

### Extraterritorial voting rights from a cosmopolitan perspective

Pârvu, Camil-Alexandru

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# **ARGUMENTUM**



# Extraterritorial Voting Rights from a Cosmopolitan Perspective<sup>1</sup>

CAMIL-ALEXANDRU PÂRVU

## INTRODUCTION

During recent years, a number of legislative proposals concerning the granting of extraterritorial voting rights have been met with increasing acceptance by national legislatures and have become implemented with varying degrees of social recognition. At first glance, supporters of global justice and cosmopolitan democracy can only rejoice from the increasing presence in national electoral legislation of such statutes conceding rights of representation to non-residents. Upon closer inspection however, only some such legislation is indeed cosmopolitan in character. Many (and probably most) cases draw rather on ethnic, cultural and otherwise identitarian forms of justifications (such as extending to an ethnically related population representation rights in the “Fatherland”). Furthermore, such extension of voting rights on ethnic criteria may contribute to an amplification of the identitarian themes in electoral campaigns and is not foreign to the rise of xenophobic movements in several parts of Europe and elsewhere. In certain recent cases, the path towards violently redrawing borders to match the ethnic territorial distribution is very short.

From a global justice or cosmopolitan democracy perspective<sup>2</sup>, the normative requirement for extending voting rights is rather based on conceptions of shared responsibility, universal community of fate, and the commitment to articulate the idea of a basic equal human dignity for all human beings. Membership in contemporary states is seen as not the exclusive or even primary source of political obligation and, as such, cosmopolitan mutual duties reaching across borders can give rise to new forms of legal and political configurations that may entail, for instance, the notion of voting rights based on constituencies defined beyond the basic framework of a nation-state. At the very least, ethnicity is not seen as particularly conducive to such a cosmopolitan agenda, since it rather contributes to

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<sup>2</sup> Gillian Brock, Harry Brighouse, *The Political Philosophy of Cosmopolitanism*, Cambridge University Press, Cambridge, 2005; Gillian Brock, *Global Justice*, Oxford University Press US, 2009.

re-emphasizing the very exclusionary borders and ethnic kinship priorities that cosmopolitans are keen to transgress or amend.

For instance, should those who are the object of international development policies have a say in their design, instead of seeing them as a matter of discretion of the donors from the global North? If yes, what form could this inclusion take? Could they – or their representatives – be included as holders of political rights when such decisions are taken? In other words, given the fact that development policies are commonly framed as a North-South divide problem, with the North as shareholders and the South as stakeholders – isn't there a (democratic) case to be made that the individuals targeted by such policies, which usually are precisely not citizens of the countries that finance them, should vote in the matters that affect them in very obvious ways? During the last decade, the case was repeatedly made that because decisions to invade Iraq and Afghanistan profoundly altered the lives of millions, and ultimately resulted in the death of hundreds to thousands, voting rights in the US elections should not be restricted to the current range of American citizens.

More generally, decisions that have explicit or implicit extraterritorial implications are deemed to be in need of further democratic justification – to those that are affected by them. Building a nuclear plant, for instance, on a river bordering two countries is an explicit case – as the effects on both the river and on the larger environment and population in case of accident are not naturally delimited by borders. Claims by neighboring populations to be included into the decision procedures and possibly vote on them are aiming to replace the traditional boundaries of citizenship with other criteria allowing for regional, subsidiarity-based judgments concerning the franchise of inclusion. Catastrophic accidents are usually invoked in such arguments, as they raise the normative stakes in the debates on political and personal autonomy. If we follow Ulrich Beck's evolving account of the risk society<sup>3</sup>, however, the global range of even mundane decisions has become the norm. The implicit effects of such decisions are not immediately visible, yet nonetheless crucial. There are three "logics" of global risks: environmental crises, global financial risks, and terrorist threats<sup>4</sup>, but also a "cosmopolitan moment":

"Global risks force us to confront the apparently excluded other. They tear down national barriers and mix natives with foreigners. The expelled other becomes the internal other, as a result not of migration but of global risks. Everyday life become

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<sup>3</sup> Ulrich Beck, *Risk Society: Towards a New Modernity*, 1 edition, Newbury Park, London, SAGE Publications Ltd, Calif., 1992; Ulrich Beck, *World Risk Society*, Polity, London, 1999; Ulrich Beck, *World at Risk*, Polity, London, 2009.

<sup>4</sup> Ulrich Beck, *World at Risk*, cit., p. 13.

cosmopolitan: human beings must lend meaning to their lives through exchanges with others and no longer in encounters with people like themselves”<sup>5</sup>.

