis for a morally hazardous politics, for the bonds of identity cannot always overcome the divergences in interests. Someone else is standing on the frontline, someone else's children can no longer go to school, someone else's life is in a state of suspension. This does not impugn the aspirations and preferences identitarian stakeholders express; it only limits the weight these preferences should be given. This mitigates the dangers of armchair revolutionaries whilst recognising they have the standing to speak to their community as insiders and to offer helpfully critical perspectives.

Collective decisions related to memorialisation, on the other hand, seem to call for a more equal distribution of influence. Collective narrative and memory are integral components of collective identity; as I have already argued, members of a collective, simply in virtue of their identification with it, are co-equal interlocutors on collective identity. Indeed, the perspectives of exiles would be especially salient in confronting past and ongoing violence. Exiles' testimony makes public wrongdoing that was inflicted under cover of night or, although widely known about, was never openly acknowledged. It confronts members with the painful realities of what was done by prior regimes, often in their name, and illustrates the dangers of backsliding. It accounts for why some groups are so aggrieved and may help to justify concessions that would otherwise attract resentment. And it expands the collective self-understanding of those in the homeland so that they recognise there are constituencies outside their territorial boundaries. In short, exiles' testimony is instrumentally valuable not only because it alerts outsiders to political crises back home, but also because it informs *insiders*, and can help inform and sustain more enduring solutions. Identitarian interests alone are sufficient to ground a say, and an equal say, in both the content and form of collective memory and memorialisation. When those in the homeland are uninterested in acknowledging those forced to flee, then exiles are entitled to insist otherwise, including by securing acknowledgement elsewhere.

⁴⁶ The Armenian diaspora was deeply critical of President Ter-Petrosian's willingness to take the 1915 genocide off the Armenian political agenda and his attempts to normalize relations with Turkey, and funded a campaign that contributed to his eventual resignation. Yossi Shain, *Kinship and Diasporas*, at 147.

Tamil commemoration of the war dead has faced restriction in Sri Lanka, where the state only acknowledges military losses.⁴⁷ There are no war memorials to the thousands of Vietnamese who died fighting for the South, their cemetery is left untended, the statue of a soldier long since removed.⁴⁸ Instead, Vietnamese exiles commemorate them in the Museum of the Boat People and the Republic of Vietnam in San Jose, and every year mark the fall of Saigon by gathering at the Vietnam War Monument in California.⁴⁹ This acknowledgement can be sought to correct the obfuscation of perpetrators but also of those in the homeland keen to move on. To be sure, the insistence on memory might be, all things considered, imprudent or unwise; the point here is only that all stakeholders are entitled to a say in collective remembering. If it is a mistake to remember, remind, or to forget, then it is a mistake that is theirs to make.⁵⁰

These two examples illustrate the ways in which exiles are entitled to a say in substantive political decisions, and in shaping political processes that lead up to these decisions. They are a simplification, not least because political influence does not proceed through discrete decisions. Moreover, there are *prior* decisions on how to prioritise different domains of decision-making, for example, on what weight to give memorialisation when it might interfere with more immediate efforts at conflict resolution. These, and other difficult dilemmas, confront transitional justice processes;⁵¹ my aim has only been to show how to approach the inclusion of exiles and to appreciate the different interests they may have at stake. These two stylised decisions are therefore still useful as a heuristic device. And they illustrate a few implications I want to highlight of the framework I have developed here.

The first is that exile inclusion is not merely a question of tactical expediency or prudence. Exiles may be included in ceasefire agreements, peace negotiations and transitional justice processes in an *ad hoc* manner and sometimes as a concession, made out of fear that they will otherwise be ‘spoilers’ who scupper political reconciliation from afar.⁵² Establishing that exiles are stakeholders in these processes, often

⁴⁷ For example, eight years after the war ended, a Tamil Jesuit priest was visited repeatedly by military intelligence after organising a service to remember Tamil victims.

⁴⁸ Viet Thanh Nguyen, *Nothing Ever Dies: Vietnam and the Memory of War* (Harvard University Press 2016), at 33–40.

⁴⁹ This might extend also to an entitlement to inform how the war is remembered in the United States. Nguyen notes that Vietnamese veterans have sought, with limited success, to be included in memorials elsewhere in the country. *Nothing Ever Dies* at 44–45.

⁵⁰ See David Rieff, *In Praise of Forgetting: Historical Memory and its Ironies* (Yale University Press 2016) and Avishai Margalit, *The Ethics of Memory* (Harvard University Press 2003).

⁵¹ Colleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge University Press, 2012).

⁵² Of course, considerations of democratic legitimacy are not always dispositive in determining exile involvement in political processes back home. Institutional capacities often do not allow for fine-grained distinctions in

with basic interests at stake, recognises them as individuals *entitled* to participate – it recognises them as one of the constituencies with which political reconciliation should be sought, and without whom any such political reconciliation is incomplete or otherwise infirm. This tells in favour of exiles' participation even when this participation is inconvenient. And it tells against blanket participation that gives all exiles an equal say, or gives them a say that amounts to little more than a rubber stamp on decisions taken by others.

Second, the stakeholder principle as I have applied it suggests that exiles are entitled to political inclusion on an *on-going* basis. Although questions around exile inclusion arise most prominently in those processes related to conflict resolution, which is what I have focused on, exile inclusion is not restricted to these contexts. That is, exile inclusion is not a feature of politics in extraordinary or exceptional times. On the contrary. For those political communities that have produced significant exile communities, exile involvement can endure beyond the resolution of conflict. Identitarian interests may be held by exiles but also their descendants, and even if they are not entitled to anything approaching an equal vote, they are still entitled to some say.⁵³ One of the legacies of political conflict and exile for a political community is an enduring constituency abroad.

And finally, exile can also be a *site of* political reconciliation. Diasporas that are instrumental in political conflicts back home often become another arena of political conflict. It is not only that the perpetrators of wrongs in the homeland and the victims of these wrongs may eventually end up in exile. It is that wrongs are perpetrated and suffered *in* exile. In the Tamil, Vietnamese, and Cuban exile communities, for example, dissident voices were silenced through intimidation and violence, and financial support was extorted, so that a climate of fear and silencing followed many into exile. Rather than be treated only as instances of ordinary criminality in their host communities, these are appropriately regarded as another arena of political conflict that also call for political reconciliation.

The framework provided by the stakeholder principle is difficult to operationalise. This is true of any normative principle, perhaps, but is especially true of a principle

influence, and differentially weighted votes will often be both practically infeasible and politically controversial. Political inclusion also has symbolic value, signifying that those who were once expelled as traitors are now welcomed back into the fold; it may therefore be a measure of correcting historical injustice. Formal voting procedures may, then, be over-inclusive in some respects, enfranchising those exiles who are not, on democratic grounds, entitled to a say or entitled to an equal say.

⁵³ Chaim Gans suggests, for example, that "voting rights on matters concerning the homeland could be granted only or mainly to those living there. Voting rights on matters of national identity and membership that have little to do with life in the homeland...could be granted equally to all members of the national group." Chaim Gans cited in Baubock, "Stakeholder Citizenship," *supra* n.6 at, 2415; emphasis added. On a practical level, this could be institutionalized through limiting external votes to referenda on pan-national issues, or electing expatriate delegates who may cast a vote only on certain issues.

that explicitly calls for so much variability. The stakeholder principle allows us to diagnose problems with the *relative* influence that different stakeholders wield even when we cannot quantify that influence. Under the ‘stakeholder principle’ as I have developed it here, the relevant question is not *whether* exiles are entitled to influence but *when* and *how much* – where this is always measured comparatively. It is not that identitarian stakeholders are entitled to some particular quantum of influence; it is that they are entitled to more or less than other stakeholders. The variability in voice that the stakeholder principles require accommodates the conflicting interests within stakeholder communities by granting some more of a voice than others but without erasing the fact of conflict or denying any stakeholder a voice. In this regard, the ‘stakeholder principle’ recognises that a shared identity generates interests without creating a unity or uniformity of interest. In particular, it alerts us to tensions between different types of stakeholders – tensions that many stakeholders are eager to paper over.

These fine-grained distinctions between different stakeholders, the decisions in which they have a stake, and to what extent, are difficult to draw and even more difficult to give effect to. But this framework does have some practical implications. For one, the stakeholder principle alerts us to the different points, formal and informal, at which individuals exert political influence, often by shaping public discourse and shifting political opportunity structures, points of influence that are prior to and often more powerful than casting a ballot. This is acutely the case for exiles, who are formally excluded, but extends to the general case as well – a general case in which exile inclusion increasingly is a feature rather than an aberration. This variability is not easy to implement but neither is it impossible to do so. Once we expand our focus from elections, we can appreciate the myriad ways in which individuals have, or can be granted, a say. It is not uncommon that exiles write articles, op-eds, send delegations, make public statements, admonish fellow stakeholders and accuse them of betrayal, or congratulate them on their foresight and commitment to peace. These interventions are appropriately accorded some standing, if only in public discourse. And the home state could formally include them, for example, by creating ministries dedicated to diaspora affairs, including exiles in debates about memory and memorialisation. Indeed, the growth in diaspora institutions suggests that sending states increasingly are responsive to demands for inclusion. These institutions reveal the myriad ways in which stakeholders can be recognised as such and given a voice but without resorting to enfranchisement.

Second, and relatedly, a *principled* framework for exile inclusion constrains the cynical use of diasporas. Political actors in the homeland may seek the inclusion of exiles who are politically sympathetic or affluent, who may be the stakeholders that clamour most loudly for inclusion but are the least entitled to it – at least relative to

those who are poor, precarious, and critical of the homeland regime. When political actors seek to selectively include some exiles but not others, the stakeholder principle can be used to illustrate who counts as a stakeholder, in what domains, and to what extent. Importantly, it also constrains claims *within* the exile community who, especially when they are based in the global North, exert disproportionate levels of influence whilst claiming an entitlement to an equal say.

Third, this framework is useful for *third parties*, who are essential for enabling exile influence. Those stakeholders with only identitarian interests at stake in the homeland are those who, by definition, have secured their basic interests elsewhere. Often, this means relatively greater economic resources and political rights, including access to decision-makers in relatively powerful host states. This framework provides guidance on how third parties can assess the claims made by different classes of stakeholders. It also *constrains* third parties who may be tempted to grant excessive weight to some stakeholders. In places like Toronto, California, and Miami, exiles can be electorally significant; in a bid to woo them, local legislators might be tempted to amplify their perspectives with little regard to the interests of other stakeholders.

The ‘stakeholder principle’ helps us to diagnose correctly the normative worries that exile influence raises. Exiles are not inherently war mongers, armchair revolutionaries who instigate violence from afar, or spoilers and irritants in peace efforts. Nor, in virtue of their physical remove and the differences in attitudes and ideals it has fostered, are they interfering outsiders entitled to no say at all. Rather, they remain insiders entitled to *some* say. As a result, the solution to the moral hazards of what Benedict Anderson described as ‘long distance nationalism’ is not to bar exile influence; or, failing which, to treat exiles instrumentally, as a resource to be deployed in pursuit of political goals they had no role in shaping. The solution to these moral hazards is to recognise that exiles are insiders entitled to some say and to regulate how much influence exiles ultimately wield. The challenge is that those exiles with the least at stake are also often those with the greatest access to powerful third parties, and so might be those with the greatest influence.

Conclusion

In early 2010, nearly a year after the LTTE’s defeat in Sri Lanka, a symbolic referendum was held amongst Sri Lankan Tamil communities in Canada, the United Kingdom, France, Denmark, Norway, Australia and New Zealand, polling them on their aspirations for an independent Tamil state in Sri Lanka. In total, an estimated 200,000 voted, a number that included those who had never set foot in Sri Lanka. The referenda endorsed the secessionist struggle, and 99% of those who voted reaffirmed

their aspirations for an independent state.⁵⁴ At the time, about 100,000 Tamils were in detention camps in Sri Lanka, down from the roughly quarter of a million who were detained immediately after the war. In addition, there was the detention of suspected insurgents in black sites, torture, and disappearances. Tamils residing in Sri Lanka were excluded from this referendum on Tamil aspirations, as were the approximately 100,000 Tamil refugees living in India, many of whom have lived with precarious status for more than twenty-five years.⁵⁵

Policymakers encourage exile voting in homeland elections as a measure that vindicates refugees' political rights and that enhances the legitimacy of homeland governance, particularly in post-conflict contexts.⁵⁶ More, rather than less, participation is encouraged, with expanded democratic inclusion treated as enhanced democratic legitimacy. At the same time, however, policymakers also worry that exiles are 'spoilers' who prevent the peaceful resolution of conflict, instead sustaining armed conflict from afar.⁵⁷ I have argued against these two views. Exiles' entitlement to participate, certainly by voting, is not obvious or straightforward, and merely increasing exile participation will not by itself enhance the legitimacy of the processes and institutions in which they are included. It can in fact do the opposite. And exile influence that prolongs conflict is not *per se* illegitimate or morally unattractive, for exiles that sustain conflict do ultimately seek peace, but on terms other than the ones currently on offer.⁵⁸ When exiles fund opposition movements, write editorials in domestic or international papers, or pressure international actors to intervene, they do so as members entitled to participate in the political lives of the communities they have left behind. Exiles belong to the stakeholder community that forms around a political community and that consists of those whose well-being is implicated in its flourishing. The stakeholder community admits of variation in the interests that are at stake, and the degree to which they are at stake; members of the stakeholder community are therefore entitled to participate in and influence collective decisions to different degrees. Exiles are constituents in the stakeholder community, with basic

⁵⁴ Amongst those who voted, approval rates were about 99%. See Sam Jones, "British-based Tamils vote for independent state in Sri Lanka" in *The Guardian*, February 1, 2010. Available at <http://www.guardian.co.uk/world/2010/feb/01/british-tamil-state-sri-lanka>.

⁵⁵ Numbers are imprecise because not all refugees register. The majority live in the more than 100 dedicated camps across Tamil Nadu, whilst others live amongst the general population. See Organisation for Eelam Refugees Rehabilitation www.oferr.org; Akshaya Nath, "The ignored plight of Sri Lankan refugees in Tamil Nadu," *India Today* (June 9, 2016).

⁵⁶ B. Lacy, "Host Country Issues," *Voting from Abroad*, 137. IDEA Handbook.

⁵⁷ H. Smith and P. Stares (eds) *Diasporas in Conflict: Peace-makers or Peace-wreckers?* (UN University Press, 2007).

⁵⁸ *Id* at 10.

and identitarian interests at stake; they therefore have *some* standing in collective deliberations and decision-making. However, their say is limited: they may legitimately participate only in some decisions, and only to some degree.

The variable participation called for by the ‘stakeholder principle’ is difficult, but not impossible, to implement. And it is useful for enabling and assessing informal and *ad hoc* modes of political influence – the modes of participation most relevant to exiles, given that existing political institutions are inadequate or even hostile to their inclusion. The ‘stakeholder principle’ allows us to understand exile participation as the interventions of those whose voices ought to be attended to, even when they express perspectives and beliefs that are not prevalent in the homeland. Importantly, it enables us to determine when an exile is intervening in a decision over which she is entitled to no say, when her influence is excessive relative to other stakeholders, and when she is drowning out the voice of those to whom the collective deliberation and decision matters most. This critical perspective could fruitfully inform discussions in political communities about the role that exiles – and diasporas in general – should play in the homeland. Rather than casting exiles as either meddling outsiders or flamekeepers, and arguing over whether or not they are entitled to participate, such discussions could turn to *when* and *how* exiles ought to have some say.

This critical perspective also provides guidance to host governments and policy-makers, who are often instrumental in determining how much influence exiles ultimately wield in their homelands. Instead of embracing exiles as the authentic voice of their homelands or dismissing them as disgruntled grumblers, these key actors can more critically assess what weight to give exiles’ claims and with what political effect. In particular, it alerts third parties to the structural asymmetry amongst stakeholders: those whose basic interests are at stake are the most vulnerable, in virtue of which they often have the least voice, while identitarian stakeholders whose basic interests are secure have the greatest say.

This asymmetry was on display during the symbolic referendum held across the Tamil diaspora, in which exiles and other diaspora members settled in affluent societies are able to participate, but not Tamil exiles in refugee camps or Tamils residing in Sri Lanka—those whose lives continue to be materially affected by the war. The ‘stakeholder principle’ suggests that little normative weight should be given to such referenda, and certainly no political effect. The difficulty with exile participation, then, is not that exiles exert influence in homeland politics and seek to shape collective decisions and fates—exiles are constituents of the stakeholder community who are entitled to a say, even when they speak from a distance and with a perspective that does not prevail within the homeland. Indeed, it is permissible, and may even be desirable, that exile remains a space of dissent or difference, where first principles are

adhered to, memories of genocide kept alive, and long-standing nationalist aspirations upheld. Rather, the difficulty is that they exert too much influence, and their perspective overwhelms other constituents, who have most at stake in these collective deliberations and decisions. Without appropriate constraints, and even unwittingly, some stakeholders may end up imposing upon or even dominating others.

Axel Gosseries¹

Should Old Age Votes be Granted Less Weight?²

This paper explores two possible defences of age-adjusted voting weights in disfavour of older voters – or in favour of young ones. It first rejects two *prima facie* objections and then presents the idea of lifetime egalitarianism. It then presents and discusses two arguments: the “future residence” and the “differential lifetime” ones. It concludes that neither of them is conclusive.

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Introduction

The vote is certainly a key element in a democracy. It raises a set of important issues such as defining who should be entitled to vote (Goodin, 2007; Arrhenius, 2018), deciding whether voting should be compulsory (Brennan & Hill, 2014), finding out whether and why it should be secret (Brennan & Pettit 1990; Gosseries & Parr, 2017), assessing whether we have good reasons to prohibit trade in voting rights (Freiman, 2014) or ascertaining whether it should be associated with expressing reasons (Vandamme, 2018). The question addressed in the present paper belongs to these voting-related issues. It has to do with the role (if any) that age should play in electoral systems. More specifically, it focuses on *old voters* – hence neither on *young* voters nor on *old representatives*. And it focuses on adjusting voting *weight*, which may differ from plain disenfranchisement.

There is a twofold motivation underlying this paper. On the one hand, concerns about the intergenerational legitimacy of electoral arrangements have been repeatedly expressed at the occasion of pension reform or Brexit, to take just two examples. In a world of overlapping generations, how should we handle policy decisions that will affect voters in the future over very different lapses of time? How much should our democratic rules adjust to the degree to which different generations endorse different views on such issues? And should it matter whether these differences (if any) can be analysed as involving age effects or cohort effects? To illustrate, if differential voting on Brexit resulted mainly from age effects, the now young may also have voted for Brexit when becoming older. Would that have changed our view about whether Brexit was decided in a democratically legitimate way or not? On the other hand, this paper also reflects a general effort at contributing to a general theory of the fair uses of age limits (if any), and of the normative specificity (if any) of the age criterion.

The paper is structured as follows. I first clear two possible objections that readers puzzled by the mere reading of the paper's title may have in mind (sect. 1). Readers familiar with these debates in political philosophy may skip this first section. Having shown that the two objections don't entail a negative answer to the title question from the outset, I present the idea of lifetime (or "entire life") egalitarianism (sect. 2). I do so because one of the purposes of this paper is to find out whether arguments for age-based voting weight differentiation necessarily rely on this lifetime egalitarian intuition. Sections 3 and 4 follow and are the heart of the paper. They explore two possible arguments for granting differential weight to the votes of elderly citizens. I show how the two arguments differ and explore each of them on their own merits. In section 5, I put the two arguments into perspective before concluding. Note that while aiming at rendering the paper relevant to the "boundary" and the "specialness of age" litera-

tures, I will also point here and there at links with disability issues, to contribute to our understanding of the age-disability link.

1. Disenfranchising the young and adjusted voting weights

A first possible reaction that this paper's title may arouse is "How could age-based differential treatment *ever* be justified?". This reaction might rest on the twofold assumption that any age-based differentiated practice involves *ageism* – whatever this means exactly –, and that ageism should be combatted in the same systematic way and for the same reasons as racism or sexism. Admittedly, one could reply that it remains an open question whether the best way of fighting racism involves going colour-blind, including rejecting any form of race-based affirmative action. For colour-based differential treatment could be justified in cases in which it promotes the interests of potential victims of racial discrimination. The same might hold for age.

Yet, I wish to approach the matter from a different angle. The fact that we are still relying extensively today on age categories may of course be read as a sign that we did not completely get rid of unreflective ageist mental and social structures inherited from the past. I suspect that there is some truth in this. However, we could alternatively and/or simultaneously read the widespread persistence of age criteria as a sign that there is something morally acceptable or even commendable in using age criteria in some cases. This paper follows such a line of investigation. It hypothesizes that the range of cases in which age criteria could be defensible is broader than for race and sex. The specifics of age may lead to normative implications that differ from those we should endorse for skin colour or sex – and their social relations "race" and "gender".

Among age specifics, we can stress that *our age constantly changes* across the course of our lives, in a manner that strongly differs from the way in which we may change e.g. our sex and/or gender. In addition, advancing in age implies the *passage of time*, which may in turn affect our abilities or worldviews through various processes that spread across time such as learning/unlearning or strengthening/weakening processes. Moreover, we can look into the extent to which age is a statistically more reliable *proxy variable* than e.g. skin colour or sex for predicting certain abilities. Whenever it is, we can evaluate whether such reliability results from *biological* and/or from *social* factors, and whether such factors have an impact on the moral acceptability of relying on age proxies (Gosseries, 2014). Finally, our current age tells us exactly *how many years we have had the chance to live* so far and may help us predict how many years we are still likely to live in the future. This matters e.g. if we care about fairness between long-lived and short-lived people.

These are a few ingredients of a possible general assessment of age criteria. The

idea is to bridge age-related *facts* with their possible *normative* implications. Whether age criteria are sometimes acceptable or desirable requires careful argument, with some degree of normative complexity. Yet, we can conclude at this stage that claiming that some age criteria may be acceptable or required is not self-evidently absurd. Of course, what I have said so far leaves things open as to whether we are talking about early, middle or advanced age, as to whether we are referring to favouring the old or the young, or as to which goods or services are being considered. For instance, some readers may be willing to use age for access to health care (Gosseries, 2020) while stressing that voting is special. Hence, they could object: “How could age-based differential weighting *in voting* ever be justified?”. This is the second initial objection that I wish to address here.

There are two ways of responding to this voting-focused objection, building on two observations. First, the disenfranchisement *of the young* is widely practised in democracies. This suggests that age could be relevant for voting. Second, *differential weighting in voting* on grounds *other than* age is also widely practised in democracies. This suggests that departures from a too simplistic interpretation of “one man, one vote” might make sense. Both practices suggest that there is potentially nothing extraordinary about the proposal under scrutiny, insofar as it involves age on the one hand and differential voting weights on the other. The widespread nature of disenfranchising children and teenagers and of relying on differential voting weights suggests that there might even be grounds supporting them. Let me briefly consider each of these two angles in turn.