This article examines the way in which the current debates on the “democracy’s boundary problem” determine the cosmopolitan answer to the question of extraterritorial voting rights. Succinctly put, in as much as the political borders of a demos are democratically arbitrary (since impossible to be decided democratically by the very demos created by such boundaries), a number of theorists has proposed that we apply, for instance, the “all-affected interests” principle<sup>6</sup> in order to extend to all affected individuals the rights of political membership, including the right to vote. Such approaches are, I claim, less ambitious than some cosmopolitan theorists presume – yet they still engage our democratic imaginary in ways that are crucial. After discussing the different formulations of democracy’s boundary problem and their normative texture, I turn to the oft-mentioned claim for granting extraterritorial rights. Such a claim is based on the all affected interests principle – which can itself have multiple significations. It mandates the inclusion of those whose interests are affected, and I discuss in turn the possible interpretations of “affected interests” and then move toward the broader political theoretical discussion concerning the imperatives of political “inclusion”. I maintain that an exclusive territorial reading of the principle does not hold; also, that the electoral primacy of inclusion through the right to vote does not hold either. I conclude on a note concerning the normative potential of modular citizenship and virtual representation when articulated in a deliberative democratic key.

## DEMOCRACY’S BOUNDARY PROBLEM

First articulated by Jean-Jacques Rousseau, and later taken up by Robert Dahl, Frederick Whelan and a growing number of theorists recently, the democratic boundary paradox opens a famously puzzling window on our democratic

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<sup>5</sup> *Ibidem*, p. 15.

<sup>6</sup> Gustaf Arrhenius, “The Boundary Problem in Democratic Theory”, *Democracy Unbound: Basic Explorations I*, Filosofiska institutionen, Stockholms Universitet, Stockholm, 2005, pp. 14-29; D. Miller, “Democracy’s Domain”, *Philosophy & Public Affairs*, 37, no. 3, 2009, pp. 201-228; R.E. Goodin, “Enfranchising All Affected Interests, and Its Alternatives”, *Philosophy & Public Affairs*, vol. 35, no. 1, 2007, pp. 40-68.

intuitions<sup>7</sup>. If we disregard the circumstances of the constitution of the democratic demos and we take it as granted, democratic theorizing is concerned with the various procedures, values, and institutions of a democratic regime – the overwhelming majority of democratic scholarship is of this sort. But as the authors above show, much of this literature rests on a silent paradox, that of the constitution of the demos itself. It is a paradox, or at least a testing problem, as it seems to involve a particularly challenging definitional circularity. It has been called “the problem of the unit”<sup>8</sup>, the “paradox of politics”<sup>9</sup> or “the problem of constituting the demos”<sup>10</sup> – and I use in the following pages several of these terms interchangeably.

In a nutshell, are we entitled to simply presuppose the existence of a democratically legitimate demos? On what grounds were the rules of membership within the demos decided? Is it even possible for a demos to constitute itself democratically? Is it not the case that, in order to be constituted in a democratic fashion, the demos has to already exist?

This circularity is troubling if we attempt to address it from within democratic theory. To be sure, on many other accounts, the problem can be easily dissipated. A nationalist approach to the composition of the demos can be perfectly comfortable with a set of criteria for inclusion and exclusion based on ethnicity. As mentioned above, in a significant number of contemporary cases this still is the framework of reference when thinking about the political boundaries of a democratic people. Recent referenda in Crimea or Scotland were densely disputed on legal grounds, but the ultimate ethnic criterion of delineating a new political community was not in itself condemned as totally groundless – if anything else, because most contemporary states were themselves established as nation-states, resulting from (however imperfect) efforts to draw geographical boundaries consistent with ethnic territorial presence. Accordingly, the ethnic criterion is still very much present in the contemporary political imaginary.

But any such criterion would be democratically arbitrary. The problem arises when we examine the structure of democratic theory. With the exception of

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<sup>7</sup> Robert Dahl, *After the Revolution? Authority in a Good Society*, Yale University Press, New Haven, Conn., 1970; *Idem*, *Democracy and Its Critics*, Yale University Press, New Haven, CT, 1989; Frederick Whelan, “Prologue: Democratic Theory and the Boundary Problem”, *Nomos XXV: Liberal Democracy*, vol. 25, 1983, pp. 13-47; Jean-Jacques Rousseau, *Rousseau: “The Social Contract” and Other Later Political Writings*, Cambridge University Press, Cambridge, 1997.

<sup>8</sup> Robert Dahl, *Democracy and Its Critics*, cit..

<sup>9</sup> Bonnie Honig, “Between Decision and Deliberation: Political Paradox in Democratic Theory”, *American Political Science Review*, vol. 101, no. 1, February 2007, pp. 1-17.

<sup>10</sup> R.E. Goodin, “Enfranchising All Affected Interests...cit.”.

Joseph Schumpeter's understanding of democracy as a 'method' with little or no deeper normative implications<sup>11</sup>, most theories of democracy need to account for the democratic quality of the authorization mechanisms governing the constitution of the demos itself. Political membership is a question to be itself decided democratically.