On the disenfranchisement *of the young*, the assumption is usually that early in life, age correlates well with the lack of some key competences deemed necessary to understand the political environment in which one is supposed to cast a vote. In that sense, disenfranchising the young can be seen as an incomplete and approximative substitute to a literacy test, concerned with ensuring that political rights be exercised in a meaningful way. We could of course revisit this “age-political competence” link empirically (e.g. van Deth et al., 2011), ask whether it involves some degree of self-fulfilling prophecy – i.e. disenfranchisement being one of the *sources* of political incompetence –, consider whether it might be wise to render the age-based legal presumption of political incompetence rebuttable, discuss whether we should lower the minimum voting age (e.g. Chan & Clayton, 2008; Nelkin, 2020), argue on whether we should leave it untouched while granting extra rights to vote to their parents (Bennett, 2000) or explore whether we should limit compulsory voting to specific age groups (Van Parijs, 1998: 306).³

³ See e.g. art. 9, 1904 Election Act, Swiss Canton of Schaffhausen - Compulsory voting till the age of 65. Retrieved on March 4, 2021: <https://www.lexfind.ch/tolv/191521/de>

While non-competence-based arguments are possible (Angell, 2020: 130-131), the assumption of an “age-political competence” link plays a key role in justifying the disenfranchisement of the young. Moreover, a context in which mentally impaired citizens have (regained) the right to vote in certain jurisdictions (Beckman, 2007), renders the question of whether we should lower or even drop the lower voting age limit especially meaningful. However, a key point deserves emphasis here: *none* of the two justifications for granting a lesser voting weight to *the elderly* that I will be discussing below rest on the assumption of *declining cognitive abilities* at an advanced age. And yet, while not focusing on the (dis)ability aspect, this paper *is* relevant for disability studies in several ways. Let me mention two at this stage. First, it shows that reasons for disenfranchising the young that tend to be competence-related and reasons for granting less voting weight to the old may significantly differ in nature. Second, and more importantly, it stresses that one could defend age-adjusted voting weights “for” the old without endorsing the view that age significantly correlates with the ability to vote, at least insofar as cognitive competence is concerned.

Let me now move to the second way of responding to the objection to differential weight in voting. It points at the fact that non-age-based differential effective voting weights are widespread in electoral systems, and at the fact that such practices may be justified. Actually, understanding this second aspect is even more illuminating for the present paper than looking at the specifics of age-based disenfranchisement of the young. This is so because it reveals some reasons for differential voting weight that are not ability-based in the strict sense, which is key since our arguments below will *not* rest on the “age-political ability” nexus. Now, by way of illustration, in the 2019 European elections, while each Maltese MEP represented around 80.000 inhabitants, each German MEP represented more than 850.000 inhabitants. This roughly means that the effective voting power of each Maltese voter was more than 10 times larger than the one of a German voter.⁴ This example leads to three questions.

First, is this a *widespread* phenomenon? The answer is “yes”. It has been traditionally salient in senatorial elections in bi-cameral systems and it still obtains in most electoral systems. Second, is this an *unavoidable* phenomenon? The demands of a strict “one man, one vote” are violated whenever we find ourselves in multiple-districts elections in which the territorially defined districts have different population sizes and in which they select a discrete number of representatives that have equal voting rights in parliament. In theory, we could engage in fine-grained re-districting with the goal of ending up with electoral constituencies of roughly equal population size. However, in real elections in which electoral districts often match historical territories and in which electoral populations fluctuate, this is hard to achieve. We could also

⁴ Apportionment in the European Union, Wikipedia.

adjust the voting weight of representatives themselves, to match the size of their electorate.

Hence, while it is certainly *possible* in theory to design electoral systems that reduce the effective voting weight differential, it is challenging to achieve it in practice. This leads to our third question: is it actually *desirable* to aim at cancelling out effective voting weight differentials? For while the idea of “one man, one vote” might be one attempt at encapsulating an important ideal of political equality, one may also consider other interpretations of the demands of political equality as well as other competing goals that a democracy may pursue. One may claim that democracy requires that we give extra weight to some votes *as a matter of political equality*. And one might alternatively claim that democracy requires that we give extra weight to some votes for the sake of ensuring the proper representation of the *diversity of interests or viewpoints*. These are two different intuitions.

The *first* intuition can reflect for instance the view that the best interpretation of the “one man one vote” philosophy is that one should have a voting right *proportional* to the degree to which one is potentially affected by decisions of the body we elect (Brighouse & Fleurbaey, 2010; Angell & Huseby, 2020). For instance, in several electoral systems, the electoral weight of non-resident citizens is typically lower than the electoral weight of resident citizens. One of the possible justifications is that they are less affected by the decisions back home (Lopez-Guerra, 2014: chap. 4). The *second* intuition reflects the idea that democracies are not only about aggregating votes, but also about deliberating on reasons offered by the different viewpoints of the electorate, through representatives. While ensuring gender parity among representatives can be read through the latter prism, the extra-weight of voters from smaller districts might actually be interpreted through both prisms (“equality as proportionality” and “diversity”). I am not claiming here that these matters are settled. I am simply saying that departures from “one person, one vote” are commonplace in our legal systems and that they are supported by *prima facie* plausible justifications.

To sum up, one should keep in mind three ideas. First, there are many contexts outside voting in which age criteria are used, some of which are often seen as *prima facie* acceptable or even desirable, especially when used at the disadvantage of the elderly in scarcity or zero-sum game contexts. Second, we do adjust voting weights to age in a radical way in most democratic countries, through reducing to zero the voting weight of those below a minimum age – typically 18. Third, the “one person, one vote” rule of thumb should be understood with care. There are various ways of interpreting its underlying logic, and there are various other goals that a democracy may pursue as well. In practice, there are different ways in which our electoral systems adjust voting weight to features other than age that depart from the “one person, one vote” slogan. This is relevant to the matter at hand.

2. Lifetime equality

As I said, resistance to adjusting voting weights on grounds of age may potentially come from a concern for political equality encapsulated in the “one person, one vote” slogan. Before proceeding with the vote-centred arguments, one more building block is needed, i.e. an understanding of the idea of *lifetime equality* (McKerlie, 2012). The latter implies that whether the demands of equality are met should not (merely) be assessed at a single point in time, in isolation from what happens at other points in time. Lifetime egalitarians claim that we should be concerned with equality over people’s entire lifetimes. We may want to give this concern a significant weight (moderate version), sometimes to the point that it may actually prevail over reducing period-specific inequalities (strong version). And we may even in the most radical version consider that spot inequalities don’t matter at all unless they lead to lifetime inequalities (Bou-Habib, 2011). Hereinafter, I will rely on the moderate version. The core intuition is that in assessing whether inequalities between two persons meet the demands of justice, we should ideally compare their entire lifetime opportunities, even if their lives are partly asynchronous. If done with a policy objective, such a comparison cannot simply be done retrospectively. Finding out whether generations are unequally treated will involve looking at their opportunities so far, as well as forecasting their respective futures. Note the difficulty of the exercise at hand: we need to compare two groups, one with a lot of its life behind and the other with a lot ahead. Hence, we are being asked to find out about inequalities between them, in a context in which we have a lot of (retrospective) information about one, and far less about the other. This is analogous to a situation in which we would be asked to assess inequalities between Hispanic Americans and African Americans in a world in which we would have a lot of information about the former group and very little about the latter.

There are three further important dimensions to keep in mind here. First, we have seen that the lifetime egalitarian intuition can come in various forms, ranging from the moderate to the radical one. Hence, there is no need to assume here that lifetime equality is the *only* dimension of equality that matters to egalitarians. We can perfectly hold the view that some concern for period-specific inequalities be reflected in the vote weighting we have in mind, or in any other policy under consideration. And I submit that the most defensible view on age will tend to be a dualist one, involving a lifetime intuition at its core together with other intuitions that go beyond the lifetime concern.

Second, it is key not to confuse the lifetime intuition with the *accomplished life* intuition (Wagland, 2012). The latter defends a specific way of connecting the lifetime

egalitarian intuition with age-based policy. It considers that, from a certain age onwards, we should assume that a person has had sufficient opportunities to accomplish the main things that a human life is meant to achieve. It may lead to the policy implication that beyond such an age threshold, the entitlement of elderly people – e.g. to access to health care – will be significantly lower than the one of people who haven't reached this age threshold yet. Yet, one may endorse the lifetime intuition without endorsing the accomplished life one and the discontinuity it involves.

Third, we should not reduce the lifetimetist intuition to a *longevitarian* one. The latter claims that longevity is one of the most precious goods and that what lifetime egalitarians should aim at is to equalize longevities in priority. While longevity is likely to matter for most lifetime egalitarians, we should not assume that going lifetimetist settles the matter as to whether equalizing longevities should be the central or even exclusive concern of lifetime egalitarians. How much longevity matters compared to other goods that render our lives valuable is a matter that is not automatically settled by the mere fact of endorsing lifetimetism. If we accept intensity-longevity (quality-quantity) trade-offs, we accept to exchange some longevity losses for gains in the quality of people's lives at specific moments in time. Longevitarianism is a claim that bears on how to handle such trade-offs.

Now, having specified some of lifetimetism's features, two further steps should still be completed. One needs a sense of how lifetimetism translates into age-differentiated policies. One also needs to say something on lifetimetism's potential implications for political rights (as opposed to e.g. health or labour rights).

Consider first the link between the lifetimetist intuition and age-based policy. We already pointed at two possible connections. An "accomplished life" understanding of lifetimetism may aim at setting an upper age threshold beyond which entitlements would more abruptly decline. A longevitarian understanding of lifetimetism may design age-based rights in order not to disadvantage those with a shorter life, typically through granting preferential rights to younger people. These two examples illustrate the following point: in addition to justifying forms of age-based differential treatment, lifetimetism will tend to privilege those that are *to the advantage of the young* – hence to the disadvantage of the elderly.

Another angle through which the connection between lifetimetism and age-based policy can be understood rests on a distinction between two lifetimetist defences of age-based policies: the neutralist and the affirmative one (Gosseries, 2014). According to the *neutralist* strategy, age-based measures are permissible as long as they *do not increase* unfairness – typically inequality – over lifetimes. For example, excluding young citizens from the right to vote or the right to work (through prohibiting child labour) will not be unfair if it does not lead to inequalities across generations over their lifetime. Note that the neutralist requirement is more often violated than we think. For

instance, differential longevity is such that age-based policy that disadvantages the young will also disadvantage the short-lived over their lifetime. Also, the fact that policies are not constant or that their effects are not constant through time either is such that age-based policies will more often than not violate the neutrality over entire lives requirement.

Be that as it may, the neutralist strategy differs from the *affirmative* strategy. The latter is not defensively claiming that age-based measures are permissible if they do not lead to unfairness over lifetime. Instead, it claims that some age-based measures are desirable or even required because of their ability to *reduce* inequalities over people's entire lives. Hence the claim of an affirmative lifetime egalitarian is not that such age-based measures are *not anisogenic* – i.e. they don't worsen inequalities. It is rather that these measures are actually *isogenic* – i.e. that they reduce inequalities. The challenge then consists in identifying which specific age-based measures tend to reduce lifetime inequalities. Measures that *increase* the rights of the young may do so. But we may not exclude the possibility that paternalistic impositions on the young such as prohibiting child labour and imposing early compulsory education might also reduce inequalities over lifetimes

As we said, one aspect to keep an eye on is whether the lifetime intuition plays a role in each of the *pro tanto* defences of lower weight for the elderly that will be discussed below. Whenever it does, the key question will be whether what we just discussed is as relevant for voting rights as it may be for e.g. education, labour, health care, insurance, housing or mobility policies. This is a complex question that depends on the very features of voting rights as a good and on the interaction between voting rights and other rights. Consider for instance freedom of expression. We could of course decide to reduce the freedom of expression of the elderly. And we could show that this may lead to equalizing the effective freedom of expression between short-lived and long-lived persons. However, we may nevertheless refuse to do so e.g. because of the priority of liberties over the equalization goal. At this stage, we cannot exclude that the same would hold for voting rights.

3. Age and future residence time

There is a variety of conceivable arguments to adjust the voting weight of the elderly downward – or the one of the young upward. The idea is not new and defences have been discussed in the literature (Van Parijs, 1998). Here, I want to contribute to this debate by focusing on *two* arguments for age-adjusted voting weights that I consider to have the strong *prima facie* plausibility, by examining them as *pro tanto* claims, and by bridging them with lifetimism. Let me present and assess each of them in turn, the second one being discussed in the next section.

Age can be related with residence in a place. Looking at how electoral systems tend to handle residence is therefore potentially relevant. On closer inspection, it turns out that there are *retrospective* and *prospective* ways in which we tend to render voting rights sensitive to residence, both being relevant to age. One of them adjusts the right to vote to *past residence* and the other to *future residence*. They are best illustrated by considering respectively the voting rights of *newly arrived residents* and those of *non-resident citizens*.

In the case of *newly arrived residents*, electoral systems typically impose a minimum residence time *before* individuals are entitled to vote, often independently from delays required to acquire citizenship. In such cases, I will assume that the measure does not primarily aim at predicting whether newly arrived residents are likely to stay in the future. Rather, I will assume that the measure rather reflects a concern for acquiring sufficient experience of the local life.

In contrast, in the case of *non-resident citizens*, granting them lesser voting rights has probably more to do with the idea that they are unlikely to be affected by future decisions than about the fact that they would not have been residents in the past. Of course, if we lowered voting weights progressively from the moment citizens left the country, we could be tracking both the degree to which they have lost contact with their country of origin and the probability that they may return in the near future, assuming here that the longer you have left the country, the less likely you are to return – admittedly a problematic assumption for emigrants that plan to return when they retire.

Hence, electoral systems adjust voting weights to past and future residence. While the former may to some extent be used to predict the latter, we can bracket their interconnection to focus on a normative issue: *should past residence matter more than future residence?* In other words, should a citizen who is about to move out on the day after election day have more voting weight than a person who just arrived on the day before election day? Answering this normative question requires a closer look at why residence matters. We could say that past residence tracks the extent to which one has been affected by state policies so far and that future residence tells us about the degree to which one is likely to be affected by the result of an election in the future. We can then ask in turn why “being affected” matters.

Consider three possible rationales for adjusting voting weights. First, if I am not affected by a policy, I lack the informal, *experiential knowledge* of what it entails concretely (*epistemic rationale*). Second, if I am not affected by a policy, I am less likely to *care* about this policy and to ensure that it is right (*motivational rationale*). Third, in the spirit of “no taxation without representation” and of Macpherson (1977)’s notion of “protective democracy”, if I am not affected by a policy, there is no need for society to shield me from it through granting me a say about it (*shielding rationale*).

One can then look at how these rationales interact with one another. There is a link between the epistemic and the shielding rationale. The former may stress the need to be properly informed in order to be able to adequately protect oneself. And yet, the epistemic rationale for adjusted weights does not need to be reduced to serving the shielding rationale.⁵ If voting is not merely about protecting oneself against others but also about being given a chance to express one's view about the common good, being knowledgeable enhances our ability to formulate sound policy proposals adjusted to a plausible view of the common good. Moreover, there is a link between the motivational and the shielding rationales. If I am likely to suffer the adverse effects of a decision, I may care about it both for my own sake *and* for the sake of others, as in the case of an airplane pilot who is also a passenger on the plane. Hence, the motivational rationale is concerned about me not being too harsh on others while the shielding rationale is concerned about others not being too harsh on me. Finally, there is a link between the epistemic and the motivational rationale. If I care more, I may try harder to gain knowledge, and if I know more, I may also become more careful.

Hence, it is important not only to distinguish the retrospective view from the prospective view on residence, but also to remain aware of the complexity of our three interrelated rationales. And yet, separating out several rationales neither tells us which one should dominate, nor which one connects best with past or future residence. On the latter issue, here are a few conjectures. First, an epistemic rationale putting a stress on experiential knowledge would probably insist more on past residence than on future one. However, it could still give some importance to future residence to the degree to which caring will entail the willingness to gain non-experiential knowledge about the possible impact of policies. Second, if residence is primarily meant to track the motivational dimension, then future residence will matter more than past one, leaving aside the predictive value of past residence for future residence and the fact that past residence may generate attachment to a country. Similarly, the need to shield oneself from State policies is probably best tracked by future residence than by past residence.⁶

As a result, unless we give priority to experience and first-hand knowledge over knowledge acquired from others, over carefulness about the future and over the need to be shielded against future power, we can conclude that *future residence matters more than past residence*. This is a core claim of this section and one that could admittedly

⁵ Thanks to L. Beckman for pressing me on this.

⁶ Some cases might be harder to interpret in this respect. For instance, citizens forced into economic or political exile by absurd labour policies, by restrictions of basic freedoms or by rule of law violations may *know a lot* and *care a great deal* about their home country and may definitely *need to be shielded*. But this case is less relevant to the comparison with age because there is no equivalent to the possibility of coming back home later on. See Lopez-Guerra (2014: 102-105). An additional complication is that non-resident citizens may also have an extra voting right in the country in which they reside.

be further explored and challenged. As a result, we could conclude that it is worse to delay the enfranchisement of newly arrived residents than to be quick at disenfranchising non-resident citizens. This probably also entails that *differences* in future residence time matter, even if it is unclear at this stage *how much* they should matter.

Now, what do these “residence-focused” considerations entail for age-differentiated voting weights? While age connects with residence time in both the prospective and the retrospective way, it does so in an inverse manner. Contrary to what often happens with actual residence, the stylized fact for age is that *the longer one has been present in the past, the shorter one is likely to remain present in the future*. We don’t live in a world in which we would typically *gain* additional life expectancy as we age - except perhaps for the very early stages of life that are less directly relevant for us here. Hence, in our world, if the purpose is to assign differential *voting* weights to different age groups, we need to *choose* between emphasizing past or future residence time. I defended the view that future residence time matters more for voting weights. As a result, younger voters should be given extra voting weight, which can be achieved through lessening the voting weight of the elderly.

This is what the logic underlying residence-sensitive voting weights may suggest for age-sensitive voting weights. From a dis/inability perspective, two points are worth stressing. First, the “future residence” (or “remaining residence”) argument for lesser weight to elderly voters *does not* rest on any assumption about their lesser *cognitive ability to vote while alive*. Hence, it does not involve dementia- or Alzheimer-related types of concerns. Admittedly, the motivational rationale may suggest the possibility of a lesser willingness to inform oneself about the future as one gets older. But willingness and ability can be separated from one another to some extent. Second, the argument still rests on another assumption that can be phrased in “ability” terms, namely one about a differential *ability to remain alive* between young and old voters. In a sense, we are talking about a *physical* disability impacting on people’s right to vote here, which is surprising. We could claim that while youth disenfranchisement is generally grounded on a lack of (non-physical) political competence, the current argument, insofar as it builds on a concern for future “residence”, builds on a lesser physical ability to remain alive of elderly voters.

In addition, while the analogy with residence-sensitive voting rights provides useful insights on possible justifications for age-adjusted voting weights, neither does it tell us about the argument’s robustness against objections, nor does it give us a sense of the relative weight of the argument compared to other considerations. Let me signal two concerns in this respect.

A first concern is that future residence in a country and additional life expectancy may differ in their voluntariness. We may assume that mobility *roughly* tends to be

more *chosen* than longevity. This may partly explain why future-residence-based differential voting weights might look *less controversial* than additional-life-expectancy-based ones. This adds to the fact that giving no weight to non-residents would probably compare better with giving no voting weight to *dead* citizens rather than to old citizens who are still residing with us – with the caveat that the dead are unlikely to return as living voters at a later stage, contrary to some non-resident citizens.

The second concern is that there are other visible traits than age that strongly correlate with additional life expectancy. We know that women or members of socially advantaged “racial” groups tend to live longer lives (Van Parijs, 1998: 305). Following the residence-sensitive logic would entail granting differential voting weights at a given age on grounds of sex or skin colour. In fact, additional concerns - to which I return in section 5 - will clash with this residence-based argument.

4. The long-lived and the short-lived

Let me now move to another possible argument in support of a lesser weight for elderly votes. The “future residence” argument considered differences in remaining life expectancy at different ages. It did not need to assume any differences in life expectancy *at birth*. The present argument adds this dimension of differential longevity. The “differential longevity” story then works as follows. There are short-lived and long-lived people in society. While all old voters are long lived, some young voters will turn out to be short lived, without us being able to tell whom *ex ante*. Let me bracket the additional fact that longevity tends to correlate with wealth – poorer people are more often short-lived. Let me also leave aside the possibility of flexible voting, such as votes storable during one’s lifetime (Casella, 2011) or beyond (Mulgan, 2003), or the idea of a lifetime voting budget that would be less sensitive to differential longevity. Here, I assume instead that our right to vote is uniformly spread across elections and that the total amount of voting rights automatically adjusts to the length of our lives. Hence, the cumulated lifetime power of long-lived people is stronger than the one of short-lived people. Old voters, since they are long-lived, have cumulated more potential political influence than those who will never reach their age. Is it unjust? Does it justify adjusting voting weights?

Let me address the first question first. Is it potentially unjust that long-lived voters will have accumulated more voting power by the end of their life? Consider two possible comparisons: pension schemes and food aid programs. In a pension scheme, the younger you die, the smaller the cumulated amount of pension benefits you will get. If pension benefits were manna from heaven, this would *not* add further bad luck to the fact that someone died earlier. However, pension benefits are the fruit of contributory efforts, rather than the result of manna from heaven. And in this respect, even

if they are part of an insurance scheme, the fact of short-lived persons ending up with a less favourable ratio of benefits over contributions *adds* further bad luck to their shorter life.

Contrast this with food aid programs. Imagine two individuals both in need of food aid from age 50 onwards, one dying at the age of 60 and the other dying at the age of 70. The latter will end up having received more food than the former. Is this *adding* further bad luck to their longevity differential? I would say “no” in this case. Assuming here that food is only needed when I am alive, not getting food beyond my death does not make me worse off. Similarly, if we stress the shielding function of the right to vote, it is reasonable to assume that we only need the right to vote while alive (see however Mulgan, 2003). The contributory dimension does not seem to play the same role in food aid as it does in pension benefits, and voting rights are more like food aid in this respect.

As a result, if we agree that the lesser amount of cumulated voting power enjoyed by the short-lived matches their lesser need for voting power, the fact that voting power adjusts to longevity *does not worsen* the situation of the short lived, in comparison to the one of the long lived. It does not add insult to injury. Yet, this does not mean that granting extra voting weight to the short-lived while alive *could not improve* their situation. The issue of course is then whether it is defensible to compensate the short-lived for their bad luck, for instance through granting them extra voting power - rather than through granting them an extra amount of other goods or services such as cash or access to health care.

I stressed in our discussion on non-resident citizens that we frequently adjust voting power with the aim of ensuring sufficient presence of perspectives from all electoral districts or with the purpose of adjusting people’s voting weight to the degree to which they are likely to be affected by collective decisions. Here, we move one step further to something like “redistributive voting weights”. The idea is to use the vote as a commodity to compensate for disadvantage in another domain – here longevity. A related strategy could consist in slightly adjusting the number of representatives of a district to the average income of its constituents, the poorer the electorate, the more electorally powerful it would be. Hence, granting extra voting power to the short-lived through weakening the voting weight of the elderly would be an instance of a general strategy granting more voting weight to the least advantaged.

The idea of adjusting political rights to wealth in a redistributive manner is far from absurd. This is so if we consider the degree to which wealth acts as a source of political influence, and the fact that alternatives to redistributive voting weights, such as reducing wealth inequalities through taxation or preventing wealth inequalities from translating to unequal political influence (e.g. through regulating campaign finance) face significant feasibility constraints (Machin, 2013). However, it is less clear

in the case of long-lived vs. short-lived people whether a voter's longevity (as opposed to his wealth) is itself a *distinct* source of extra influence – even if we also know that seniority in political office may, if we keep in mind that longevity allows for the accumulation of wealth over time, and if we remember that initially wealthier people tend to be more long-lived.

I lack room here for a full argument that would account for what renders the right to vote special and whether extra votes could not be used to compensate for a shorter life. In a nutshell, I would conclude here with two ideas. First, the fact that cumulated voting power adjusts to longevity *does not add* further disadvantage to the bad luck of being short lived. Second, if alternative strategies are available to compensate the short-lived, and if being short-lived is not a significant and distinct source of lesser political influence, I would resist pursuing the aim of compensating the short-lived through adjusting voting weights to their advantage, rather than through other means. Hence, I would endorse a presumption against a redistributive “differential longevity” case for age-adjusted voting weights.

5. Self-respect, the lifetime view and age differences in voting

Let me now put the two arguments into perspective. I will first point at a tension between them. I will then look into the connections among voting, self-respect and the lifetime view. Finally, I will discuss the evidence-sensitivity of the “future residence” argument.

I first want to stress a tension between the “future residence” and the “differential longevity” arguments for age-adjusted voting weights. The former claims that the elderly should have less voting weight *because of* their lesser *future* exposure to political decisions. In contrast, the latter claims that the young (among which the short-lived are overrepresented) should have more voting weight *despite* the lesser *future* exposure of short-lived people to political decisions. While both arguments converge on the same policy, their underlying rationales clash. One cannot simultaneously claim that *greater* future exposure requires extra power today (“future residence” argument) and that *lesser* future exposure should not prevent extra power today (“differential longevity” argument). Hence, a defender of lesser voting weight for the elderly will at best have to choose between the two logics.

This tension between the “future residence” and the “differential longevity” arguments also translates into the way in which these two arguments connect with the issue of disability. As I said, none of the arguments discussed here are premised on connecting age with any *cognitive* inability. The “future-residence” argument anchors lesser voting weight in the *lesser ability to remain alive of the elderly*. In contrast, the

“differential longevity” argument grounds greater weight to the young in the fact that short-lived people are more represented among them than among the old. This means that the lower voting weight of the elderly is premised this time on a *lesser ability to remain alive of some of the young*. Hence, both arguments care about inequalities in ability to stay. And yet, in one case, the disability is associated with older voters while in the other case it is attached to some of the younger voters.

My second point is about people’s sense of exclusion and self-respect (see e.g. Eyal, 2005). The reason why we should be especially careful about adjusting voting weights is the sense of lesser worth that they may convey. Admittedly, we are not advocating plain disenfranchisement here. Yet, in our societies, elderly citizens already experience a sense of exclusion in respects other than voting, e.g. through having to end their life in care homes in a significant amount of cases. We need to ensure that the electoral system does not worsen that.

Admittedly, the idea of respect and self-respect may interact with the lifetime intuition. Lifetimists might object to a rejection of differential voting weights: not taking the lifetime dimension into consideration could lead to disrespect too. This can in turn affect the way in which people could build their self-respect as well as the relationships they have with one another. Hence, self-respect does not necessarily need to be interpreted from an instantaneous perspective. This means that if an argument for granting lower voting weight to the vote of the elderly were premised on a lifetimetist assumption, it could provide one reason to consider it compatible with – or even required by – the idea of self-respect (see as well Beitz, 1989: 94). The differential-longevity argument for lowering the elderly’s voting weight is necessarily premised on a lifetimetist intuition. Non-lifetimetist views seem unable to capture a concern for the short-lived. Yet, the differential longevity argument also happens to be the weakest of our two arguments above. What this means is that the compatibility with self-respect of the future residence argument cannot be grounded on a lifetimetist interpretation of respect and self-respect. I won’t dig deeper here. I would simply submit however that for the purposes of an all-things considered argument on age-adjusted voting weights, this dimension of self-respect is key and would constitute a core objection to such age-adjusted weights “against” the elderly (see as well Queralt & Gonzalez-Ricoy, 2020).

Let me then move to my last – and related – point. One would need to discuss whether people’s sense of self-respect should be taken as given or whether we should only consider reasonable grounds for lack of self-respect. Let us assume here though that the elderly’s sense of self-respect would be potentially under threat if we were to lower the weight of their vote. We may of course ask whether this concern for self-respect should not also have implications for the disenfranchisement of the young. In other words, if self-respect were to provide us with a sufficient reason for sticking to

a full voting weight for the elderly, we should explore what it entails for the issue of disenfranchising the young too. But what I would like to stress even further here is the following idea.

As there is a significant risk for self-respect, this risk should only be taken if we have reasons to believe that the differential in political views and behaviour between young and old *is significant* and *results from the right drivers*. Remember the point above about the incompatibility of the logics of the “future residence” and “differential longevity” arguments. Now, differences in political views and behaviours may result from a series of determinants that may include “generational” ones. And these can consist in period, age or cohort effects. Imagine that we find ourselves in a case in which age effects tend to dominate such differences. Imagine that when they will get older, the young will *change* preferences and may share the preferences of today’s old. For instance, consider a world in which the young tend to prefer a “defined contribution” (DC) pension schemes while the elderly consider “defined benefits” (DB) pension schemes more appropriate.

In such a case, we would face the following dilemma. On the one hand, if differences in views/behaviours were driven by age effects, it would be compatible with defending the “differential longevity” argument, since short-lived people will not live in the future by definition. Yet, this is the weakest of the two arguments. On the other hand, if differences are driven by age effects, it would be a problem for those defending the “future residence” argument. For if we want to track the long-term views of the young and if they happen to be driven by age effects, these views are likely to be closer in the future to those of the currently old. Hence, in such a setting, it is *reinforcing* rather than weakening the voting weight of the old that is likely to best track the future preferences of those who are currently young. The problem with age effects – contrary to cohort effects – is that they lead to preferences that are not necessarily consistent across time for a given individual. And that the currently old would in that case best track the future views of the young. Now, I am not saying that differences between the young and the old never involve period or cohort effects. I just want to stress how much the plausibility of our two arguments depends on empirical assumptions, not only about the magnitude of voting behaviour differences, but also about the causes of such differences. Sometimes, if we want to know what the young will want for their future, we should ask the currently old rather than the currently young.

6. Conclusion

This paper aimed at exploring whether there is a robust case for a downward adjustment of the voting weight of elderly citizens. I first rejected two preliminary objections. One stresses the problematic nature of any adjustment of our right to vote to the

age dimension. I challenged it through pointing at youth disenfranchisement. The other objection claims that any voting weight adjustment, be it based on age or on other grounds, is problematic. I indicated that voting weight adjustment is common practice in democracies and that there is a potentially strong case for it in some cases. In section 2, I provided the readers with basic tools to grasp the nature of the lifetime egalitarian intuition.

I then explored two arguments for age-adjusted voting weight. One connects age with future residence time and the other connects age with being short-lived or long-lived. While neither argument relies on any connection between age and cognitive disability, both connect age with the ability to remain alive. Also, while both arguments advocate a reduction in the voting weight of the elderly, they rely on logics that are mutually incompatible. In addition, while the differential longevity argument relies on a lifetimetist intuition, the future-residence one doesn't. Hence, the future-residence argument illustrates the possibility of an age-based measure that neither associates advanced age with cognitive disability, nor relies on the lifetimetist intuition.

I showed that the differential longevity argument faces a significant challenge. It could only work if redistribution between short-lived and long-lived people were best achieved through reallocating voting rights rather than other resources. In contrast, the future-residence-based argument seems more robust. And yet, in the end, it faces the objection from self-respect. I suggested that we should require that differential weights be implemented only if we have serious reasons to think that a significant differential in electoral behaviour across the ages obtains and if, in addition, such differences cannot be characterized as an age effect. Hence, the examination of these two *prima facie* arguments, which I consider among those potentially most able to justify lower weights for elder votes, indicates that we are far from a conclusive case to support such adjusted weights.

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Gustaf Arrhenius¹

Democratic Representation of Future Generations and Population Ethics²

I shall consider how future people can be represented on the level of ideal theory and what implications such a representation would have for the outcomes of current decisions. More specifically, if future people are represented by proxies, what implications will that have for so-called different number cases, that is, cases where the number of people varies in the compared future populations? I will show a surprising connection between democratic theory and population ethics, and that we can derive principles used in population ethics, such as Total Utilitarianism, from some interpretations of the All Affected Principle, the most plausible solution to the democratic boundary problem.

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Introduction

I shall consider an extension of justice and democracy that at first might strike one as misguided and bizarre, namely the extension of the demos underlying democratic decision-making to include future generations.

It might strike one as misguided because a theory of democracy is not a theory of justice but rather a practical decision method that is, in turn, justified by an appeal to a theory of justice or some other normative ideal. Here, however, we shall understand democracy as a normative ideal in itself, namely, as an ideal regarding the fair distribution of influence or power (we are not claiming that this is the only plausible way of understanding democracy). As such, it will be a part of a more comprehensive theory of justice.³

This extension might strike one as a bizarre idea since it is impossible for future people to take part in present-day democratic decision-making simply because they are not around. However, that we should include them might follow from the most plausible solution to the democratic boundary problem.⁴ This problem concerns criteria for who should have a right to take part in which decisions in democratic decision making – how to delimit the demos. The most popular and, in my mind, the most promising criterion is the so-called All Affected Principle, which roughly says that the people that are relevantly affected by a decision ought to have, in some sense and to varying degrees, influence over it.

The All Affected Principle has been criticized on several grounds, for example, for proposing what is logically and procedurally impossible or for crowding out individual liberty.⁵ As I have shown elsewhere, these criticisms miss its target.⁶

Another interesting aspect of the All Affected Principle that hasn't been much discussed is that it seems to imply that future generations should have influence over decisions taken today. Since political decisions that we make today will affect the interests of future people, and since some of these effects surely would count as being relevantly affected, the All Affected Principle seems to imply that future generations should have an influence on these decisions, or so the argument goes.

It has been suggested that there are at least two problems with including future generations in current democratic decision-making. The first is that future people are

³ See Arrhenius (2005), (2018b) for a discussion of both of these understandings of democracy.

⁴ Robert Dahl (1989) refers to this problem as “the problem of the unit” (p. 193), “the problem of inclusion” (p. 119), and sometimes as the “boundary problem” (pp. 146–7). Robert Goodin (2007) calls it “the problem of ‘constituting the demos’”. Frederick G. Whelan calls it “the boundary problem” in his (1983) pioneering article on the subject, and so shall I.

⁵ See e.g., Whelan (1983), Nozick (1974), and Bergström (2005).

⁶ See Arrhenius (2005), (2018b) for a detailed defence.

not around so it is impossible to include them in a democratic process. Hence, the All Affected Principle demands what is impossible and should for that reason be rejected as a boundary criterion for democratic decision making.⁷ This “Impossibility Argument” I’ve discussed elsewhere so we will leave it aside here.⁸ One reason to think that this problem isn’t insurmountable is that future people could be represented by proxies, just like present people that for some reason or other cannot directly take part in a decision.⁹

However, not much has been said about a second problem, namely how future people can be represented and what implications such a representation would have for the outcomes of current decisions. This will be the focus of this paper but on the level of ideal theory. More specifically, if future people are represented by proxies, what implications will that have for so-called different number cases, that is, cases where the number of people varies in the compared future populations? These issues are in the domain of ethics known as *population ethics*, which involves foundational questions regarding axiology and our duties to future generations. The main problem in population ethics has been to find an adequate theory about the value or choiceworthiness of outcomes where the number of people, the quality of their lives, and their identities may vary.¹⁰ This paper will show a surprising connection between democratic theory and population ethics, and that we can derive principles used in population ethics, such as Total Utilitarianism, from some interpretations of the All Affected Principle.

The All Affected Principle

The All Affected Principle has been formulated in many different ways, both by its advocates and by those opposing it. To the best of my knowledge, the first formulations of the All Affected Principle are by Robert Dahl and Carl Cohen. The former suggests that “[e]veryone who is affected by the decisions of a government should have the *right to participate* in that government”, whereas the latter says that “in a *perfect democracy* all who are thus affected [by a decision] *play some part*”. Frederick G. Whelan, in his influential paper on the boundary problem, defines the All Affected Principle as “all those people who are affected by a particular law, policy, or decision *ought to have a voice* in making it”.¹¹

⁷ Tännsjö (2007).

⁸ Arrhenius (2018a).

⁹ Kavka & Warren (1983).

¹⁰ The fact that the identities of future people may vary in different outcomes, and that this in many cases is a consequence of our actions, is closely connected to the so-called non-identity problem. See Arrhenius (2000b), (forthcoming); Parfit (1984).

¹¹ Dahl (1970), p. 64; C. Cohen (1971), p. 8; Whelan (1983), p. 16 my emphasis.

The contemporary formulations differ in a somewhat similar manner. In my 2005 and 2018 papers, I formulated the All Affected Principle in terms of influence: “The people that are relevantly affected by a decision ought to have, in some sense and to varying degrees depending on how much they are affected by it, influence over the decision”. Likewise for Brighouse & Fleurbaey (although they use the term “power”): “...all individuals with a positive stake should have some power”. On the other hand, Ian Shapiro suggests that “[e]veryone affected by the operation of a particular domain of civil society should be presumed to have a say in its governance”; Robert Goodin submits that “all affected interests should have a say”; Lars Bergström claims that “the all-affected principle ... says that every individual who is affected by a given decision should have a vote”; and Torbjörn Tännsjö renders the All Affected Principle as “[e]veryone who is affected by a decision should be allowed to take part in it”.¹²

Given such a plethora of formulation, whether the All Affected Principle implies that we should include future generations in present day decision making in any interesting sense depends on which formulation we choose.¹³ We shall thus here focus on two versions that may be interpreted in such a way that they imply that future people should be represented by proxies, just like present people that for some reason or other cannot directly take part in a decision.¹⁴

Cohen formulated the All Affected Principle in terms of “perfect democracy”. This suggests a version of the All Affected Principle as part of an ideal-type definition of democratic decision-making. We shall render this idea follows:

The Ideal Democracy Version of the All Affected Principle (AAP-ID): A decision is optimally democratic if and only if each individual’s influence on the decision is in due proportion to how each individual’s relevant interests are affected by the decision.

Since this condition is devoid of normative content, it doesn’t have any implication regarding whether future people *ought* to be included in present decision making.¹⁵ It might only imply that future people must be included for a decision to be optimally

¹² Arrhenius (2018b), p. 102, cf. Arrhenius (2005); Brighouse & Fleurbaey (2010), p. 139; Shapiro (1996), p. 232; Goodin (2007), p. 50; Bergström (2009), p. 1; Tännsjö (2007), p. 5.

¹³ See Arrhenius (2018a) for a discussion.

¹⁴ To the best of my knowledge, Kavka & Warren (1983) was the first to propose this in the democratic theory literature.

¹⁵ It might be partly evaluative depending on how one spell out “interests” (and likewise for “influence”). For example, assume that interests is equated with welfare. To say that Krister has higher welfare than Tim in outcome X is an evaluation to the effect that Krister is *better off* than Tim in X. Still, this wouldn’t give the condition any normative bite.

democratic. In that case, if we cannot include future people in the required way, then it only follows that no decisions are optimally democratic.

As we said above, one might take democracy as a normative ideal, however, and claim that we ought to approximate it as far as possible:

Normative Ideal Democracy (NID): A decision ought to be as democratic as possible, other things being equal.

The *ceteris paribus* clause leaves open the possibility that our final normative theory might take other important values into account, for example, equality, liberty and welfare.

It is still unclear, however, whether AAP-ID together with NID imply any requirement to the effect that future people ought to be represented in the decision process. It depends on what it is for a decision to be closer to the democratic ideal. However, if we get closer to the ideal by having proxies for those people that are relevantly affected but cannot take part, then AAP-ID together with NID imply that future people should have representatives that take part in present decision-making processes. We shall render this version of the All Affected Principle as follows:

The Representational Ideal Democracy Version of the All Affected Principle (AAP-RID): A decision is optimally democratic if and only if all individuals whose relevant interests are at stake in a decision are represented in the decision procedure by a representative who has influence in proportion to her charge's (represented individual's) stakes.

AAP-RID together with NID imply that future people ought to be represented in the decision process.

Brighouse and Fleurbaey have suggested that “[a]ll individuals should have their interests effectively represented in proportion to their stakes”.¹⁶ Brighouse and Fleurbaey add the “requirement that *whenever possible the individuals should represent themselves*”.¹⁷ When an individual cannot represent herself, then she should be represented by a trustee: “An “appropriate” trustee is one who is the most likely to correctly take account of the ... person’s interests.” This also holds for future people: “The fact that future generations ... are necessarily out of the decision-making process does not mean that their interests should be neglected.”¹⁸

¹⁶ Brighouse & Fleurbaey (2010), p. 150.

¹⁷ Brighouse & Fleurbaey (2010), p. 150.

¹⁸ Brighouse & Fleurbaey (2010), p. 150.

We shall render this version of the All Affected Principle as follows:

The Representational Proportional Version of the All Affected Principle (AAP-RP): All individuals whose relevant interests are at stake in a decision ought to be represented in the decision procedure by a representative who has influence in proportion to her charge's (represented individual's) stakes, other things being equal.

AAP-RP follows from the conjunction of NID and AAP-RID, properly formalized.

Representation of Future Generations

To be able to derive some clear implications from the above principle, we need to say more about how future people are to be represented. Brighouse and Fleurbaey don't say much about this. At some point, they suggest that future people should be represented "by the electorate as a whole" but they unfortunately don't explain why the electorate as a whole would be an "appropriate trustee" for future people's interests.¹⁹

Let me make a suggestion that fits with their idea of an "appropriate trustee" at the level of ideal theory. Each possible future person is represented by a guardian angel who votes in accordance with the interests of that future person. The guardian angel will thus vote for the alternative that is the best one when she is only considering the interests of her charge (the future person under consideration):

Guardian Angel Representation: Each person who cannot adequately exercise her voting right is represented by a guardian angel who votes in accordance with the relevant interests of her charge (the represented person), that is, for the alternative that maximizes the charge's interest satisfaction.

This representation will include all future people but may also include some present people who cannot adequately exercise their voting right.

In cases involving only the same people in the compared outcomes, it is rather clear how the guardian angel would vote. In cases involving people whose existence is contingent on our choices, however, it is not so clear. An outcome A is better than B for Peter if Peter has higher welfare in A as compared to B. But what if Peter exists in outcome A but not in outcome B? Is it in Peter's interests that outcome A rather than B comes about? Can it be better or worse for a person to be than not to be, that is, can it

¹⁹ Brighouse & Fleurbaey (2010), p. 150.

be better or worse to exist than not to exist at all? This old and challenging existential question has been raised anew in population ethics:²⁰

The Existential Question (in population ethics): Can existence be better or worse for a person than *non*-existence?

Different answers to this question have different implications for the Guardian Angel Representation. The two most discussed answers are:

The Negative Answer: Existence cannot be better or worse than non-existence for a person.²¹

The Affirmative Answer: Existence can be better or worse than non-existence for a person.²²

The Affirmative Answer and an Informal Theorem

Let's first assume the affirmative answer and that a person's relevant interests are understood in terms of a person's welfare (more on the latter below). Then, if the guardian angel has a choice between bringing her charge into existence with negative welfare or not bringing her into existence at all, she would choose the latter. Moreover, if the guardian angel had the choice between bringing her charge into existence with positive welfare or not bringing her into existence, she would choose the former.²³

A democratic theory that represents future people in this manner in combination with AAP-RP, implies, given some further assumption, an interesting result.²⁴ Assume that AAP-RP is satisfied in the following manner:

1. Each person who can adequately exercise a voting right gets a vote with a weight proportional to how her interests are at stake in the decision.

²⁰ See e.g., Arrhenius (2003), (2009), (2015); Arrhenius & Rabinowicz (2010), (2014), (2015); Bykvist (2007), (2015); Bykvist & Campbell (2020); Fleurbaey & Voorhoeve (2015); Holtug (2001), (2010); Johansson (2010); Persson (2017); M. A. Roberts (1998), (2003).

²¹ See e.g. Broome (1999).

²² Arrhenius & Rabinowicz (2010), (2014), (2015) and M. A. Roberts (1998), (2003).

²³ For a detailed exposition of this approach, see Arrhenius & Rabinowicz (2010), (2014), (2015) and Arrhenius (forthcoming).

²⁴ This is an extension of an informal theorem in Brighouse & Fleurbaey (2010) which is restricted to a fixed population setting and doesn't involve representatives for future generations.

2. All future persons and all present persons who cannot adequately exercise a voting right are represented by guardian angels who each get a vote with a weight proportional to the stakes of the person she is representing.
3. A person's stake (relevant interests) given two alternatives consists in the absolute value of the difference of the (numerical representation of the) person's interests in the two alternatives (measured on an interpersonally comparable ratio scale).²⁵
4. If a person exists only in one of the compared alternatives, then her stake is her interests in the alternative in which she exists.
5. Every non-represented person votes in accordance with their interests, that is, for the alternative that maximizes their interest satisfaction.
6. The weighted majority rule is applied to every pair of alternatives in the decision and that alternatives are ranked according to how many (weighted) votes they get.²⁶

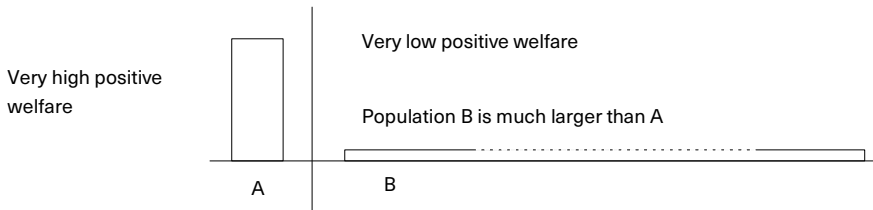
Given the above assumptions, the alternatives are ranked according to the total sum of welfare, that is, along the lines of Total Utilitarianism. Hence, what we could call *Welfarist Proportional Representative Democracy* (WPRD) will have the same ranking as Total Utilitarianism in population ethics.

Consider for example a choice between two possible future populations, one consisting future people with very high welfare (or interest satisfaction) (population A), and another one consisting of a huge number of people with very low positive welfare (B):

²⁵ Let $li(A)$ be a function that returns the numerical representation of individual i 's interest satisfaction in outcome A. Then $|li(A) - li(B)|$ is the weight of individual i 's vote for application of the majority rule to the choice between alternative A and B. A ratio scale is unique up to a similarity transformation, which means that the ratios of scale values are preserved. The admissible transformations are all functions of the form $f(x) = \alpha x$, $\alpha > 0$. Sentences such as "John has many times higher (lower) welfare than Chandra" are meaningful. With such a scale, talk of the total and average amount of welfare in a population makes sense (see F. S. Roberts (1984)).

²⁶ The assumption that everyone votes in her interest can be relaxed: it is sufficient for the theorem that every person votes either in her own interest or for the general good (i.e., for the outcome that maximizes the sum of interest satisfaction).

Diagram 1



The blocks in the above diagram represent the two future populations, A and B. The width of each block represents the number of people in the corresponding population; the height represents their lifetime welfare. Dashes indicates that the block in question should intuitively be much wider than shown, that is, the population size is intuitively much larger than shown (in this case population B).

Assume that no person exists in both outcomes and that present people's welfare are not at stake. The guardian angels representing the A-people will vote for A and *vice versa* for the guardian angels representing the B-people. The latter guardian angels will get a much lower voting weight than the ones representing the people in A. However, if B is of a sufficient size, then their guardian angels will, because of their greater number, outvote the guardian angels representing the A-people. Hence, like Total Utilitarianism, Welfarist Proportional Representative Democracy implies Derek Parfit's infamous Repugnant Conclusion.²⁷

The above result holds even if the present people's welfare is at stake. Assume that population A consists of both present and future people, and the same for population B. The present people will vote in favour of A since they have much to lose if B came about. Likewise, the guardian angels representing those future people that exist in both A and B — the necessary future people — and those that only exist in A, will vote in favour of A. The guardian angels representing the people that only exist in B, the contingent future people, will get a much lower voting weight than the ones representing the people in A. Again, however, if B is of a sufficient size, then the guardian angels representing the contingent future people will outvote the guardian angels representing the present and necessary future people.

In this sense, it can be said that if we let future people have influence on present decisions, then they are sometimes going to crowd out our influence. This might strike one as the opposite of democracy such that that democracy and the representation of

²⁷ The Repugnant Conclusion is normally formulated and discussed in axiological terms Parfit (1984), Arrhenius (2000a), (forthcoming), but it has also been formulated in terms of choiceworthiness Parfit (1984), Arrhenius (2000b), (2004), (forthcoming).

future people are fundamentally at loggerheads.²⁸ Hence, one can take the above result as a *reductio ad absurdum* of the above idea of representation for future people and Welfarist Proportional Representative Democracy. However, one can also take it as a new reason for accepting the Repugnant Conclusion, derived partly from democratic intuitions.

The Negative Answer

What happens if we go for the negative answer to the existential question? Well, then nothing is at stake for contingent people, that is, people that only exist in one of the two compared outcomes. The guardian angels for contingent people will thus be indifferent between the outcomes since nothing is at stake for their charges, and the vote by necessarily existing people will determine the outcome, that is, present people and people who exist in both of the compared outcomes.²⁹ For example, if no one exists both in A and B above (a different people case), then Welfarist Proportional Representative Democracy will now be indifferent between the two populations. Likewise if the present people's welfare is unaffected and all the future people are contingent people.

However, if there is an overlap of people, then A beats B in a vote. Assume that population A consists of both present and future people, and the same for population B. The present people will vote in favour of A since they have much to lose if B came about. The guardian angels representing those future people that exist in both A and B, the necessary future people, will vote in favour of A. The guardian angels representing the people that only exist in A or B, the contingent future people, will be indifferent so we can assume that they will abstain or cast their votes randomly. Hence there will be a clear majority for A over B. And since most future people are contingent relative to some pair of alternatives in a choice situation, it is likely that the present people will rule the world with the negative answer to the existential question.

This of course means that the above theorem yields another conclusion. Instead of yielding Total Utilitarianism it will entail a version according to which alternatives are ranked according to necessary people's total sum of welfare. Hence, we have an interesting derivation of what we could call Necessitarian Total Utilitarianism.

²⁸ See Bergström (2005) for this view.

²⁹ I'm using the terminology of "contingent" and "necessary people" slightly differently as compared to how I define them in Arrhenius (2000b), (2003), (forthcoming) since here they are defined on the two compared populations in a binary choice rather than on the whole choice situation.

Complicating the Picture

In the above discussion, we assumed that the “currency” of the All Affected Principle is people’s welfare. This assumption can of course be contested. Notice, however, that the concept of welfare used here can be a broad one. For the present discussion, it doesn’t matter whether welfare is understood along the lines of experientialist, desire, or objective list theories.³⁰ Moreover, many of the views presented in the debate on the currency of egalitarian justice as alternatives to welfare, for example Rawls’ influential list of primary goods, can be included in the concept of welfare used here.³¹

Still, we need to develop a measure or index of what should count as being relevantly affected by a decision by consulting our considered intuitions about which effects on people’s interest are of such significance that they should have a say in a decision, and when some people’s interests trump other people’s interests.

Such a theory would in many respects be similar to the theories of welfare that have been suggested in the discussion of utilitarianism and to the theories regarding the currency of egalitarian justice. One might also think that one could just import an axiology from this area, such as Rawls’ “primary goods” or Sen’s “capabilities”, as an explication of “relevantly affected”. This is suggested by Brighouse and Fleurbaey, and an advantage with this approach is that it might bring democratic decision making more in line with what is good from the perspective of justice and morality.³² However, our judgments about when people are affected by a decision in such a way that they should have influence over it may be different in many respects from our judgments about when people’s well-being is affected, or about the relevant goods for the state to distribute in an egalitarian fashion.

The example of “nosy preferences” is a case in point: Even if I am so disgusted by the lewd literature that you read, or by your choice of bedroom activities, that my well-being is seriously at stake, it still seems that I shouldn’t have any power over you in regards to such activities. Rather, you (and your partner if one is needed) should have all the power to decide such issues.³³

It might be that the results in the previous section would still follow with the correct

³⁰ For experientialist theories, see e.g., Sumner (1996), Feldman (1997), (2004), and Tännsjö (1998). For desire theories, see e.g., Barry (1989), Bykvist (1998), Griffin (1986), and Hare (1981). For objective list theories, see e.g., Braybrooke (1987), Hurka (1993), Rawls (1971), and Sen (1980), (1992a), (1993).

³¹ For this debate, see Rawls (1971), Sen (1980), (1992a), (1993), Dworkin (1981b), (1981c), (2000), G. A. Cohen (1989), (1993), Arneson (1989), and Nielsen (1996).

³² Brighouse & Fleurbaey (2010), p. 151. Roughly, if people vote in accordance with what is good for them from the perspective of the metric of social justice, then the winning alternative will also be the one that maximises social justice.

³³ See e.g., Sen (1970); Dworkin (1981a), (2000).

currency for the All Affected Principle. It would mainly depend on whether this currency would be measurable on an interpersonally comparable ratio scale. We would then get the similar conclusion but not in terms of welfare but in terms of this currency. So we would get, for example, a version of Total Utilitarianism from the informal theorem above but with a different currency from welfare.

Another complication is that we also have to consider what degree and kind of influence that should be given depending on how one is relevantly affected. This can vary, a point that is often overlooked in the discussion of the All Affected Principle. Sometimes it could be a vote (perhaps with differential weights as we did above), sometimes a veto, sometimes only a right to participate in the deliberation or the right to put forward proposals, sometimes a combination of these and other ways of having influence over a decision. We need to develop a theory regarding what kind of influence or power that should be given to people and guardian angels in different situations, not the least when it comes to existential decisions. So there are indeed further issues to explore regarding the connection between democratic representation of future generations and population ethics.

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The Democratic Inclusion of Artificial Intelligence? Exploring the Patiency, Agency and Relational Conditions for Demos Membership³

Should artificial intelligences ever be included as co-authors of democratic decisions? According to the conventional view in democratic theory, the answer depends on the relationship between the political unit and the entity that is either affected or subjected to its decisions. The relational conditions for inclusion as stipulated by the all-affected (AAP) and all-subjected principles (ASP) determine the spatial extension of democratic inclusion. Thus, AI qualifies for democratic inclusion if and only if AI is either affected or subjected to decisions by the political unit in relevant ways.

This paper argues that the conventional view is too simple; that it neglects democratic reasons to recognize only agents and/or moral patients as participants in decision-making. The claim defended is that AAP and ASP implicitly affirms requirements for agency and patiency. The entity included

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must be an agent, understood either as legal status, capacity to comply with the law or ability to recognize legitimate authority. The entity included must be a patient, understood either as the capacity for sentience or consciousness.

Thus, this paper explores the potential democratic inclusion of artificial intelligences by advancing our knowledge of the relevant conditions of agency and patiency that are implicit in democratic theory. Although conceivable that AI are or will be either affected or subjected in relevant ways to decisions made by political units, it is far less clear that AI will ever be agents or patients in the sense required for democratic inclusion.

The extent of democratic inclusion is among the most fundamental questions for any association that aspires to be democratic.⁴ Yet the nature of the principles for democratic inclusion remain unclear and widely contested. Recent developments in democratic theory have come to a stand-still between the two major alternatives; the all affected principle (AAP) and the all subjected principle (ASP) (see Goodin, 2007; 2016; Miller, 2009; Hultin Rosenberg, 2020; Beckman, 2009; Valentini, 2014). Whereas the AAP takes the extent to which someone is affected by a decision as necessary and sufficient conditions for inclusion in the demos, the ASP identifies the demos with the subjects of decisions. At a higher level of abstraction, the ASP and the AAP are nevertheless in agreement on the fact that the *relationship* between decisions and an entity is decisive for democratic inclusion (Bauböck, 2018). The object of disagreement is on the nature of this relationship.

In the attempt to advance this debate, the current paper argues that democratic inclusion cannot exclusively be determined by appeal to the nature of the relationship between decisions and entities. Additional assumptions are needed. In particular, the boundaries of the demos are premised on claims about “political patency” – non-relational properties in virtue of which an entity has political standing – as well as on claims about “political agency” – the capacity for either intentional political action or judgment. The thesis is that both the ASP and the AAP remain indeterminate unless complemented by claims about the patients and agents to whom the relational requirements apply.

In the paper we look to recent advancements in technological innovation as a cause for exploring the assumptions of agency and patency that should guide judgments about democratic inclusion. Developments in artificial intelligence (AI) have produced algorithms with self-learning capacities, allowing them to adjust their performance on the basis of collected and analyzed data. These are vastly more sophisticated than regular computer scripts that are bound by the original program and are unable to adapt to and learn from the environment. Their “intelligence” consists in the capacity to emulate goal-directed behavior. Though currently existing AI (weak or narrow AI) have few or none of the properties associated with human intelligence, the ultimate aim of investments in computer technology is to develop genuine artificial subjectivity, or what is referred to as “strong artificial intelligence” or “artificial general intelligence”; entities with the capacity to “sense, understand, reason, learn and act in the environment in ways similar to how humans can intelligently” (Wah and Leung, 2020). Artificial general intelligence (AGI) will blur the distinction between human and non-human entities in important respects. AGI with human-like properties

⁴ As understood here, democratic inclusion concerns inclusion in the demos understood as the group of people (or more generally, the group of entities) that collectively govern, or elect those who govern, in a democracy.

would challenge the particularity of man and has rightly propelled philosophical research into the metaphysics of human consciousness and computerizing, but has not yet attracted much attention among political philosophers.

Pitching the problem of democratic inclusion to artificial intelligence technologies may strike readers as absurd for at least two reasons. First, democratic participation is widely assumed to be the privilege of human beings. Since AI are not part of the human species, they are not eligible for democratic inclusion. Second, even if criteria for democratic inclusion would apply to AI, it is hard to imagine a situation where algorithms participate in political decision-making on equal terms with humans. The idea is just infeasible.

The claim that democratic inclusion is the privilege of human beings is not obviously true, however. This is evinced by the fact that democratic participation is applicable to entities that are artificial persons and not just to persons of human flesh and blood. A democratic association can be composed of associations (e.g. municipalities, regions or states) or corporations (Beckman, 2018; Hasnas, 2018). Associations are not members of the human species, of course. More fundamentally, the “speciesist” assumptions of democracy are increasingly under pressure as is illustrated by claims that the right to a democratic say, or political representation, should extend to non-human animals (Kymlicka and Donaldson, 2016; Garner, 2017) or even eco-systems in nature. Hence, there are reasons not to assume that democratic inclusion is necessarily an exclusive privilege of human beings.

So, what about the feasibility of extending democratic rights to AI? This point might very well be correct, we will not investigate it further here. But it is worth remembering that democratic principles are always idealizations. Democracy might “not be suitable to men” but feasible only among Gods, as Rousseau (1762, Book 3:IV) famously suggested. The point is that an exploration of the commitments that follow from the democratic ideal should not be limited by what is feasible at a particular time and place. As noted by Bob Goodin (1996, 841), the fact that it is absurd for practical reasons to include some particular entity in democratic decision-making does not imply that it is absurd to believe that they ought to be included.

In any case, the motivation of this paper is not just to answer whether AI should be democratically included. We also believe that the confrontation between AI and democratic principles is instructive in a more general sense as it helps us identify implicit and potentially controversial assumptions of well-known democratic principles. Though the answer depends on the nature and qualities of artificial intelligence, it also depends ultimately on the principles of democratic theory. On what grounds are entities entitled to rights to democratic participation and when could we legitimately refuse them? The aim of this paper is to tease out the connections between basic democratic convictions and the properties associated with Narrow AI, AGI and possible

versions of AI in-between Narrow and General, for the purpose of identifying the conditions for membership in the demos. The question of democratic inclusion for AI is thus used to specify the conditions for democratic inclusion with implications for this question and beyond. AI is uniquely suitable for this task since AI could develop in different directions which enable us to elaborate on various kinds of conditions using different possible developments of AI. In this sense, AI is better than other entities such as children, animals, and corporations that have previously been addressed in the literature on democratic inclusion.

A non-speciesist approach to the question of AI and democratic inclusion

For the purpose of this paper, we assume that non-human entities, including artificial entities, *could* qualify for democratic inclusion. If currently existing narrow AI or future more sophisticated AGI do not qualify for democratic inclusion, this is because there are some other relevant differences between AI and humans that motivates this difference in status. This suggests that the question of democratic inclusion of AI could be addressed as a question of what *properties* an entity must possess in order to qualify for democratic inclusion. Such “property-approach” to the question of the moral and political status of AI (Andreotta, 2021) fits the purpose of this paper which is about using the question of democratic inclusion of AI in order to re-examine established principles of democratic inclusion. This property-approach thus offers an alternative to the “species-approach” to the question of democratic inclusion, according to which those and only those who belong to a certain species qualify for democratic inclusion by virtue of its belonging to this species. Our suggestion will be that the properties that future AI needs to possess in order to qualify for democratic inclusion are the properties that an entity needs to possess in order to have political agency and political patiency – i.e. agency and patiency in the sense relevant for democratic inclusion.

We approach the question of democratic inclusion as concerned with the extension of principles of democratic inclusion and assume that AI entities are within the domain of application of these principles. We start out with the assumption that future AI, if similar to humans in all democratically relevant respects, should be included in the demos. To be clear, AI will never be similar to humans in all respects. The task here is to specify what similarities are democratically relevant. Regardless of how sophisticated AI becomes, it remains a fact that these entities are *technological devices created by humans* and artefacts are typically not seen as rights holders, at least not as holders of direct rights (Andreotta, 2021). If this is taken to be a democratically relevant respect in which AI is different from humans and other entities that could qualify for democratic inclusion, the issue is already settled. While tempting to rule

out the democratic inclusion of AI by appealing to the fact that they are technological devices, not biological beings, there are good reasons not to settle for this conclusion too quickly. As shown by the discussion of the ontological, legal, and moral status of AI (Basl, 2014; Gunkel, 2012; Gunkel, 2014; Gunkel and Bryson, 2014; Gordon, 2020) it is possible to extend concepts developed, and previously reserved, for humans to non-human AI entities. Moreover, the claim that AI's are created by humans is not necessarily true. In case an AI can create AI's, there will be AI's that are not created by humans. In any case, it is unclear if the origins of an entity is relevant at all. According to Christian List (2021, 1225) "no matter how AI systems have been brought into existence, systems above a certain threshold of autonomy constitute a new loci of agency, distinct from the agency of any human designers, owners, and operators".

As said above, the intelligence of currently existing AI consists in the capacity to emulate goal-directed behaviour. This intelligence is narrow in the sense that it is developed to solve specific tasks. Currently existing artificial intelligences are better than humans in solving certain tasks. The general game-playing AI-program AlphaZero is far better at chess and other games than the best human players. This machine-learning AI is also better than the best programmed specialist game-playing AI-programs (Silver, et al., 2018). Despite this, the intelligence of AlphaZero, although more general than that of specialist game-playing AI-programs, is far from the general intelligence of human beings. It is a matter of scholarly controversy whether or not human-like AGI will ever emerge. Some AI-scholars claim that it is a matter of when rather than a matter of if (McCarthy, 2007). Other scholars are equally certain that AGI will never be realized (Fjelland, 2020). For the question of democratic inclusion of AI, an equally important question as the question of what intelligence AI will develop is whether or not AI will be built "with a *capacity for emotions* of their own, for example the ability to feel pain" (Wallach and Allen, 2009: 204).

Without taking a position on this issue, there are good reasons to pay attention to questions concerning what properties AI must develop in order to qualify for democratic inclusion on established principles of democratic inclusion. If artificial intelligences emerge that exhibit qualities of consciousness, we face pressing questions about their political and legal status. Non-human entities with such properties will be able to perform tasks in public administration, they will not just be able to improve the political decisions of human beings, but may in some respects replace them. Many philosophers speculate that a time will come when legal and moral rights will extend to AI. Yet, few if any have delved further and asked whether these entities would also be entitled to exercise the powers that in a democratic society are the privilege of citizens or the members of the demos – i.e. the people with rights to democratic participation.

AI and the relational-requirement

Democratic associations at all levels make distinctions between the members and non-members of the demos. In states that aspire to be democratic, citizenship is the predominant condition for rights to vote and democratic participation (Earnest, 2008). However, the democratic status of the rules determining membership in the demos cannot be taken for granted. The rules identifying the demos are democratic only if they conform to the principles for democratic inclusion. Though little agreement on the substance of these principles yet exist, it is widely agreed that citizenship status does not define the democratic status of the boundaries of the demos. The predominant view is that inclusion in the demos instead is conditioned by the existence of a particular relationship between the political unit and potential members. The principles of democratic inclusion identify a *relational requirement* as a necessary condition for membership in the demos.

The nature of the relational requirement is disputed, however. AAP and ASP currently represent the two main alternative conceptions of the relationship required for inclusion in the demos. According to the AAP, an entity is entitled to inclusion in the demos if and only if affected by the decisions of the political unit in the relevant sense. According to the ASP, an entity is entitled to inclusion in the demos if and only if subjected to the decisions of the political unit in the relevant sense. Exploring the potential inclusion of AI in the demos, a first step is consequently to ask whether intelligent artificial entities satisfy the relational requirements as conceived by the AAP and the ASP respectively.

The relational requirement of AAP

The scope of inclusion of AAP has been the subject of extensive discussion within the scholarly literature on democratic inclusion. The principle has been argued to stretch the boundaries of inclusion far beyond its current limits. In requiring the inclusion of everyone causally affected by the decisions of the political unit, the principle stretches the boundaries of inclusion *spatially* by requiring the inclusion of affected entities outside the territorial jurisdictions of these political units. In a seminal article Bob Goodin (2007) suggests that AAP requires the inclusion of everyone, everywhere in every decision. That claim has also been a main target by the critics of AAP (Miller, 2009; Song, 2012; Whelan, 1983). Others argue that AAP stretches the boundaries of inclusion *temporally* by requiring the inclusion of either future (Tännsjö, 2007; Heyward, 2008; Goodin, 2007; Cruz, 2018) or/and past generations (Goodin, 2007; Bengtson, 2019). More importantly in the present context is the claim that AAP stretches the boundaries of inclusion *categorically* to include entities that are not usually

included in the demos: children (Saunders, 2012), animals (Kymlicka and Donaldson, 2016; Garner, 2017), and non-sentient organisms and nature (Cruz, 2018). However, to the best of our knowledge, artificial intelligent entities have not yet been addressed.

The scope of inclusion of AAP depends on how the principle more precisely is formulated. The radically inclusive implications (in the spatial sense) suggested by Goodin (2007) is based on a formulation of the principle such that it requires the inclusion of everyone who is possibly affected by a possible decision. Other, arguably more plausible, versions of the principle are less inclusive in this respect (for an overview, see Hultin Rosenberg, 2020). The question of democratic inclusion of particular artificial intelligent entities depends on the spatial and temporal extension of AAP. While the more fundamental question of whether AI-entities could be eligible for democratic inclusion on this principle depends on its categorical extension. Could the scope of inclusion of AAP stretch beyond the current domain of human and perhaps even non-human biological entities to include non-human artificial entities? To answer this question the first step is to determine whether AI could satisfy the relational requirement associated with AAP.

In common for all versions of AAP is that democratic inclusion is triggered by a particular relation between the political unit and the entity - the relation of the latter having an interest that is causally affected by the policies decided by the former (Dahl, 1970; Whelan, 1983; Goodin, 2007; Miller, 2009; Hultin Rosenberg, 2020). On this understanding of AAP, the scope of inclusion, categorically understood, is determined by what type of entities: i) that have an interest, ii) that is of a kind that warrant democratic inclusion, and iii) that could be causally affected by political decisions taken by the political unit. In order for AI, narrow or general, to qualify for democratic inclusion on AAP, these artificial entities must have interests that are of this kind.

Perhaps, there could be entities that have an interest that is of a kind that warrant democratic inclusion but that cannot be affected by political decisions.⁵ Currently existing AI cannot be excluded based on this requirement. Political decisions affect existing AI by regulating its use. In order for AAP not to require the inclusion of AI it must be because these entities do not have interests or because the interests of these entities are of a kind that do not warrant democratic inclusion.

Intelligent artificial entities could be seen as bearers of interests. As argued by Basl (2014), existing AI are goal directed and teleologically organized. In that sense, they

⁵ This would be the case if AAP is interpreted to require democratic inclusion of those and only those who are harmed, or risk being harmed, by democratic decisions and if individual future human or artificial entities due to the non-identity problem cannot be said to be harmed by decisions made today. These future entities have an interest that warrants democratic inclusion (an interest in not being harmed) and these interests cannot be affected by democratic decisions today because these decisions cannot harm these future entities.

are similar to non-sentient biological organisms with what he refers to as *teleo interests*. Hence, on a categorically maximally inclusive understanding of the relational requirement of AAP, existing AI ought to be included in the demos. Of course, on this understanding of “interests”, also viruses and other microorganisms are bearers of interests. The counterintuitive implications of AAP so understood is not acknowledged by either adherents or critics of AAP that, with few exceptions (Cruz, 2018; Garner, 2017; Kymlicka and Donaldson, 2016), discuss the principle as if it applies exclusively to human beings. The question addressed is typically formulated as a question of which individuals, persons or peoples to include in the demos. That AAP is highly inclusive in a territorial sense has been recognized by many. Its potential categorical inclusiveness has not been the subject of an equally thorough scrutiny.

In order to save AAP from this counterintuitive implication it must be argued that the teleo interests of currently existing AI is an interest of a kind that does not warrant democratic inclusion. This could be argued by referring to the fact that AI are not humans and only human interests warrant democratic inclusion. An alternative to this “species-approach” that will be explored in this paper is the “property-approach” according to which only entities with certain properties have interests that warrant democratic inclusion.

Rainer Bauböck, to take an example, seems to assume something akin to this when discussing AAP and suggesting that “individuals must be capable of having interests, which presupposes sentience, a sense of selfhood and capacity for purposive action” (Bauböck, 2018). As indicated above, non-sentient entities could be bearers of interests. Defining the interests that are relevant from the perspective of AAP as something that requires “a sense of selfhood and capacity for purposive action”, Bauböck assumes an interpretation of AAP according to which not all interests warrant democratic inclusion. With this interpretation, the scope of inclusion of AAP might admittedly reach beyond the human domain and include at least some non-human animals but it will not include entities with only teleo interests. To take another example, Ben Saunders (2012, 286) assumes that *all sentient beings* have interests that warrant democratic inclusion on AAP.

On the most categorically inclusive interpretation of AAP, the principle could be argued to require the inclusion of currently existing AI. In order to avoid this implication, adherents of AAP could make a distinction between interests that warrant democratic inclusion and interests that do not warrant democratic inclusion. With the terminology used in this paper, AAP could be reinterpreted as a principle with a patiency-requirement that discriminates between interests that are worthy of political concern and interests that are not worthy of political concern. This patiency-requirement of AAP will be further developed below.

The relational requirement of ASP

The claim that democratic inclusion is conditioned by subjection to public decisions is informed by the notion that public decisions are decisions *for* some entities and that only entities *for whom* decisions are made should be included in the demos. The relational requirement is thus conceived in terms of what it means for an entity to be relevantly subjected to public decisions rather than affected by them.

The relevant meaning of “subjected” is nevertheless controversial. A popular view in the literature is that subjection is to be understood in terms of subject to coercion. The members of the demos should consequently equal the domain of individuals and other entities subject to the coercive apparatus of the state (Blake, 2001; Abizadeh, 2008). There are two problems with this definition of the ASP, however.

The first is that coercion may not be a necessary element of legal systems at all. Early positivist conceptions of law clearly emphasised the coercive nature of law, either as a necessary means for the enforcement of law or as the fundamental object of regulation (Bobbio, 1965). More recent positivists have abandoned this view and instead picture law as an institutionalized normative system. The existence of law so conceived does not necessarily depend on coercive enforcement (Raz, 2009).

The second reason why subjection should not be explained in terms of subjection to coercion is methodological. The scope of the coercive effects of public decisions depends on the range of people affected by them. Hence, if the all subjected principle applies to anyone subjected to coercion the analytic distinction between this principle and the all affected principle evaporates (Goodin 2016, 370). In order not to blur the distinction between the ASP and the AAP the former principle should preferably be defined in different terms.

Instead, two distinct interpretations of the ASP are to be considered here. The first holds that an entity is relevantly subjected to public decisions if and only if the entity is legally obligated to comply with the decision. The second holds that an entity is relevantly subjected to public decision if and only if the entity is subject to claims to legitimate authority. The extension of subjection following these two understandings is potentially divergent. It is conceivable that an entity is legally obligated by a decision, though not subject to claims of legitimate authority and, conversely, that an entity is subject to claims of legitimate authority though not legally obligated.

Could AI satisfy the distinct readings of the relational requirement associated with the ASP? Consider the first view, according to which an entity is relevantly related to public decisions if and only if subject to legal obligations. To know whether AI can be legally obligated to comply with the law clearly depends on what legal obligations are taken to imply. On one understanding, legal obligations are entailed by any legal

claim to the effect that the law applies to an entity. Legal obligations are not conditioned by moral obligations and do not depend on the subject accepting the obligation to comply with the law. Legal obligations do in that sense apply “automatically” whenever the law is valid (Lyons 1993, 98). This is the reading of the ASP endorsed by Goodin (2016, 370f.) who argues that the extent to which an entity is reliantly subjected to the law is a “purely formal, juridical” matter.

It appears to follow from this reading of the relational requirement that AI can be relevantly subjected to the law if and only if true that AI is subject to legal regulation. Laws that regulate AI incur legal obligations for AI by the mere fact that the law applies to AI. However, the possibility of applying the law in this sense is premised on the legal recognition of that entity as a bearer of legal duties. An entity is a potential bearer of legal duties only if true that it is recognized as a legal entity in the legal system. In effect, this is equivalent to legal personality. A legal person is an entity recognized as a bearer of legal rights and/or duties. Hence, AI is subject to the law in the relevant sense only if it enjoys legal personality. AI must in other words be afforded a particular kind of legal agency in order to be subject to law in the “juridical” sense of that term.

On the other hand, the notion of obligation implies the possibility of compliance. For a rule to be complied with, the subject to which the rule applies should be able to act in accordance with the rule. Subjection to legal obligations is on this understanding premised on the additional condition that the entity has the capacity to comprehend and respond to rules. It is clear that the certain agency requirements are involved in the ascription of this stronger version of subjection to legal obligations. In order to judge whether the law applies to an entity such that the entity is able to comply with the obligations of the law, something needs to be known about the capacity for action of that entity. From these preliminary observations, two agency conditions emerge as necessary preconditions for democratic inclusion. In order to be included in the demos by virtue of being subject to the law, AI must be endowed with legal personality and capacity for action.

Now, let us consider the second view, according to which an entity is subject to the law in the relevant sense if and only if subject to claims of legitimate authority. The basis for this view is Raz’s (1986; 2009) view that every legal system claims for itself legitimate authority, i.e. that law “presents itself” as justified to entities under its purview. A distinctive mark of this position is that the subjects of law are not identified by the extent to which they are subject to “juridical norms” (Goodin, 2016) but by the extent to which they are subject to claims to legitimate legal authority. The demos – the democratic people – should include all entities that are subjected to claimed legitimate authority.

Since the claim to legitimate authority entails the right to create legal obligations

for the subject, this version of the relational requirement subsumes the agency conditions already mentioned. Only legal persons with the ability to comply with the law can be subjected to claimed legitimate authority. But the additional agency-requirement following this version of the ASP is the capacity to recognize the authority as legitimate. The law can be legitimate only for agents that are able to accept the law as legitimate, hence legitimate authority can be claimed only for agents with such an ability. It is perfectly conceivable then that entities relevantly subjected to the law according to the first conception of the ASP are not relevantly subjected according to the second conception. An entity may have legal personality and the capacity for compliance but still lack the ability to recognize the law as legitimate. The point is that assumptions about the agential properties of the subjects of law are critical in deciding if the ASP applies to AI and other entities.

ASP and the agency-requirement

According to ASP, a necessary precondition for democratic inclusion is the fact of being subjected to the law. Only entities that are legal subjects should be included in the demos. But in order for an entity to be subjected to the law, it must be an agent of some kind. As already discussed, the first reading of the ASP holds that, an entity is subjected to the law in the relevant sense if and only if it is a legal person within the jurisdiction of the legal system: the law applies to legal persons only. The consequent understanding of the principle of democratic inclusion proposes a relational requirement (subjection to the law) and an agential requirement (legal personhood) that are together necessary and sufficient for democratic inclusion.

On the second reading of the ASP, an entity is subjected to the law in the relevant sense if and only if it is a legal person within the jurisdiction of the legal system that possesses the ability to comply with the law and to recognize the law's claim to legitimate authority. The agential requirements posited by this view are more demanding. However, the structure of the conditions for democratic inclusion are similar. In order to be included in the demos, the entity must stand in a particular relationship to public decisions (subjection to the law) as well as satisfying certain agential requirements (legal personhood, capacity to comply and capacity to recognize legitimate authority). The question now is whether either version of the ASP is applicable to AI, whether in its weak or strong version?

Legal personality

One view is that legal personality is premised on the ability to initiate legal actions against others (Solum, 1992). Legal personality is conditioned by the possession of a

capacity that is a natural kind. The implication is that entities that do not possess the capacity necessary for legal personality cannot be recognized as legal persons by the law. Entities that lack the natural kind that is a precondition for legal personality are consequently not subjected to the law in the sense of being the potential bearers of legal rights and duties. The scope of the ASP is thereby limited to entities with a particular agency, i.e. the capacity to form legal relationships. We might for example say that the ASP does not apply to rocks because rocks fail to meet the agency requirements that would allow them to be legal persons. And since rocks cannot be legal persons, rocks cannot be subjected to the law.

A different view is that legal personhood is a “fiction”, employed for the purpose of illustration and simplification, not for the purpose of identifying features that are intrinsic to natural objects (Kelsen, 2015). The implication is that the status of legal personality is not the privilege of a predefined set of entities. Legal personhood is a mere “artifice” (Naffine, 2011) that is attributable to anybody, or anything, whenever the law so declares (Tur, 1986; Berg, 2007; Naffine, 2003). According to this view, legal systems are empowered to ascribe legal personality as they see fit and are not constrained by the intrinsic properties of the entities they seek to regulate.

It might be objected that we should distinguish between the claim that the category of legal personality is artificial and the claim that membership in that category is artificial. Even if the category of legal personality is artificial in the sense of being stipulated by law, it does not follow that membership in that category is arbitrary. The law may invent any conditions for legal personality but it may still be the case that certain entities would never qualify as legal persons because of their intrinsic properties (Kurki, 2019; Banas, 2021).

Yet, legal practice does not seem to corroborate the view that legal personality is constrained by the intrinsic properties of entities. Legal systems are known to extend legal rights to minors or infants, even though they lack the capacity to initiate legal actions by themselves (Tur, 1986). More radically, non-human animals - dolphins and primates - are granted legal personality and rights in some legal systems (Shyam, 2015) and well-known is the extension of legal personality and associated rights to rivers in India and New Zealand (O'Donnell & Talbot-Jones, 2018). This indicates that the status of legal personality is not limited by the natural or intrinsic properties of an entity; there are few if any legal obstacles to ascribe legal personhood to artificial intelligences and to consider them as subjects of the law.

The artifice theory of legal personality is consistent with the extension of legal personality to non-human animals, ecosystems and artificial intelligences. If legal personality is a precondition for subjection to the law that in turn is a precondition for inclusion in the demos, the implication is that membership in the demos is contingent on developments in legal practice. This particular requirement for the inclusion

of artificial intelligences in the demos consequently does not depend on the properties possessed by artificial intelligences but on accidental features of legal systems.

Currently, legal personality is not conferred to AI. But such development seems a real legal possibility (Bryson, Diamantis and Grant, 2017). The robot Sophia has been granted citizenship in Saudi Arabia (Jaynes, 2020) and the European Parliament has urged the Commission to grant “electronic personality” to sophisticated AI (European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). In addition, some claim that AI can achieve legal personality indirectly – by assuming control of entities that are already legal persons (Lopucki, 2018). An algorithm that exclusively controls a legal entity is a legal person *de facto*. Following the first version of the ASP, both currently existing AI and future more sophisticated AI would meet the requirement for inclusion.

Compliance

As remembered, the second version of the ASP makes additional demands on the agential capacities of legal persons in the jurisdiction for them to be included in the demos. One such requirement is that the legal person has the capacity to comply with the law. It is an open question whether legal persons are able to. Consider, for example, the tendency to recognize ecosystems as legal persons vested with legal rights. Even if rivers and mountains are granted legal standing, no one believes that rivers and mountains can be agents with the capacity to comply with the law. Thus, on the second version of the ASP, rivers and mountains do not qualify as legal subjects in the sense relevant for democratic inclusion, even if they would be legal persons.

The question then is if AI can or could comply with legal norms in the domain in which they are active? At first glance, the answer may seem obviously affirmative. Legal norms are rules for behaviour and AI is specifically designed to be goal-directed in the sense of collecting the information necessary to achieve specified ends. Note however that prior specification of all relevant legal norms in the program of the AI is unlikely to be feasible. The law is a moving target, constantly open to either specification or change (Malle et al., 2020). On the other hand, an AI equipped with sufficiently powerful self-learning capacities might be able to adjust to and learn about changes in the legal environment. Surely then, we should expect AI to learn to behave in accordance with legal norms.

Yet, the challenges involved in compliance with the law have been found to be more complex than expected. A study on autonomous vehicles investigated the ability of compliance with traffic laws in the Netherlands. The study explored several approaches in the field of AI, including those that allowed the algorithm to “reason” in

order to solve new problems. Yet, the study concluded that legal compliance is difficult to ascertain due to the law being characterized by “rule conflicts, open texture and vagueness” (Prakken, 2017; also, von Ungern-Sternberg, 2018). The problem is that law is not a given set of rules, but a body of norms that is not always explicit and open to interpretation when it is. Given the difficulty in making AI comply with what appears to be a relatively simple domain of law, there is reason to be pessimistic about the ability of AI in its current form to comply with the full range of laws in the jurisdiction.

A stronger reason for scepticism about the potential for AI to comply with the law derives from the claim that AI necessarily lacks the relevant cognitive faculties. Sceptics argue that the decisions needed to comply with the law ultimately depend on human intuitions and that no technological system can ever fully replicate the workings of that faculty (Khan et al., 2019).

Yet, it is premature to exclude the possibility of future and stronger versions of AI with the capacity to identify and learn how to comply with the law. The capacity of AI to reason intuitively and to interpret textual information in sophisticated ways is a forgone conclusion. Intuitive judgment is arguably neither mystical nor a uniquely human capacity but a quasi-analytical skill that can be mirrored by algorithms trained in the appropriate way (Frantz, 2003). Also, the ability to interpret vague and complex patterns is a skill in which AI is already outperforming humans in some domains (Topalovic et al., 2019). It is thus likely that Strong AI, and weaker versions too, will possess the capacity to comply with the law and should in that respect be considered as legal subjects.

Recognition of legitimate authority

Following the second conception of the all subjected principle, legal personality and rule-compliance are not sufficient for inclusion in the demos, however. The subjects of the law are entitled to inclusion to the extent that they are subjected to legal authority. And in order for them to be subjected to legal authority, they must be able to recognize the law as legitimate.

To see why, it is helpful to note what compliance with the law appears like from an external point of view. An external observer can observe agents in a society behaving in ways that are law-like and hypothesize the existence of norms to which subjects comply. But the external observer cannot be confident in that conclusion. From the external point of view, compliance with law appears little different from adjustments to the natural environment. The fact that individuals tend not to jump off from high buildings is a law-like pattern just as the tendency of most individuals to comply

with the law against murder. But to the extent that citizens comply with the law because it is the law, their reasons for action are very different from the practical reasons that induce them not to jump off from high buildings. In the latter case, people act prudentially such that they accept a particular conclusion in view of the balance of practical reasons that apply to the relevant facts. But that is not what is going on when people comply with the law because it is the law. In that case, compliance follows directly from recognition of the authority of law. Only if they believe in the authority of the law do they have content-independent reasons for compliance.

Of course, legal systems rarely if ever achieve legitimate authority. But if they are more than brute exercises of power they are recognized “as if” legitimate by a significant number of its subjects. The distinctive mark of the law is that it claims legitimate authority while often possessing little more than *de facto* authority (Raz, 2009). The point is however that *de facto* authority is distinct from brute power and other circumstances to which people regularly adapt. Following the second version of the all subjected principle, the claim to democratic inclusion among the subjects of the law derives from the fact that they are subjected to a body that claims authority over them. Hence, the ASP applies only to subjects with the ability to recognize law as authoritative. In order for this version of ASP to apply to AI, it must be an agent with the capacity to believe that law is legitimate (in addition to being a legal person and having the ability to comply with the law). The question then is whether AI does have that capacity? This is a vast and complex issue that cannot be satisfactorily discussed here. Two observations are nevertheless in order.

The first is that “norm-recognition” is an important topic in AI-literature. The issue here is how to design autonomous systems that are able to distinguish between normative systems that ought to be complied with and those with whom they should not. The capacity needed to accomplish this task is that of “autonomous norm formation” as the AI must be able to make judgments not just on the validity of pre-existing normative systems but also on new and previously unknown systems of norms (Conte and Dignum, 2001). Yet, the ability to navigate between various normative systems does not entail the capacity to believe in their legitimacy. “Reasons” to accept a normative system are not premised on the ability to believe that the normative system is legitimate.

The second is that the capacity to recognize legitimate authority is a moral capacity. The belief that the law has authority is equal to the belief that the powers vested in the legal system are morally legitimate. When subjects believe that law is legitimate, they effectively believe that its directives are morally binding because they believe that the law provides reasons that apply to them independently (Raz, 1986).

With respect to AI, the implication is that they should be included in the demos only if they have the ability to make moral judgments about the legitimacy of legal

authority. A capacity for ethical and moral reasoning is thus required for an entity to be included in the demos. Now, numerous algorithms are reportedly able to make ethical decisions in narrowly defined circumstances. More importantly, some argue that artificial agents can be “virtual” moral agents or “functionally equivalent” to moral agents (Coeckelbergh, 2009; Wallach and Allen, 2009). Indeed, Sullins (2006) proposes that robots are moral agents if they have the capacity for intentional, autonomous and responsible actions. No actual version of AI reportedly enjoys a capacity for sophisticated moral reasoning in this sense (Cervantes et al., 2020). But can we exclude that future versions of AI can? Some think we can exclude that possibility since “functionally equivalent” moral agency is not moral agency in the relevant sense (Jebari 2021). On the assumption that recognition of legitimate authority requires sophisticated moral reasoning, artificial agents that are “moral agents” would need the ability to distinguish between legitimate and illegitimate legal authority. That in turn, depends on the capacity to identify and form moral concepts, which is a stronger requirement than intentional, autonomous and responsible action. If democratic inclusion is premised on subjection to legal authority that claims to be legitimate, and subjection to such authority is premised on the capacity to determine if authority is legitimate, it is uncertain if future AI ever qualifies for inclusion in the demos.

AAP and the patiency-requirement

It was suggested earlier in this article that already existing AI meets the relational requirement of AAP in the sense that the teleo interests of these entities are causally affected by the decisions taken by democratic political units. Interpreted as a principle that requires inclusion of everyone with an affected interest with no restrictions of what interests that warrants democratic inclusion, AAP could be argued to require inclusion in the demos of currently existing AI. However, this conclusion is based on an over-simplified interpretation of AAP. A lot of things like trees, viruses and rivers could be said to be causally affected in this way while granting these entities democratic inclusion is not what is usually taken to follow from the principle. Something more than being in this particular relation to political decisions seems to be required.

Unlike ASP discussed in the previous section, AAP cannot outright be attributed an implicit agency-requirement. As argued by Ben Saunders (2012), AAP requires inclusion without regard to a capacity for political agency. An entity could be causally affected in a way that warrants democratic inclusion without having the capacity for political agency. Instead, AAP seems to have an implicit *patiency-requirement* that could possibly exclude non-sentient biological organisms and artifacts, perhaps even intelligent artifacts, from democratic inclusion. Having an interest is not necessarily the same as having an interest that warrants democratic inclusion. In order for an

interest to warrant democratic inclusion on AAP, it must be an interest that is worthy of political concern. Just to be clear, something could be worthy of political concern without having an interest that is worthy of political concern. To take an example, nature and the environment could be worthy of political concern not because nature or the environment have an interest that is worthy of political concern but because other entities with political standing have an interest in a concern for nature and the environment. Entities with interests that are worthy of political concern will be referred to as “political patients”. This terminology is borrowed from the literature on moral standing where entities with moral standing are referred to as “moral patients”. With this terminology, only political patients are worthy of political concern *because* they have an interest that is worthy of political concern. Other entities that are worthy of political concern are that because a political patient has an interest in that these entities are treated in a certain way.

Reinterpreted along this line of thought, AAP does not require inclusion of everyone with an affected interest but of everyone with an affected interest of a certain kind - namely an interest that is worthy of political concern. Put differently, the scope of inclusion of AAP is limited to political patients since only political patients are bearers of interests that warrant democratic inclusion. With such reformulation, the categorical extension of the principle will be less extensive - assuming that all interests are not interests worthy of political concern. Determining the more precise scope of inclusion of AAP, reformulated in this way, we need to establish what interests that warrant democratic inclusion and what entities that could be bearers of these interests.

Psychological instead of teleo interests

The literature on the AAP is not very detailed on what type of interests that warrants inclusion. It has been suggested that we need some measure or index to determine what should count as being relevantly affected (Goodin, 2007; Arrhenius, 2018). But such a measure or index is seldom developed. Although, with the exception of Saunders (2012), political patiency is never explicitly discussed in the literature on AAP, it seems fair to say that both adherents and critics assume a conception of patiency (or of interests that warrant democratic inclusion) that is less inclusive than the maximally inclusive interpretation according to which all interests (including teleo interests) are interests that warrant democratic inclusion. Both adherents and critics of AAP seem instead to assume that only *psychological interests* warrant democratic inclusion. At the most general level, these psychological interests could be distinguished from the teleo interests discussed above. A teleo interest is, as said, an interest an entity has “in virtue of being teleological organized” while a psychological interest is an interest an entity has “in virtue of having psychological status” (Basl, 2014).

Understood as a principle that requires inclusion of those and only those with an affected psychological interest, the scope of inclusion of AAP is limited to entities with cognitive capacities necessary for having psychological interest. It can be about the capacity for consciousness, the capacity to have basic emotions, the capacity for experiencing pleasure or pain, or more sophisticated cognitive capacities. Regardless of which of these capacities are required for having psychological interests that warrant democratic inclusion, requiring psychological interests limits the scope of inclusion in a way that excludes entities without rudimentary cognitive capacities such as currently existing (narrow) AI or non-sentient biological entities.

The more precise scope of inclusion of AAP depends on what psychological interests that warrant democratic inclusion and what types of entities that have the cognitive capacities required for having these psychological interests. As said earlier in this paper, the discussion on the temporal and spatial extension of AAP has often assumed that the categorical extension of the principle is limited to humans or even adult humans. That the discussion of the scope of inclusion of AAP has mainly focused on adults does not however necessarily reflect an assumed patency requirement that excludes children. As will be discussed below, there are adherents of AAP that assume such patency requirement. However, it seems fair to say that most adherents of AAP probably assume that children have interests that are worthy of political concern but that children for some other reason are not eligible for democratic inclusion. That the discussion of the scope of inclusion of AAP has mainly focused on humans is more likely to reflect such assumption. The assumed boundaries of political patency in this literature would in that case coincide with the “common-sense view on moral standing” (Jaworska and Tannenbaum, 2019). On the common-sense view of moral standing, humans (with possible exception of fetuses and those in a persistent vegetative state) have full moral standing. Humans have a higher moral standing than animals although animals also have some moral standing. This difference in moral standing has proven difficult to account for philosophically (Jaworska and Tannenbaum, 2019). This suggests that it would be difficult also to formulate a conception of political-patency that includes all human entities and excludes all non-human entities. If this is the case, a coherent conception of political patency will be over-inclusive, under-inclusive or both in relation to the view of political patency assumed in much of the literature on AAP. Inspired by the literature on moral standing we could distinguish two other conceptions of political patency that limits democratic inclusion to entities with psychological interests. The first holds that political patency requires sophisticated cognitive capacity, whereas the second holds that political patency requires only rudimentary cognitive capacity.

Autonomy

The sophisticated cognitive capacity conception on moral standing or moral patiency traces back to Immanuel Kant. On his account, autonomy, or the capacity to set ends and act upon these ends, is a necessary requirement for having full moral standing (Jaworska and Tannenbaum, 2019). The Kantian account of moral patiency, also referred to as the “standard position” (Gunkel 2012, 95) or the functional conception, treats moral patiency as the flipside of moral agency. Those and only those with a capacity for moral agency have moral patiency. This intimate connection between agency and patiency has been challenged by scholars discussing the moral status of non-human animals (see Gunkel, 2012).

Autonomy has been put forward as an important value also in the literature on democratic inclusion. Arash Abizadeh (2008) argues for a version of ASP requiring inclusion in the demos of all those and only those coerced by democratic decisions. Here, autonomy is what grounds democratic inclusion. All those and only those whose autonomy is invaded by democratic decisions ought to be included in the demos making these decisions. It follows from this account that those who lack the cognitive capacities necessary for autonomy do not have a justified claim to democratic inclusion. The cognitive capacities required are the capacities needed for formulating and pursuing personal projects (Abizadeh, 2008). In relation to AAP something along the line of the sophisticated cognitive capacity conception of patiency has been suggested by Kim Angell (2020). On his account, the domain of interests that warrant democratic inclusion is limited to “people’s interest in leading an autonomous life” (Angell, 2020). The main rationale for limiting the domain of interests that warrant democratic inclusion in this respect is that it avoids the counterintuitive implication of AAP as it is usually formulated in relation to the question of democratic inclusion of children and tourists (Angell, 2020). Children lack the cognitive capacities necessary for autonomy and ought therefore to be excluded on this account. Limiting the domain of interests that warrant democratic inclusion in this respect, the scope of inclusion of this version of AAP is similar to the scope of inclusion of ASP discussed in the previous section. Understood in this way, AAP will exclude not only children but also (most) non-human animals, people with intellectual disabilities and narrow AI. Future AI with a capacity to autonomously formulate, revise and pursue life-plans will be included on this account. The life plan version of AAP seems to require the inclusion of AI with these capacities even if these artificial entities do not have an interest in personal autonomy.

The scope of democratic inclusion on the categorical dimension following this life-plan version of AAP is intuitively plausible in the sense that it coincides with current democratic practices. It could nonetheless be argued to be based on an under-

inclusive conception of political patency. Although it seems plausible to include only entities capable of political agency, limiting the domain of political standing to entities capable of political agency seems implausible. Limiting the scope of inclusion in this way by limiting the domain of interests that warrant democratic inclusion seems to imply not only that children and people with intellectual disabilities could be excluded from the demos but also that the interests of children and people with intellectual disabilities does not deserve political consideration.

Requiring sophisticated cognitive capacities for democratic inclusion seems reasonable indeed since these capacities could be argued to be a precondition for political agency. But, requiring sophisticated cognitive capacities for political patency seems problematically under-inclusive. The domain of interests that warrant democratic inclusion should not therefore be limited to interests that require sophisticated cognitive capacities. A more plausible alternative is to limit the domain of interest to that warrant democratic inclusion to interest that requires rudimentary cognitive capacities.

Consciousness

In the literature on moral patency, the main alternative to the Kantian or functional conception is the experiential conception (Gunkel, 2012). Just like the functional conception of moral standing, the experiential conception connects patency to certain cognitive capacities. But the cognitive capacities required for patency are different. The experiential conception does not require the sophisticated cognitive capacities required for autonomy. What is required here is instead the cognitive capacities required for experiencing pleasure, pain, welfare, or harm. This conception of patency, or moral standing, has been developed in the literature on animal ethics and the decisive difference between entities that qualify as patients and entities that do not qualify is consciousness (or self-consciousness) (Jaworska and Tannenbaum, 2019).

Understood as a conception of political patency, entities with a capacity for conscious experiences are political patients and thus have interests that are worthy of political concern. Hence, having a capacity for consciousness is what qualifies an entity as a political patients on this account. Reformulated along these lines, the scope of inclusion of AAP would not be limited to adult human entities. All entities with a capacity for consciousness including children, people with severe intellectual disabilities, and animals are within its scope of inclusion. That AAP could be interpreted as a principle that is radically categorically inclusive in this respect has been recognized by others (Saunders, 2012; Garner, 2017; Campos, 2019). However, the scope of inclusion with this interpretation of AAP is not categorically unlimited. Non-sentient biological organisms, nature, and currently existing narrow AI lacks the capacities required for consciousness and could therefore be excluded.

With this interpretation of AAP, the categorical scope of inclusion is determined by what entities have a capacity for consciousness. The question of democratic inclusion of future more sophisticated AI therefore turns into a question of whether or not AI will develop something equivalent to the human consciousness. Adherents of this interpretation of AAP should join those that have argued that a developed capacity for consciousness is a necessary condition for AI to deserve moral concern (Mosakas, 2021) or for being a holder of direct rights (Andreotta, 2021) and argue that AI should not be treated as an entity with an interest that warrants democratic inclusion until AI has been developed with these capacities.

It should be noted here that the conscious machine with the emotional capacity for having conscious experiences does not necessarily possess the intellectual capacities required for political agency. AI could be developed into a “mere patient” without the capacity for agency. These machines can be harmed and are not to be treated as mere machines (cf. Bryson, 2010).

Concluding discussion

The general issue addressed in this paper is with the non-relational properties required for inclusion in the demos. The answer determines if intelligent artificial entities are or can be eligible for democratic inclusion as it is less controversial that AI satisfies the relevant relational requirements: AI's can be either affected or subjected to collective decisions. But as argued here, it is less clear that AI's do or can satisfy the agency and patience requirements for democratic inclusion. Democratic inclusion cannot be conclusively determined from the fact that an entity is either subjected or affected by public decisions. Only agents and/or patients qualify as members of the demos.

The general import of this conclusion is that the debate about democratic inclusion should move beyond an exclusive focus on the relational requirement of AAP and ASP. The relational requirements offered by these principles determine the spatial and temporal extension of democratic inclusion. But the categorical extension of the demos depends also on the agency-requirements of ASP and the patience-requirements of AAP.

The agency requirements identified by the distinct versions of ASP are legal personality, the capacity to comply with rules and the ability to recognize legitimate authority. While it is plausible that AI do or will satisfy the first two conditions, it is at present uncertain whether AI would develop the capacity for moral reasoning required to satisfy the third condition. Hence, on at least one version of ASP, there is reason to doubt that AI will ever be entitled to democratic inclusion. On the other hand, on at least one version of the ASP, there is reason to conclude that AI might or perhaps already should be included in the demos. The most plausible patience-

requirement of AAP suggests that democratic inclusion is premised on a capacity for conscious experiences. Understood in this way, AAP does not require the inclusion of currently existing AI. However, this formulation of AAP could still be argued to be over-inclusive in relation to the scope of inclusion that AAP is usually taken to imply. Interpreted in this way, AAP will stretch the boundaries of inclusion beyond the human domain. It will require the inclusion of children, some animals and future AI with this capacity. As discussed in the first section of this paper, there is reason to doubt that AI is developing consciousness. But if it does, AI would qualify for democratic inclusion following AAP.

The further question is if ASP needs to incorporate some patiency-requirement associated with AAP and if AAP needs to incorporate some agency-requirement associated with ASP. As indicated earlier, a capacity for agency may not be sufficient for patiency. Hence, even if AI would develop a capacity for agency (moral or political), it is not necessarily the case that AI develops political (or moral) patiency of the relevant kind. The reverse is also imaginable. An entity with moral patiency does not necessarily satisfy the relevant requirements of agency (Saunders, 2012). Hence, even if AI would develop a capacity for patiency, it is not necessarily the case that AI develops agency of the relevant kind. It was suggested above that currently existing AI poses a challenge to AAP and ASP understood as principles that require the inclusion of all entities that satisfies the relational requirement. It could be argued that possible future AI could pose a challenge also to the versions of AAP and ASP developed in this paper. The “experiential machine” with the capacity for political patiency but without the capacity for political agency will pose a problem for AAP while the “morally intelligent machine” with a capacity for political agency but without a capacity for political patiency will pose a problem for ASP.

However, AAP and ASP may both harbor the resources to cope with this challenge. Arguably, the importance of agency and patiency are implicit in the normative rationales for democratic inclusion on either principle. Advocates of AAP argue that the affected should be included in decisions because it extends to them control and influence (Goodin, 2007; Hultin Rosenberg, 2020). If control and influence can be exercised only by those who are political agents, it follows that democratic inclusion could be limited to agents also on AAP. Similarly, advocates of ASP argue that democratic inclusion is required for the subjects of collective decisions because it imperils their freedom understood either as autonomy (Abizadeh, 2008) or non-domination (Beckman and Hultin Rosenberg, 2018). Democratic inclusion could be limited to political patients on ASP because a capacity for patiency is a precondition for freedom.

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Katharina Berndt Rasmussen¹

The Rae-Taylor Theorem and the Weighted Majority Rule²

An influential theorem proposed by Rae (1969) and Taylor (1969) shows that the collective decision-rule which is individually optimal, for a constitution-maker behind a veil of ignorance, is the simple majority rule. A recent theorem by Brighthouse and Fleurbaey (2010) and Fleurbaey (2008) shows that the weighted majority rule selects collectively optimal outcomes. In this paper, I argue that the Rae-Taylor framework contains hitherto underexplored resources that can be used to align their result with Brighthouse and Fleurbaey's. More specifically, I argue that Rae's (1969) own discussion of the constitution-maker's possible biases points to a way of generalising his argument, which seamlessly transposes it to support the weighted, rather than the simple majority rule.

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1. Introduction

An influential theorem by Douglas Rae³ and Michael Taylor⁴ shows that the individually optimal collective decision-rule, for a constitution-maker behind a veil of ignorance, is the *simple majority rule*. This rule, in binary collective decisions, assigns to every person an equal vote, and selects as outcome the option receiving more votes. A recent theorem by Harry Brighouse and Marc Fleurbaey⁵ and by Fleurbaey⁶ shows that the *weighted majority rule* selects collectively optimal outcomes. This rule, in binary collective decisions, assigns to every person a voting weight in proportion to her stakes and selects as outcome the option that receives more voting weights.

The weighted majority rule is extensionally equivalent to the simple majority rule, in decisions with equal stakes. However, since the former selects collectively optimal outcomes even when stakes are unequal, one would expect it to be optimal to choose for a constitution-maker under uncertainty. Thus, the Rae-Taylor theorem seems at odds with the Brighouse-Fleurbaey theorem. However, as Fleurbaey⁷ points out, the latter is a generalisation of the former, which results from dropping Rae's assumption of equal intensities of preferences (i.e., of equal stakes).⁸

In this paper, I argue that the Rae-Taylor framework already contains the resources needed to derive the Brighouse-Fleurbaey result. More specifically, while Rae explicitly assumes equal intensities of preference, his own discussion of the constitution-maker's possible biases in effect allows for unequal intensities. We can describe this as an unacknowledged inconsistency in Rae's framework – or as an underexplored opening, pointing to a way of generalising his argument to support the weighted, rather than the simple majority rule.

Section 2 summarises Brighouse's and Fleurbaey's argument and spells out its implications for a veiled constitution-maker. Section 3 reconstructs Rae's argument, whose five controversial assumptions I point out in section 4. I show how they can be relaxed, along the lines already suggested by Rae, and that the resulting generalised argument advocates the weighted majority rule. Section 5 concludes.

³ Rae (1969).

⁴ Taylor (1969).

⁵ Brighouse & Fleurbaey (2010).

⁶ Fleurbaey (2008).

⁷ Fleurbaey (2008).

⁸ Cf. List (2013: §2.4); Conradt & List (2009: 730f.).

2. The Brighthouse-Fleurbaey argument

Assume that, for a given binary decision with options x and y , x yields a greater sum-total of well-being for the people it affects than y . Second, assume everyone either prefers x to y or y to x or is indifferent, and that the direction and intensity of her preference corresponds to her *stakes*, i.e., her difference in well-being units between the options. One way to understand the idea of stakes is that, for every decision, the voter's well-being level from the option that is worse for her constitutes a baseline, and her stakes equal the number of additional well-being units from the for her better option. Then those who prefer x to y do so with a greater overall intensity – and have a larger total amount of stakes – than those who prefer y to x . Third, assume a decision-rule assigning numbers of votes in proportion to stakes (assigning zero votes to indifferent individuals). Fourth, all *voters* (stakeholders with assigned votes) are *self-interested* (seek to maximise their preference satisfaction), such that, in a vote between x and y , they choose their preferred option.⁹ Then a decision-rule, which selects as outcome that option receiving the greater number of votes, selects the option with the greater sum-total of well-being. The rule described is the weighted majority rule.¹⁰

For an even number of votes, half of which support x and the other half y , the rule needs a tie-breaker. *Ceteris paribus*, any tie-breaker will do. Given that the votes are split evenly between the options, so are the stakes, which implies that the options are equal in sum-total of well-being. Thus, the weighted majority rule, complemented with any tie-breaker, selects the *collectively optimal outcome*, i.e., an option that is at least as high in sum-total of well-being as its alternative.

This argument provides a utilitarian social planner with a strong (*prima facie*) reason to implement the weighted majority rule.¹¹ What does it imply for the individual – as assumed, self-interested – voter? Does it provide her with a reason to accept this collective decision-rule? If this question concerns single instances of collective decision-making, the answer is no. The voter's acceptance depends on how the chips happen to fall: if she finds herself on the side of the minority-stakeholders, she has a (*prima facie*) self-interested reason to oppose the rule along with its outcome.

A more interesting question concerns the voter's second-order decision which rule

⁹ The binary setup excludes strategic voting (Gibbard 1973); the question of the cost/rationality of voting (Downs 1957) is here disregarded entirely.

¹⁰ Brighthouse & Fleurbaey (2010), Fleurbaey (2008). They describe the rule as assigning voting *weights* to votes. Presenting it in terms of *numbers* of votes facilitates my arguments; though note that voters cannot split their votes between options.

¹¹ Its relevance is, admittedly, limited to a highly idealised context, with a planner assessing stakes and assigning votes correctly. For less idealised circumstances, other rules may approximate this ideal by letting each voter do the planner's task for herself; e.g., Hortala-Vallve's (2012) qualitative, or Casella's (2012) storable vote rule, or Tullock's (1970) logrolling practice.

to accept for any and all upcoming instances of collective decision-making. Which rule would be optimal for a voter *qua* constitution-maker, making this decision under ignorance? Intuitively, not knowing who she will be beyond a veil of ignorance, she should choose a rule maximising the sum-total of well-being for all. According to the above argument, this is the weighted majority rule.¹² A substantial argument for this conclusion runs as follows.

Assume that the veil conceals which first-order decisions the constitution-maker will face and what her stakes will be. Second, the constitution-maker is *self-interested in a qualified sense*, seeking to maximise preference satisfaction while prioritising satisfaction of more intense preferences over satisfaction of less intense preferences. I.e., her normative criterion is to maximise intensity-weighted preference satisfaction. Then, not knowing whether she will be a majority- or minority-stakeholder, with high, low, or no stakes in any upcoming decision, she will satisfy this criterion by choosing a rule which, for every binary decision, assigns votes in proportion to stakes (corresponding to intensity-weighted preferences) and selects as outcome the option attracting an at least as great sum-total of votes as its alternative. I.e., she will choose the weighted majority rule. This conclusion provides the self-interested voter, *qua* constitution-maker, with a reason to accept this rule. Yet this runs counter to Rae's argument.

3. Rae's argument

Rae's constitution-maker is 'a single, anonymous individual who is self-interested in the sense of wishing to optimize the correspondence between his own values, however selfish or altruistic, and those expressed by collective policy. This individual would like to "have his way" as often as possible, by securing the adoption of proposals he likes and the defeat of proposals he dislikes'.¹³

Second, the constitution-maker chooses among n voting rules, for any group of $n \geq 3$ voters facing a binary decision between supporting policy x and defeating x (i.e., preserving status quo). At one extreme of these n rules Rae locates the 'rule of consensus': x is passed only if all n voters support it. At the other extreme is the 'rule of individual initiative': x is passed only if one voter supports it.¹⁴ Between these extremes are the rules stating that x is passed only if $n-1$ ($n-2$; ...; or $n-(n-2)$) voters support it.

Third, the constitution-maker knows 'nothing about the (long-run) agenda which

¹² For an experimental study assessing the acceptance of weighted voting, see Montgomery and Dimdins (2009).

¹³ Rae (1969), p. 41.

¹⁴ Rae (1969), p. 49.

will confront the [collective], about the ways individuals will evaluate the proposals which do arise, or about the factional structure of the [collective]'.¹⁵ He just knows that each voter (including himself) will either support or reject each proposal, independently of any other. Rae's constitution-maker thus faces one of four possible events for each decision:

(A) A policy he supports is collectively defeated.

(B) A policy he opposes is collectively passed.

(C) A policy he opposes is collectively defeated.

(D) A policy he supports is collectively passed.

In (A) and (B), the 'values' expressed by the outcomes of the decision do not correspond to the constitution-maker's own. In (C) and (D), they do. His wish to 'have his way' as often as possible is precisified in Rae's individualist normative criterion: 'One should choose that decision-rule which minimizes the sum of the expected frequencies for (A) in which the [collective] does not impose a policy which his value schedule leads him to support, and (B) in which the [collective] imposes a policy which his value schedule leads him to oppose'.¹⁶

These assumptions generate a model within which the expected frequencies of (A) and (B) can be calculated for any voting rule that requires $n - m$ voters to vote for a policy in order to pass it. Rae assumes that $n > m \geq 0$. Under Rae's rule of consensus, the expected frequency of (A) is at its maximum: a policy is passed only if everyone supports it. The expected frequency of (B), however, is zero: the constitution-maker's rejection will suffice to defeat a policy. Under Rae's rule of individual initiative, the tables are turned. The expected frequency of (A) is zero: the constitution-maker's support will suffice for a policy to pass. The expected frequency of (B) is, however, quite high: a policy is defeated only if no one supports it. Between these two extremes, the expected frequencies for (A) are monotonically increasing with the number of individuals whose support is required for a policy to pass, while the expected frequencies for (B) are monotonically decreasing. The frequency curves are thus opposed.

Rae's normative criterion requires that the *sum* of the expected frequencies for (A) and (B) is minimised. Rae illustrates that this minimum is located between the two

¹⁵ Rae (1969), p. 41.

¹⁶ Rae (1969), p. 42.

extremes, rule of consensus and rule of individual initiative. For an odd number of voters, the sum is minimised when the required number of supporters to get a policy passed is $(n+1)/2$. For an even number, this minimum occurs both at $n/2$ and at $(n+1)/2$.

Hence, simple majority rule, requiring that more than half the voters support a policy for it to pass, is an optimal decision-rule. Rae concludes that ‘majority-rule is as good (i.e. optimal) as any alternative decision-rule, given the model proposed here’.¹⁷ In the long run, it ensures the constitution-maker's preferred outcomes as often as possible. This provides the constitution-maker with a reason to accept this rule.

4. Adjusting Rae's argument

I now examine five central restrictions of Rae's argument: (i) Rae's n decision-rules “exhaust the available alternatives”, such that, e.g., weighted decision-rules are excluded from the outset.¹⁸ (ii) For every policy x and every voter i , i either supports or rejects x , leaving no room for indifference, i.e., ranking x as just as good as the status quo. (iii) Framing the argument in terms of supporting versus rejecting policies makes all decisions status-quo dependent, leaving aside decisions between two options, neither of which is the status quo, (e.g., two mutually exclusive policies un-animously ranked above status quo). (iv) Rae explicitly disregards as theoretically intractable the ‘problem of intensity’, i.e., the idea that in some decisions there might be more at stake for some voters than for others.¹⁹ (v) The constitution-maker is not biased in favour of one of the options, ruling out, e.g., a conservative bias in favour of preserving the status quo. Rae characterises such bias as a ‘*positional*’ (as opposed to substantive) *preference*.²⁰

Undoubtedly, Rae's argument is sound given these restrictions; and uncontroversially, we may make it more general by suitably relaxing them, thereby possibly modifying its conclusion. The next section, however, highlights how Rae's own considerations point us into the direction of such a generalised argument. Starting from (v), I show that relaxing the no-bias assumption, in accordance with Rae's suggestions, paves the way for relaxing the others.

¹⁷ Rae (1969), p. 52. Strictly speaking, Rae shows that a “non-minority rule”, requiring that *at least half* the voters support a policy in order for it to pass, is optimal. However, for the special case with a policy supported by exactly $n/2$ voters, the constitution-maker is indifferent between the simple majority rule (policy not passed) and the non-minority rule (policy passed), since he has an equal chance of being among either half of the voters. Thus, either rule is equally as good for him.

¹⁸ Rae (1969), p. 40.

¹⁹ Rae (1969), p. 41, footnote 6. Cf. Rae and Taylor (1969).

²⁰ Rae (1969), p. 52.

4.1 The problem of bias

Rae considers a constitution-maker with a general conservative bias in favour of the status quo, assigning more disvalue to (B) than to (A). His normative criterion now needs adjustment: the optimal decision rule minimises the sum of the *weighted* expected frequencies of (A) and (B), with the weights chosen in proportion to the assigned (dis)values.²¹

Rae discusses the weights of 1 and 2, respectively, for (A) and (B). Intuitively, the idea is that bad action (B) is twice as bad as bad inaction (A). Stressing ‘the enormous difficulty of supplying meaningful quantities for [these weights]’, Rae concedes that, ‘[o]n the assumption that the weights themselves make sense’, the adjusted normative criterion singles out another optimal voting rule: the two-thirds majority rule, according to which a policy is passed only if 2/3 of the n voters support it.²²

We should pause to note the extent to which this concession changes Rae’s model. Originally, the constitution-maker ranks the events according to only one factor: correspondence between preference and outcome – (C) or (D) – is ranked above non-correspondence – (A) or (B). By introducing a conservative bias, Rae introduces an additional factor, ranking non-preferred status quo – (A) – above non-preferred change – (B). Thus, the constitution-makers now ranks the two options he values – (C) or (D) – over one he disvalues – (A) – over one he disvalues *even more* – (B). Hence, given that he supports a policy, he prefers (D) to (A), and given that he opposes a policy, he prefers (C) to (B), and the latter preference’s intensity is *greater* than that of the former. Relaxing assumption (v) by introducing bias thus implies introducing ‘intensity’, i.e., varying stakes. This amounts to relaxing assumption (iv). Rae’s ‘*positional*’ preference is thus not only opposed to substantive preference, but also to the binary (on-off) picture of preference satisfaction underlying the whole of Rae’s model.

In dealing with bias, Rae thus points out a way to deal with the problem of intensities. His specific suggestion holds for a constitution-maker who is always and only biased in one way — in this case, conservatively. For generality, we should allow that he may be conservatively biased only in certain decision, e.g., concerning family issues. In decisions concerning, e.g., education and the sciences, he may instead have an anti-conservative (innovative) bias, or no bias at all. Yet for such a voter, Rae’s adjusted normative criterion with fixed weights becomes irrelevant.

An upshot of generalising the assumption of varying biases to one concerning varying stakes is that we do not have to frame the events facing the constitution-maker in terms of *passed* or *defeated* policy x (both having the status quo non- x as their

²¹ Rae (1969), p. 52–53.

²² Rae (1969), p. 53.

baseline). We can frame them instead in terms of whether or not the collective ranking of any two options x and y corresponds to the constitution-maker's individual ranking of these options. This amounts to relaxing assumption (iii) and reduces the number of events the constitution-maker has to take into consideration:

(I) *Correspondence*: The constitution-maker ranks x above y , as does the collective.

(II) *Non-correspondence*: The constitution-maker ranks x above y , but the collective does not.

(I) is equivalent to the union of (C) and (D). (II) is equivalent to the union of (A), (B), and additional event (E). (E) covers all cases of non-correspondence, such that the constitution-maker is not indifferent between x and y , while the collective ranking is indifferent. This possibility was missing in Rae's model.

Within this framework, we can also account for another missing event:

(III) *Individual indifference*: The constitution-maker is indifferent between x and y , while the collective either ranks one above the other or is indifferent as well.

Thus, relaxing (v), the no-bias assumption, helps reframe the constitution-maker's decision problem in a way which ultimately allows us to relax even assumption (ii).

In the next section, I suggest a normative criterion for a self-interested constitution-maker considering the events of (I), (II), and (III) in this less restricted context. I then show how the criterion, along Rae's own lines of reasoning, seamlessly leads him to accept the weighted majority rule. This shows how even assumption (i), the restriction to Rae's set of n voting rules, can be relaxed.

4.2 Deriving the weighted majority rule from the Raean framework

Considering (I), (II), and (III), the constitution-maker wants as much correspondence and as little non-correspondence as possible. Indifference event (III) does not matter to him (unless his goal of 'having his way' is a fetish). However, not all correspondence is equally good and not all non-correspondence equally bad for him, due to varying stakes. Accordingly, he wants as much correspondence as possible, especially

in high-stakes decisions, and as little non-correspondence as possible, again, especially in high-stakes decisions.

To precisify this idea, the constitution-maker wants to maximise the sum of the weighted expected frequency of (I) minus the weighted expected frequency of (II), with weights chosen in proportion to his stakes. This *stakes-sensitive normative criterion* applies to equal and unequal stakes-cases alike. (We can see from its formulation why (III) becomes irrelevant: this event occurs only when the constitution-maker is indifferent, such that his stakes, and hence weights, will be zero. Thus, including (III) makes no difference.)

This seems to be a hopeless criterion for finding one single optimal voting rule for all possible decisions, since the stakes — and thus weights — may vary for every instance of (I) and (II). But it helps if the constitution-maker shifts perspective. He knows that, in each upcoming decision, he will have some number of stakes, ranging between zero (indifference) and the total amount of stakes in the decision, s , i.e., the sum-total of all the voters' well-being differentials. What he wants can now be re-described as having as many of his stakes in instances of (I) and as few in instances of (II) as possible. Thus, for every one of his stakes, he wants to maximise the probability that it 'occurs' in (I), or — equivalently — minimise the probability that it 'occurs' in (II). (That a voter's stake 'occurs' in (I) (or (II)) simply means that it is one of his stakes in a decision where the for him better (worse) option is selected.) Thus, he wishes to minimise the expected frequency of (II) for each of his stakes, rather than for himself. This is the *stakes-centred normative criterion*.

I now assimilate this criterion to Rae's original criterion, to facilitate the assimilation of his argument to my purposes. As stated, (II) is equivalent to the union of (A), (B), and (E). Rae's criterion only considers (A) and (B). Assume, initially, that there are only decisions with an odd total number of stakes, such that there cannot be any collective indifference. Then, (E) can be disregarded, such that (II) is equivalent to the union of (A) and (B). Rae's normative criterion requires that the sum of the expected frequencies of (A) and (B) is minimised for the constitution-maker. Thus, it is equivalent to my stakes-centred normative criterion, except that it focuses on the constitution-maker — as one of n voters — instead of on any one of his stakes — as one among a total of s stakes.

Rae shows that the optimal decision rule, according to his criterion, requires that to get x passed, there are $(n+1)/2$ voters supporting x , for an odd number of voters. Along the same lines, we can now conclude that the optimal decision rule, according to the stakes-centred normative criterion, requires that to get x passed, there are $(s+1)/2$ stakes 'supporting' x , for an odd number of stakes. Recall that we defined a voter's stakes as equalling her number of additional well-being units from the for her better option, compared to the baseline level of the for her worse option. Each stake can

thus be said to ‘support’ the for her better option. Thus, the support of a simple majority of stakes is required for a policy to be selected. This is ensured by the weighted majority rule, which assigns numbers of votes in proportion to stakes and selects as outcome the option that gets a simple majority of votes.

Assume now that there are decisions with an even total number of stakes. Then there are three possibilities. One, there is no collective indifference, i.e., there is a majority of stakes in favour of one of the options. Then, the above argument holds even here. Two, there is collective indifference between the options — and the constitution-maker is indifferent as well. Then, he does not care which voting rule is employed. The weighted majority rule, with any tie-breaker, is as good for him as any other. Three, there is collective indifference between options x and y — and the constitution-maker is *not* indifferent. This is event (E). Since there are as many stakes in total for x as there are for y , the constitution-maker knows that it is equally likely that his stakes will support either option. Hence, the weighted majority rule, with any tie-breaker choosing either one of the options, is as good for him as any other.

The weighted majority rule is thus better for the constitution-maker than any other, in odd-stakes cases as well as even-stakes cases without collective indifference. And it is as good for him as any other, in even-stakes cases with collective indifference. He will thus choose it behind his veil of ignorance.²³

5. Conclusion

I have shown that the Rae-Taylor theorem can be taken a good step further, and that Rae’s own discussion already contains the resources necessary to generalise his result. Rae’s consideration of the problem of bias points out a way to handle varying stakes, to allow status-quo independence for describing the options, and to allow voter indifference. The resulting generalised argument supports the weighted majority rule, as the individually optimal collective decision-rule, and thus aligns with the Brighouse-Fleurbaey theorem’s implication for individual optimality.

²³ Replace ‘stakes’ with ‘constituents’, and you get a constitution-maker version of Barberá and Jackson’s (2006) argument for a weighted majority rule for political representatives, with weights proportional to their number of constituents.

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More, better or different?³

In this paper we investigate the interaction between the number of voters and the development of their competence over time. Among other things we consider how different learning profile for the members of a committee affects the optimal committee size.

Our framework provides the first natural way to include the potentially positive effects on majority decisions of having a heterogenous group of voters, and we discuss why some earlier attempts fail to capture the effect of heterogeneity.

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1. Introduction

The various perceived benefits collective decision making were described very early on, e.g. Aristoteles writes

For the many, who are not as individuals excellent men, nevertheless can, when they have come together, be better than the few best people, not individually but collectively, just as feasts to which many contribute are better than feasts provided at one person's expense. For being many, each of them can have some part of virtue and practical wisdom, and when they come together, the multitude is just like a single human being, with many feet, hands, and senses, and so too for their character traits and wisdom. That is why the many are better judges of works of music and of the poets. For one of them judges one part, another another, and all of them the whole thing.

Aristoteles, *Politics* (Aristotle; Reeve 1997)

First out in this description is the idea that a collective decision could be taken with greater competence than that of any of the individual decision makers. Indeed, this is the positive half of Condorcet's celebrated jury theorem:

Theorem 1.1 (Condorcet's jury theorem). *Given n independent jurors, each of which votes for the correct verdict with a fixed probability $p > 1/2$, the probability P of a correct verdict grows monotonically to 1 as $n \rightarrow \infty$*

However, there are some aspects already in Aristoteles' description which do not fit into Condorcet's theorem, at least not in its original form, and also situations where at least a naive application of the theorem seems to give conclusions which contradict practical experience. An example of the first aspect is given by Aristoteles emphasis on how variety among the decision makers can improve their collective competence. In the basic form of the jury theorem there is no room for such effects, since all individual competences are fixed, and we shall soon see that the existing attempts to incorporate this aspect in generalised jury theorems still fall short. An example of the second type comes from the composition of committees. A naive application of the jury theorem to the question of how to set up a committee in order to get the best quality of its decisions seems to indicate that in order to make the committee as competent as possible we should make it as large as possible, or at least as large as our financial resources allow. That committees simply become better the larger they are is a statement which many would not agree with, and as e.g. (Francis 1982) has already discussed, the internal structure of a large enough committee becomes crucial.

Our claim is that the missing component in the various versions of the jury theorem is the fact that typically some amount of time will pass from the point when an election is announced or a committee formed to the point when votes are cast. It is how the individual competence improves during this time, either by an individual's own work, deliberation, or other interaction with other voters, which is affected by the variety of background in Aristoteles' description, and which bounds the structure of an efficient committee.

We will first take a quick look at how Condorcet's original theorem has been generalised, in order to cover more realistic situations, and then outline a way to include time developing competence in the theorem.

The conditions in Condorcet's theorem are quite strict: the jurors are independent and p is fixed and equal for all jurors. Dietrich and Spiekerman (Dietrich and Spiekermann 2017) provides a good survey and additional critique of these assumptions. However, one can easily show that these conditions can be relaxed substantially. We can have jurors numbered $i = 1, \dots, n$ and let each have an individual probability p_i . If we now let p denote the average $p = \frac{1}{n} \sum_{i=1}^n p_i$ then the theorem still holds (Boland 1989). We also do not need to keep p independent of n , a number of different theorems on how close to its mean a random variable is likely to be, imply that as long as $(p - 1/2)\sqrt{n} \rightarrow \infty$ the theorem still holds (Berend and Paroush 1998). That is, as the number of voters grow we can allow p to be just a bit larger than $1/2$ plus 1 over the square root of the number voters.

Finally, and perhaps least well-known, it is not hard to show that instead of requiring that the jurors are independent it is enough to require that the average size of their pairwise correlations is not too high. This was shown already in (Ladha 1992), but has also been considered in more recent papers (Kanwiovski 2011). One important corollary here is that *negative* correlations are in fact beneficial for the probability P , rather than a problem, and the more negative they are the better. Some papers (Stone 2017) have tried to use variation in individual probabilities together with correlations to explain how the benefits of having a heterogeneous electorate should become visible Condorcet's theorem. However, the focus there was on elimination of the detrimental effects of underlying biases in the electorate, rather than different forms of background competence.

Our basic set up is as follows: We have n voters $i = 1, \dots, n$ each with an individual competence $p_i(t)$ regarding the issue at hand. Here the individual competence $p_i(t)$ depends on the time t , with $t = 0$ corresponding to the point where the voter is made aware of the issue, and some later time $t = T$ being the time at which the vote is held. In this setting the group competence $P(t)$ is also time dependent and the way it develops will depend both on how the individual competencies $p_i(t)$ can be improved over time and on how correlations among the voters develop.

In this discussion we will make the simplifying assumption that correlations are negligible in the final vote, and instead focus on the effect on different learning profiles for the individual competencies and the interaction between the number of voters, as well as the total cost of the election. By a learning profile we here mean the average individual competence $p(t)$ as a function of time. We will first discuss the behaviour of majority decisions for a specific simple form of learning profile and later discuss when different such profiles are to be expected.

2. Earlier results

In this section we will review some the existing variations on Condorcet's original jury theorem, including some which aims at balancing the cost for salaries versus a cost incurred by incorrect decisions. However, unlike our results, the competence of individual voters in all these results is static.

We will here use X_i both to refer to the i th voter, and the 0/1-valued random variable which is the vote of that voter. For X_1, X_2, \dots we assume that $\Pr(X_i = 1) = p_i$ and $\Pr(X_i = 0) = 1 - p_i$. We let $Z_n = \sum_{i=1}^n X_i$. We assume that a value of 1 is a vote for the correct alternative, so for a simple majority decision we are interested in $\Pr(Z_n > \frac{n}{2})$.

We will use two further pieces of notation: $\mathbf{p} = (p_1, p_2, \dots, p_n)$, $\mathbf{p}(p) = (p, p, \dots, p)$.

For independent voters some of the basic variations of the original are compiled in this theorem, for which we include a proof in the appendix:

Theorem 2.1. *Here we let $P_n(\mathbf{p})$ denote the probability of a majority for the correct outcome and we define the average competence $\bar{p} = \frac{1}{n} \sum_{i=1}^n p_i$.*

1. *If $p > 1/2$ is fixed then $P_n(\mathbf{p}(p)) \rightarrow 1$ monotonically with n .*
2. *If $\bar{p} = p > \frac{1}{2}$ for some fixed p then $P_n \rightarrow 1$ and $P_n(\mathbf{p}) \geq P_n(\mathbf{p}(p))$.*
3. *If $\bar{p} = \frac{1}{2} + \frac{\omega(n)}{\sqrt{n}}$, where $\omega(n)$ is any increasing, unbounded, function of n , then $P_n \rightarrow 1$.*

Part 1 here is the classical Condorcet jury theorem. As has often been pointed out this basic version is based on stronger assumptions than any practical situation is likely to satisfy, see e.g. (Dietrich 2008) for an in depth discussion of this. Part 3 is a version of the result from (Berend and Paroush 1998).

Part 2 is a combined version of results from (Boland 1989; Owen, Grofman, and Feld 1989), which established that one can use the value of \bar{p} instead of a homogenous

value p , and (Kanazawa 1998), who proved that the homogenous situation with probabilities given by \mathbf{p} actually gives the lowest probability for correct decision. At a first glance this might be interpreted as a confirmation of the idea that heterogeneity is desirable, but this is a misleading interpretation. What the statement says is that if we take two juries with exactly the same size and value for \bar{p} , where one is the homogenous jury given by $\mathbf{p}(\bar{p})$ and the other by some heterogenous \mathbf{p} , then the latter will have a better probability for a correct decision. However, the mechanism behind this is really based on the fact that the heterogenous jury must, in order to be both heterogenous and have the same \bar{p} , have several members with higher competence p_i than \bar{p} , and their influence on the probability outweighs the effect the low competence members. In fact an old theorem of Hoeffding (Hoeffding 1956) identifies the exact jury composition which maximises the probability for a correct decision, with a given \bar{p} . This is given by having $[\bar{p}n]$ members with $p_i = 1$, one with $p_i = \bar{p}n - [\bar{p}n]$, and the remaining $n - [\bar{p}n]$ with $p_i = 0$. So for $n = 3$ and $\bar{p} = 0.7$ we could have had a jury with $\mathbf{p} = (0.7, 0.7, 0.7)$, giving a non-zero probability for an incorrect decision, and Hoeffding's theorem shows that for this value of \bar{p} the maximum probability for a correct decision is reached by a jury with $\mathbf{p} = (1, 1, 0.1)$. For $\bar{p} > 1/2$ a jury of the form identified by Hoeffding always makes a correct majority decision, but one can hardly claim that this is due to a positive de-homogenising effect by those jurors which have $p_i < 1$. Hoeffding's theorem was further refined by Glesser (Gleser 1975) in a way which provides a simple condition for deciding which of two jury compositions lead to the highest probability for a correct decision, a result which is applicable for any finite size n . With two juries given by \mathbf{p}^a and \mathbf{p}^b we say that jury a majorizes jury b if $\sum_{i=1}^j \mathbf{p}_i^a \geq \sum_{i=1}^j \mathbf{p}_i^b$ for every $j = 1, 2, \dots, n$, and Glesser's result then states that if a majorizes b then a has the higher probability for a correct decision.

One can also obtain valid forms of the jury theorem for situations where the jurors are no longer independent. The following theorem was proven by Ladha (Ladha 1992). Recall that by standard definitions $\text{Var}(X_i) = p_i(1 - p_i)$ and $\text{Cov}(X_i, X_j) = \mathbb{E}(X_i X_j) - p_i p_j$.

Theorem 2.2 *We use the same terminology as in the previous theorem but now we allow the X_i to be dependent. Let $\bar{p} = \frac{1}{n} \sum_{i=1}^n p_i$, $d = n(\bar{p} - 1/2)$, and*

$$\sigma^2 = \sum_i \text{Var}(X_i) + 2 \sum_{i < j} \text{Cov}(X_i, X_j)$$

Then $P_n(\mathbf{p}(p)) \geq \frac{d^2}{\sigma^2 + d^2}$

Note that this theorem only requires knowledge of the pairwise correlations among the X_i , even though knowledge of all k -wise correlations are needed in order to fully reconstruct a correlated distribution. The price of only looking at the pairwise correlations is of course that the bound in the theorem is sometimes far from optimal, in the sense that the probability P_n can be higher than what the theorem guarantees. Adding additional assumptions about the joint distribution for the X_i can easily improve the bound. An extreme example is given by the distribution which sets exactly $\lfloor \frac{n}{2} \rfloor$ of the variables to 1, with all such assignments given equal probability. With this distribution there is always a correct majority decision, while the bound in the theorem goes to 0 as n grows.

As a general rule we see that positive correlations reduce the bound for a correct decision and negative correlations improve the bound, the latter is the explanation for the example we just gave. At the same time, since we are ignoring higher order correlations, one can construct examples of distributions with different correlations and the same probability for a correct decision (Kaniovski 2010). An interesting question here is whether we can create negative correlations, or reduce the positive ones, in a jury by e.g. selecting jury members which connect to different basic moral foundations (Graham, Haidt, and Nosek 2009). We will return to this, and correlations in general, in Section 6.3.

There have also been generalisations of the jury theorem which add additional elements to the set up, apart from the individual competencies. In (Stone 2017) a version where each juror has some inherent biases is considered and it is demonstrated that when biases are strong, the composition of the committee can strongly influence probability for a correct decision. In (Libby 2010) costs are added to the problem of selecting a committee. This is done by selecting members from a pool of candidates each of which have both a known individual competence and a salary cost, and also assigning a cost to incorrect decisions. Here it is shown that the expected total cost, for both salaries and incorrect decisions, is minimised for some committee composition which typically consists of a much smaller committee than the full pool of potential members.

3. Competence and time

3.1 Individual vs group competence

In our results we let $p_i(t)$ demote the competence of individual number i on the issue to vote on, at time t . When the individuals are part of a group performing some kind of deliberation on the issue at hand this can have two effects on $p_i(t)$. First, the competence of X_i can increase when X_i is regarded in isolation. This is of course the

effect we see in a one-person committee, where the entire improvement in $p_1(t)$ comes from the improvement in the competence of that individual, due to single study of the question at hand.

Second, we may also see an improvement in $p_i(t)$ which is only valid as long as individual X_i is part of the group. As an example, let us assume that we gathered a committee to make a decision on the construction of a railway bridge over a gorge. Here we may have a geologist, an expert on explosives, a railway engineer, someone in charge of the budget, and several additional experts. During the deliberation on how to design and build this bridge each committee member is likely to learn new things which raise $p_i(t)$ by some amount, but in addition to this, lasting, increase of their individual competences, they may also gain an effective increase in their $p_i(t)$ which is group dependent rather than lasting. For example, the railway engineer will be able to dismiss some infeasible designs thanks to the knowledge of the geologist, and will be able to make additional improvements as long as the geologist is part of the committee. This added effective competence will however mostly be lost when the committee is dissolved, since the engineer is unlikely to have learnt all the relevant knowledge of the geologist.

3.2 Improving competence over time

Here we also assume that from the point when a committee is formed or a referendum is announced the voters will undertake deliberation or other activities which improve their competence on the issue at hand. This activity can take on many different forms. For a single individual this can be some form of single study and investigation, as must be the case for a single person committee. Those activities are also available for members of a larger group, but here some form of group deliberation may also take place.

We will refer to the way $p_i(t)$ changes as a *learning profile*. This term only refers to the change in the value of $p_i(t)$, not the process behind how that change comes about.

As we will see there are some resource-constrained situations in which a large group can outperform a smaller one if the learning profile for the larger group is faster than that for the smaller group. This can happen trivially if the members of the larger are simply better at learning than those in the smaller group, but a more interesting situation is when this instead comes about as a genuine group advantage. Here, by either bringing in different background competencies, as in the example in the previous discussion, or by delegating different parts of the fact finding process to different members, the group is able to improve the joint competence in a more efficient way.

In our results we will only consider the learning profile and see how different learning profiles affect the group competence. A question which we leave open is how different modes of collaboration and deliberation give rise to different learning profiles.

4. The probability for a correct decision by a simple majority vote

Here we quickly recall a few basic facts about the probability $P(n, p)$ that a group of n independent individuals with competence p reach a correct decision, when voting under unweighted majority.

$$P(n, p) = \sum_{i=\lfloor n/2 \rfloor}^n p^i (1-p)^{n-i} \binom{n}{i}$$

The function $P(n, p)$ has some useful properties:

1. For $p \geq 1/2$, $P(n, p)$ is a concave increasing function in p .
2. For $p \geq 1/2$, $P(n, p)$ is an increasing function in n .
3. For large n , we have that $\frac{d}{dp} P(n, 1/2) \sim \sqrt{n2/\pi}$.

In order to help guide intuition, in Figure 1 we display $P(n, p)$ for a few values of n and p in the interval $[\frac{1}{2}, 1]$

5. Linear learning profiles

Here we will first examine one of the simplest possible non-constant learning profiles. We let $p(t) = 1/2 + ct$, where c is a constant, for $t < 1/c$, and $p(t) = 1$ for $t \geq 1/c$. Here we see a linear improvement in the average competence until the average reaches 1, and then the competence stays at one. In most situations this is an unrealistically efficient learning profile, but it gives rise to the same qualitative behaviour as more realistic ones, and makes the mathematical analysis easier to follow. In some cases we will use different values of c for different n and then denote this value by c_n .

Figure 1. The probability for a correct decision as a function of p , for $n = 1, 3, 5, 7, 91$

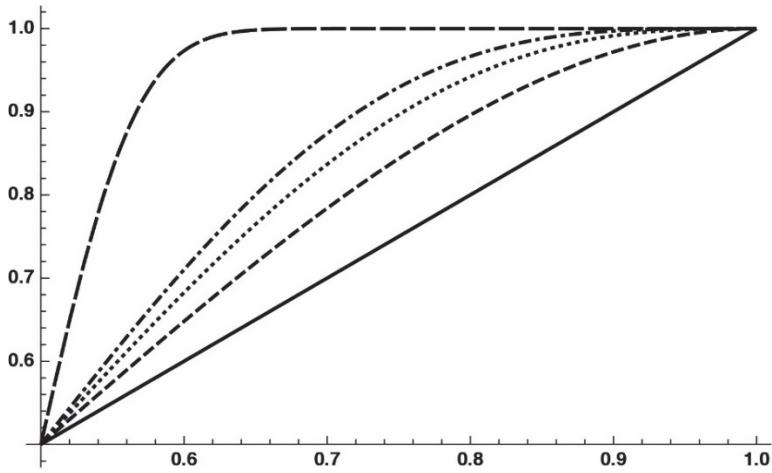
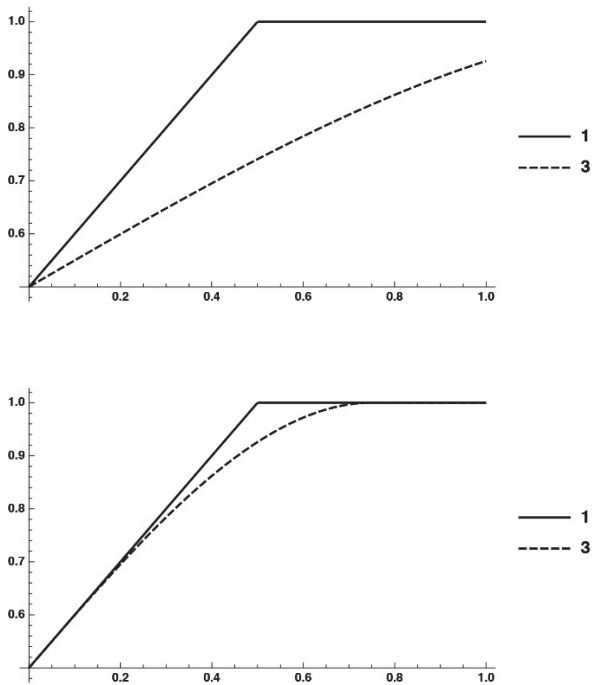


Figure 2. Group competence for $c_1 = 1$ and $c_3 = 1$ and 2



5.1 Fixed total time

Let us now consider the situation where we have a fixed total amount of time T , and we can either let one voter use the whole amount or instead let n voters use T/n each. This would e.g. correspond to the situation where we are setting up a committee. We have a given budget for salaries and are free to spend that budget on either a one member committee, working for a longer period of time, or a larger committee which has to finish earlier. To make things explicit we will first take $n = 3$.

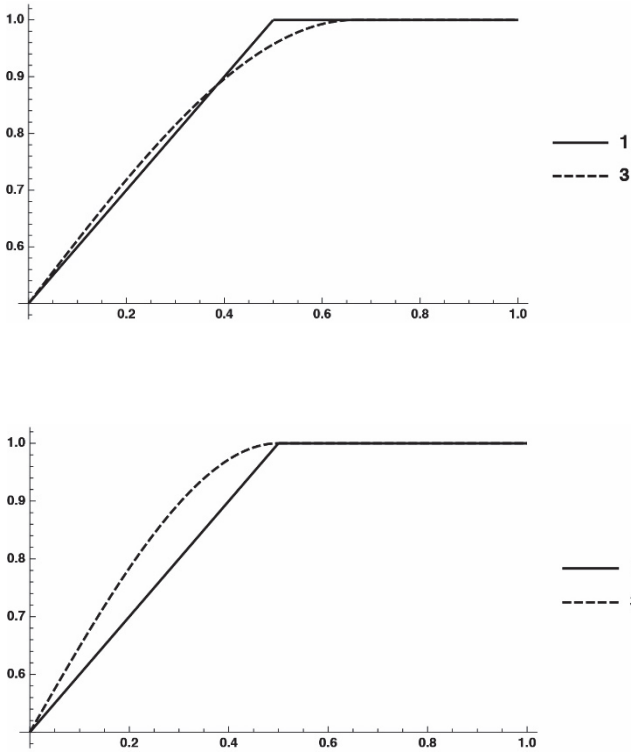
We first take $c = 1$. In the top part of Figure 2 we display the group competence for the two group sizes a function of T . Here we can clearly see that unless T is much larger than here, a single voter will achieve a higher group competence than 3 voters. If T is so large that $p(T/3) = 1$ then the group competence for three voters will have caught up with that for a single voter.

That this is the case can easily be seen by calculating the derivative of the group competency with respect to T . For $n = 1$ the derivative is simply c . For $n = 3$ we take the derivative of $P_3(T) = (3 - 2p(T/3))p(T/3)^2$ which after a bit of algebra is $c/2 - (2c^3T^2)/9$. At the point $T = 0$ we thus have derivative c for $n = 1$ and $c/2$ for $n = 3$. Since the latter is smaller, and $P(T)$ is a concave function of T , the group competence for $n = 3$ will remain smaller than that for $n = 1$, until $p(T/3) = 1$.

So, with a bounded total time and a linear learning profile a single voter has the advantage as long as those in the 3-member committee learn at the same rate as an isolated individual. We can instead look at what happens if the larger group now has a learning profile of the form $p_3(t) = 1/2 + c_3t$ for $t \leq 1/c_3$. As long as $c_3/2 \leq 1$ the previous argument still applies, and the single voter has the advantage. For $c_3 = 2$ the two functions are tangent at $t = 0$, but the ordering remains the same, with the single voter performing better than the group. For $2 < c_3 < 3$ the larger group outperforms the single voter for an initial range of T , and at a large value of T the single voter regains the advantage. For $c_3 > 3$ the larger group has the advantage for all values of T . In Figures 2 and 3 we display the two functions for several different values of c_3 .

Here we see that with a fixed time budget the larger group performs worse than a single voter unless the larger group actually takes advantage of the group to improve the learning rate, and this improvement in learning rate must be sufficiently large in order to outperform a single voter. So, we do not see any "wisdom of the crowd" merely by having a crowd, communication is necessary.

Figure 3. Group competence for $c_1 = 1$ and $c_3 = 2.25$ and 3



The corresponding critical values c_n^* , after which a group of n voters can perform better than a single voter, for n from 3 to 15 are

$$2, 8/3, 16/5, 128/35, 256/63, 1024/231, 2048/429$$

so a group with $n = 7$ members has to learn more than three times as fast as a single voter, and a group with $n = 11$ more than four times as fast.

For larger groups the demand on the learning rate c_n can be found asymptotically. For large n the derivative of $P_n(t)$ is to leading order given by $\sqrt{n2/\pi}$ and when setting $t = T/n$ this gives a total derivative at $T = 0$ of $c_n \sqrt{\frac{2}{n\pi}}$. So, in order for a group of size n , when n is large, to perform better than a single voter we must have $c_n > \sqrt{\frac{n\pi}{2}}$.

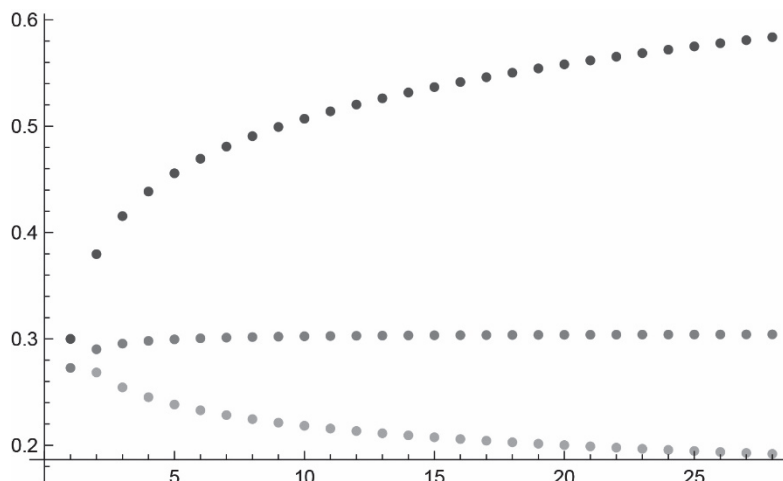
Hence, the larger the group is, the more they need to be able to take advantage of other group members in order to improve the average competence of the group.

5.2 The cost of reaching a given group competence

Instead of looking at which group competence we can reach with a given budget for the total time we can consider the cost $C(n, P^*)$ of achieving a given group competence P^* for different group sizes. The function $P_n(p)$ is approximately linear as a function of p for $p \leq \alpha/\sqrt{n}$, where α is a constant smaller than 1, and using this we can estimate the cost of reaching a given group competence.

In order to find the total cost for achieving group a given competence P^* with n voters we first find the value p^* which gives $P_n(p^*) = P^*$, second we find that time t^* such that $p_n(t^*) = p^*$ and the compute the cost as nt^* . Here we see that again the learning profile enters the cost, and due to the linear nature of $P(t)$ for small t it turns out that the cost $C(N, P^*)$ behaves differently depending on whether the learning rate is below, on, or above, the critical learning ratio c_n^* which we have already identified. For learning rates c_n smaller than c_n^* the cost grows with n and is unbounded, at the critical learning rate the cost converges, and for learning rates larger than the critical one the cost is decreasing with n . In Figure 4 we show examples of the three different behaviours.

Figure 4. The cost for reaching a given group competence, here $P^* = 0.8$, as a function of n , for three different learning rates



So, the critical learning rate c_n^* characterises both when a larger group is able to perform better under a given time budget, and when a large group can achieve a given group competence at a lower cost than a single individual.

5.3 Compensating for slow learning by increasing the group size

In a setting where the time until a decision must be made is fixed we may also ask how a single highly efficient expert investigator performs compared to a larger group of non-experts.

Here we assume that the expert has learning profile $p(t) = \frac{1}{2} + c_1 t$ and the members of the larger group learn at a standardised rate $p_n(t) = \frac{1}{2} + t$.

If $c_1 = 1$ then clearly the larger group will perform better, this is just the conclusion of the classic jury theorem, and any increase in c_1 will improve the performance of the expert. So a natural way to phrase this problem is to ask, from which value $c_1(n)$ will the expert out-perform a group of n non-experts, for small t ? The reason for first considering small t is that unless we know more about the time until decision we cannot rule out situations like the one in the left part of Figure 5, where the group initially has the higher competence but the single voter eventually overtakes the group.

For small values of n this can be calculated directly by differentiating P_n with respect to t . For n from 3 to 15 we then get the values of $c_1(n)$ as:

$$3/2, 15/8, 35/16, 315/128, 693/256, 3003/1024, 6435/2048$$

So, for $c_1(3) > 3/2$ the single expert will outperform a group of three non-expert voters, while for $n = 7$ we find $c_1(7) = 35/16$, and so the expert must learn more than 2.18... times as fast as the seven non-expert voters.

For larger n we can use the fact that we know the derivative of $P_n(t)$ to leading order to get the approximation $c_1(n) = \sqrt{\frac{n2}{\pi}} + o(1)$, where the $o(1)$ -term is a positive error term converging to 0.

5.4 The high competence range

In each of the situations considered so far we focused on the range where the group competence $P(n, p)$ is roughly linear in p . This is relevant for situations where we begin with an average individual competence close to $1/2$ and time does not continue long enough to reach competence much larger than $p = 1/2 + C/\sqrt{n}$, for some constant $C > 0$. If t is allowed to be much larger than this then the group competence

will reach a region where it is close to 1 and almost constant, and so quite insensitive to further improvements in p . This corresponds to the nearly horizontal part of the graphs in Figure 1.

There is of course also a middle range where p is close to where $P(n, p)$ changes from growing linearly in p to being nearly constant. This is the region close to $p = 0.6$ for $n = 91$ in Figure 1. In this region the linear approximation is no longer valid and in order to see where a larger or smaller group has the advantage we have to make a calculation for those two specific values of n , rather than using a simplifying approximation. Given the relatively simple form of $P(n, p)$ this can quickly be done using computer algebra, for any concrete pair of group sizes and explicit learning profiles.

6. Learning profiles

So far our discussion has focused on linear learning profiles and while these provide clear examples, and their properties are representative for many more general profiles as well, they are not likely to be exact models for the growth of competence in real life. In this section we will discuss both how general learning profile can differ from the linear case and which type of learning profile we might see in different settings.

6.1 General learning profiles

For completely general learning profile very little can be said, since this allows e.g. an oscillating mean competence. However, we can identify some general features of certain classes of learning profiles.

For learning profiles which are continuous and weakly monotone increasing to 1, i.e. allowed to remain constant for some time intervals but not to decrease, but do not depend on the number of voters n , we see the same type of behaviour as in the linear case. For profiles of this type we can rescale the time and map the group competence to that of a linear profile, with a more complicated time dependency for the larger group. Here the qualitative behaviour, when comparing a single learning profile for different numbers of voters, is the same as for a linear profile, but the time dependency can be more complicated.

If the form of the learning profile depends on the number of voters we can get stronger versions of some of the behaviours which we have seen in the linear case.

Let us compare a linear profile for a single voter with a concave profile for several voters. As an example we can take $p_1(t) = \min(1/2 + t, 1)$ as the individual competence for the single voter and $p_3(t) = \min(1/2 + t^{0.55}, 1)$ as the individual competence in a group of three voters. Here the individual competence in the larger group

is a concave function of time, leading to rapid growth for small values of t and then a much slower growth for larger t . In the top part of Figure 5 we display both the individual competences and the group competence as a function of time, as function of the total time T . As we can see, the group competence for the group of three voters grows rapidly and remains higher than that for the single voter until the single voter has managed to reach a very high competence and overtakes the larger group, due to the decreasing learning rate in the concave profile. Here the preference between a larger and smaller group depends strongly on the time budget. How distinct the behaviours of the two profiles are depends on how concave the learning profile for the larger group is. In our simple example replacing the exponent 0.55 by number closer to 1 will move us towards the linear case, and making the exponent smaller will quickly make the profile even more strongly concave. If we have a convex profile, e.g. taking the exponent in our example to be 2, then the advantage for the single voter will instead increase, as shown at the bottom in Figure 5.

Figure 5. A concave (top) and a convex (bottom) learning profile for a group of three voters compared with a single voter

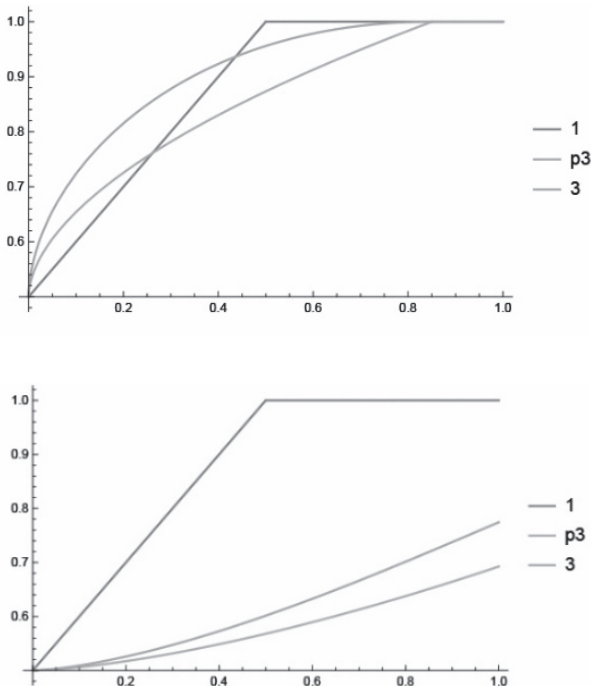
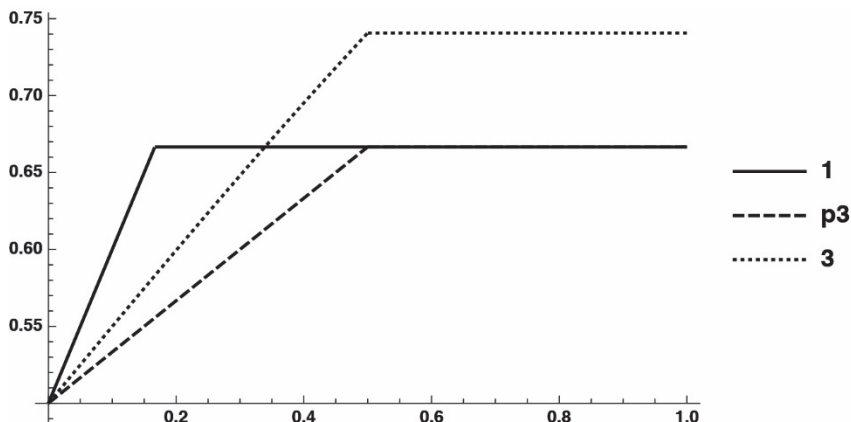


Figure 6. A learning profile bounded away from 1, for groups of one or three voters



A case which instead shifts the long term advantage towards a larger group of voters is the set of profiles for which the individual competence does not converge to 1. As a simple example we can consider the piecewise linear profiles $p_n(t) = \max(1/2 + a_n t, 2/3)$. The difference between this and our earlier linear profiles is that for large t the competence will plateau and become $2/3$. The value of a_n determines how quickly a group of n voters reach this maximum individual competence level, but the maximum value itself does not depend on n . In Figure 6 we plot the individual and group competences for 1 and three voters, both with $a_n = 1$. As we can see for both groups the individual competence reaches $2/3$, at different times. However, for the larger group this is still amplified by the majority vote into a group competence which instead converges to $\frac{20}{27} \approx 0.74$, a clear advantage for the larger group. The absolute size of this advantage will become larger with increasing group size, as long as the total time is large enough.

6.2 Which learning profiles actually occur?

So far we have demonstrated some of the qualitatively different possible behaviours under different learning profiles. This leads to the question of which learning profiles occur in real life, and under which circumstances. To a large extent this is an empirical question which to some extent should already be present in the research literature, though not necessarily presented in the same form as here. We will here present some thoughts on which factors might affect the learning profile, and how.

First we note that due to the different types of deliberation involved we would expect to see different types of learning profiles in committee work and larger elections and referenda. In a well-functioning committee the deliberation is typically quite organised and the members of the committee are chosen so that they complement each other's background competencies in one way or another. In large scale elections the electorate does typically not depend on the question to be voted on, and deliberation is not organised in the same sense as for a committee. There are several distinct factors which appear in this description.

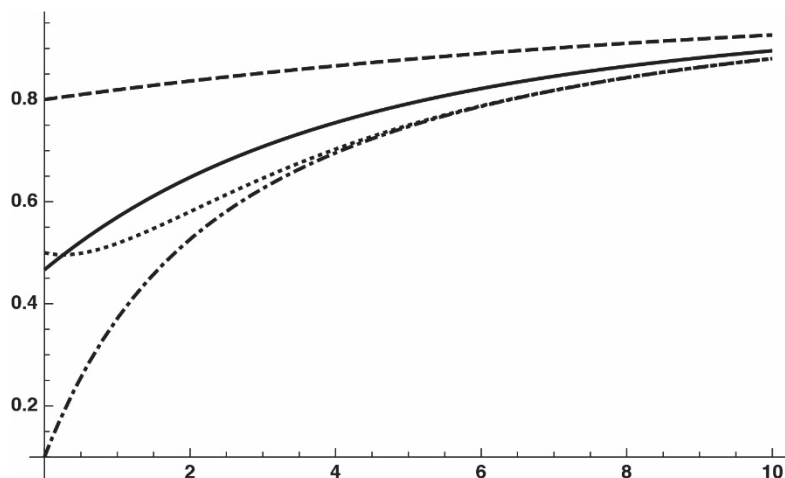
First, we can ask more generally how the group size affect the learning profile. In a small group deliberation is relatively easy to organise and one can assure that all members of the group are both heard and gets access to all the others. As the group size grows communication becomes costlier to organise, and at very large scales will even require physical infrastructure in order to function. So, unless adequate organisation and infrastructure is present we would expect each added member to contribute less and less to the learning rate, when the group has reached above some size threshold.

Secondly, we can here reconnect to the initial discussion of heterogeneity and homogeneity in deliberation. In a group which manages to leverage the different background competencies of the members we would expect the group to quickly make early progress and increase the effective competence of the group, hence leading to a learning profile with a rapid increased for small times. Here we could e.g. see something much like the concave learning profiles in the previous section.

Apart from how these general features affect the learning profiles we can also consider dynamical models for how the individual competence in a group develops over time. Even quite simple such models can lead to both diverse and complicated behaviour. Let us look at two very simple models.

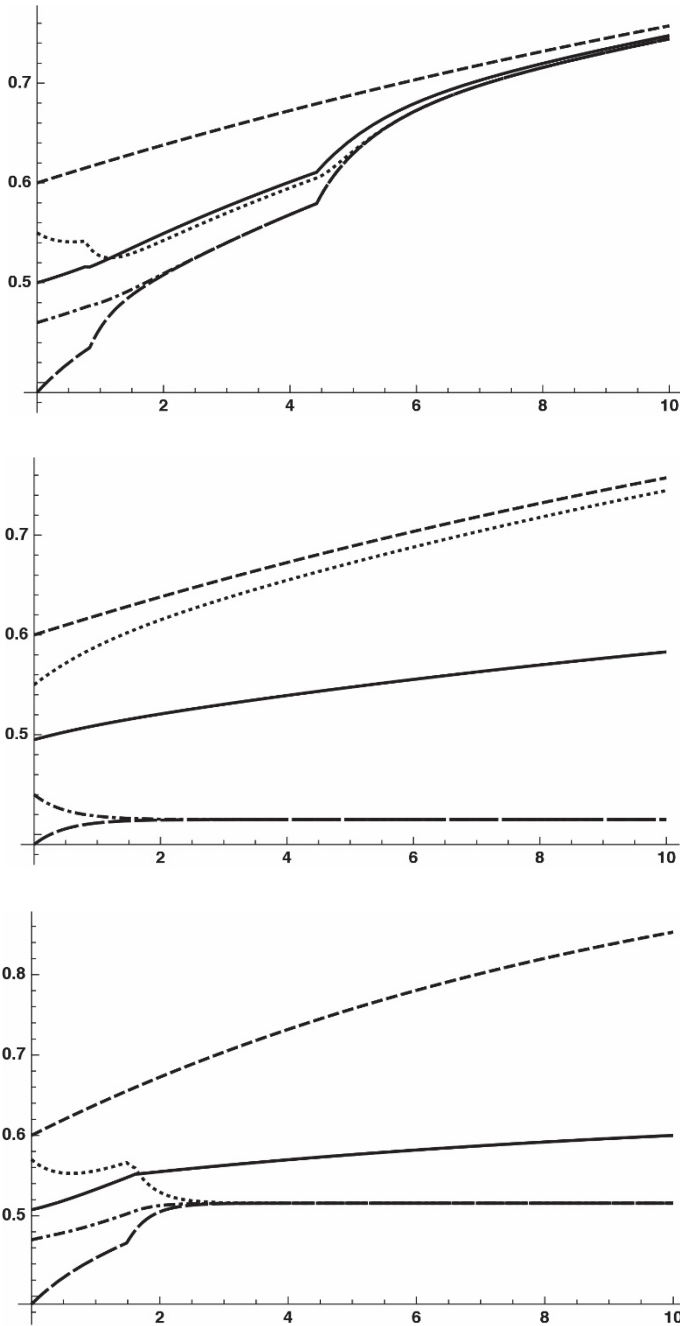
In our first model we have three voters, indexed by $i = 1, 2, 3$, which start out at some competence $p_i(0)$ at time $t = 0$. For voter 1 the competence has time derivative which is $0.1(1 - p_1(t))$. This means that voter 1 increases their competence, at a rate which slows down as the competence approaches 1. The other two voters have a time derivative which is equal to the difference between their own competence and the mean competence of the group. So, these voters drift towards the mean competence. In Figure 7 we display the three individual competences and the resulting learning profile of the group, in solid. As we can see the whole group is gradually improving thanks to being lifted by voter 1 which does not simply move towards the average. Note that the competence of voter 2 initially decreases due to the low initial mean competence, but eventually all voters have an increasing competence.

Figure 7. The individual and group (solid) competence in the mean drift model



Let us now consider the same model with one modification. Instead of drifting towards the global mean competence each voter, except voter 1, instead drifts towards the mean competence of those voters which are close enough to their own competence. In Figure 8 we display the behaviour of this model with four voters and three small modifications. In the first case we see a behaviour which is similar to our previous model. Some of the voters have initially decreasing competencies but the voters are spread evenly enough for the positive influence from voter 1 to affect all other voters and the learning profile increases towards 1. In the second case, middle figure, the initial competence of voter 3 is slightly lower than in the first case and due to this the competence of voter 3 is initially decreasing and voter 2 leaves the window of voter 3, who then instead converges with voter 4 at a low competence. Here the learning profile does not converge to 1 as time increases, due to the group stuck at the lower competence. In the third case, the last diagram of the figure, the initial competences are the same as in the first case, but the derivative of the competence of voter 1 has been multiplied by 2. So the only difference is that voter 1 learns twice as fast. Just as in the first case the competence of voter 2 is initially decreasing, but now voter 1 improves so fast that they leave the window of voter 2. As a consequence voters 2 to 4 now converge towards their mean competence, which is just slightly above 0.5. So here the improved learning rate of voter 1 led to a fragmentation, again leading to a learning profile which does not converge to 1.

Figure 8. The individual and group (solid) competence in the mean drift model with a window



6.3 Growing competence and correlations

In our discussion so far we have generally assumed that voters are independent, i.e. that there are no correlations between them apart from what their individual competence levels imply. However under most reasonable models for a deliberative procedure one would expect that interactions during the deliberation will also create some correlations. As we mentioned in our discussion of existing jury theorems, negative correlations are actually beneficial but one might worry that positive correlations will reduce the positive effects of the majority vote. A detailed discussion and critique of various forms of independence assumptions is given by Dietrich and Spiekermann in (Dietrich and Spiekermann 2017). It is clear that strong enough correlations can significantly lower the probability for a correct vote, but as we saw in Theorem 3 this effect can be controlled in terms of the average strength of the correlations. More generally, the probability for a correct decision is a continuous function of the full probability distribution for the set of votes, in terms of the total variation distance for probability distributions. This means that none of the conclusions we have made are sensitive to the qualitative independence assumption, rather the probability for a correct decision will change continuously with the strength of the correlations when such are present.

It is sometimes claimed that strong correlations are one of the main drivers for why majority votes in very large groups are not as near-infallible as the jury theorem might make one think. However, taking examples such as the ones we have just seen into account one might instead ask if this is not instead, or additionally, due to having competence levels which are much closer to 0.5 in large groups than in small ones. We have already mentioned that learning profiles for large groups might increase much slower due to the cost of communication, leading to a lower final competence. In the past this might to some extent have been compensated for by having correlations which decay rapidly with physical distance within a country, making local communities more or less independent of each other. Today that positive effect may have been reduced due to rapid communication via the internet and dominating effects of some national and international media channels. The interplay between the learning profile on these large scales and the creation of correlation, by intention or inadvertently, is certainly worth further scrutiny.

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Appendix

Theorem 6.1. *Here we let $P_n(\mathbf{p})$ denote the probability of a majority for the correct outcome and set $\bar{p} = \frac{1}{n} \sum_{i=1}^n p_i$.*

1. *If $p > 1/2$ is fixed then $P_n(\mathbf{p}(p)) \rightarrow 1$ monotonically with n .*
2. *If $\bar{p} = p > \frac{1}{2}$ for some fixed p then $P_n \rightarrow 1$ and $P_n(\mathbf{p}) \geq P_n(\bar{\mathbf{p}})$.*
3. *If $\bar{p} = \frac{1}{2} + \frac{\omega(n)}{\sqrt{n}}$, where $\omega(n)$ is any increasing, unbounded, function of n , then $P_n \rightarrow 1$.*

Proof. Let X denote the, random, sum of the individual votes

$$X = \sum_{i=1}^n x_i,$$

where x_i can be 0 or 1 with probabilities $1 - p_i$ and p_i respectively. Here $x_i = 1$ denotes a vote for the correct outcome, $x_i = 0$ the opposite vote, and the group decision is correct if $X > \frac{n}{2}$.

The expectation of X is given by $E[X] = \sum_{i=1}^n p_i = n\bar{p}$ and since the variables are independent Hoeffding's concentration inequality tells us that $Pr(|X - E[X]| > t) \leq 2\exp(-t^2/n)$. So with $\bar{p} = \frac{1}{2} + \frac{\omega(n)}{\sqrt{n}}$ we find that $P(X < n/2) < 2\exp(-\omega^2(n))$, and hence that the probability for a correct majority decision tends to 1 if $\omega(n) \rightarrow \infty$. This yields both (1) and (3).

Part (2) follows directly from (Hoeffding 1956).

This volume addresses a fundamental and yet under-studied problem in democratic theory and practice: *who should have a right to take part in which decisions?* This “democratic boundary problem” is reflected in questions about who should be entitled to participate and vote in any association or political unit, whether at the national, local, regional or supra-national level. A key question is what the relevant conditions for inclusion of democratic participation should be: the people affected by decisions or the people subjected to laws or rules? In addition, the democratic boundary problem raises questions about the nature of agents that can or should be eligible for democratic inclusion. Is democracy only for human beings? The democratic boundary problem is thought-provoking and invites us to reconsider widely-held presumptions about what democracy is.

The *eleven* working papers included in this volume edited by Paul Bowman offer new and thought-provoking insights into the boundary problems of democratic theory, written by an international and multi-disciplinary group of scholars from the disciplines of philosophy, political science, law and mathematics. Contributing authors include Vuko Andrić, Gustaf Arrhenius, Ludvig Beckman, Katharina Berndt Rasmussen, Robert E. Goodin, Axel Gosseries, Jonas Hultin Rosenberg, David Miller, Klas Markström and Ashwini Vasanthakumar. The research included here received funding from the Marcus and Marianne Wallenberg Foundation and the Swedish Research Council.