I have argued elsewhere<sup>12</sup> that in fact there are two logically (and perhaps chronologically) distinct versions of the paradox of democratic inclusion. One version is relevant for the founding time of a political community: in such an inaugural moment, a demos is at the same time subject and object of the decision to establish a political community. The circularity is binary: the people as subject (shareholders) are the people as object (stakeholders) of the same act – hence a democratic self-institution paradox. In order for a demos to institute itself democratically, it has to already exist and operate with democratic procedures. The second version concerns the contemporary borders of a political community – and questions the democratic legitimacy of putative decisions to be taken only by the members, yet affecting in significant ways nonmembers. Here, the circularity is ternary: if in the previous case the decision itself was univocal (founding a demos) and fixed, now it can have any content – and hence all the three elements of the paradox can define the others: stakeholders, shareholders and the content of the decision. As we shall see below, in both versions of the paradox there are crucial concerns to be answered, with fundamental consequences for the political application of these issues.

The present discussion looks mostly into the second version – and the specific problem of democratic externalities that are generated by it. In a sense, the question of political or geographical borders is crucial to political theory in general, not only to democratic theory. Yet democracy, again, presupposes a procedural consistency of a higher order than is the case in other theories. As such, it cannot avoid dealing with the conundrum of the mismatch between shareholders and stakeholders – as it goes to the very core of its notion of procedural legitimacy. The fact that a democratic people makes decisions that commonly affect others is both unavoidable *and* impermissible within democratic proceduralism, and as such a fundamentally immanent problem. As Abizadeh writes,

“[T]he act of constituting boundaries circumscribing political rights is always an exercise of power over both insiders and outsiders that, by the very act, purports to disenfranchise

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<sup>11</sup> Joseph Alois Schumpeter, *Capitalism, Socialism, and Democracy*, Routledge, London, 1942.

<sup>12</sup> Camil Alexandru Pârnu, “The Boundary Problem in Democratic Theory: Cosmopolitan Implications”, in Dan A. Lazea, Tamara Cărăuș (eds.), *Cosmopolitanism Without Foundations*, Zeta Books, București, 2014, pp. 89-110.



the outsiders over whom power is exercised [...] It is this *conceptual* feature of boundaries that confronts democratic theory with an externality problem [...] The power required to constitute political boundaries is intrinsically an outward – extending power<sup>13</sup>.

## THE CASE FOR EXTRATERRITORIAL VOTING RIGHTS

Can we say, then, that the contemporary boundaries paradox, possibly augmented by the democratic self-institution paradox, determines a reconsideration of the justification for extraterritorial voting rights? Democratic theory is, as suggested above, particularly sensitive to the internal procedural coherence of the answer to the democratic boundary problem<sup>14</sup>, being also seemingly unable to provide any obvious justificatory framework for criteria of inclusion and exclusion that does not reproduce the circularity (in either its binary or in its ternary form); and cannot also easily externalize the definition of democracy's domain to other theories. Could there, accordingly, be a case that extending voting rights beyond the limits of political boundaries may address the underlying normative concern in a manner that is consistent with a *democratic* articulation of the basic intuitions? After all, voting and elections are an essential element of the contemporary (and modern) understandings of the meaning of democracy, having displaced the ancient defining features of democratic government – the unmediated presence of the whole people and selection by lot<sup>15</sup>.

Two of the moral contexts that have received privileged scrutiny in recent studies on global justice refer to the circumstances of global poverty, and to the problem of policing the borders in face of migration. In the latter case, territorial demarcations through physical frontiers designate also the limits of the political membership – a significant and often overlooked overlap that equates demos with territory. In both cases, the relevant normative framework can be questioned as to its ultimate political consequences: are the individuals affected by decisions taken and by policies designed in other political communities, entitled to claim a right to vote – or be somehow represented in the democratic procedures of those countries?

<sup>13</sup> Arash Abizadeh, "On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem", *American Political Science Review*, vol. 106, no. 4, November 2012, p. 877.

<sup>14</sup> Gustaf Arrhenius, "The Boundary Problem...cit."; Ben Saunders, "Defining the Demos", *Politics, Philosophy & Economics*, vol. 11, no. 3, August 1, 2012, pp. 280-301.

<sup>15</sup> Bernard Manin, *The Principles of Representative Government*, Cambridge University Press, Cambridge, 1997.

Of course, to answer such claims, a long process of articulating the meaning of political representation (and its possible realization beyond voting rights) is manifestly due. The last part of this article will look into some particularly thought-provoking modes of re-thinking the problems of political representation in cosmopolitan settings. Similarly, any entitlements or claims to voting rights are to be judged on the basis of interpretations of national and transnational responsibility<sup>16</sup>, duties to others and corresponding rights<sup>17</sup> – which are by no means uncontroversial issues; on the contrary, they are precisely the very gist of normative theorizing about global justice. The purpose of this article is not to account for the details of these debates, but rather to question a very specific line of reasoning, that establishes *voting rights* as the ultimate political outcomes of the normative considerations on, for instance, the nature of responsibilities for global poverty or the degree of coercion represented by the borders limiting migration.

What types of extraterritorial rights can then be promoted, compatible with a cosmopolitan perspective (i.e., which do more than simply aim to recreate ethnically homogenous political communities)? Several recent studies elaborate on the conditions and terms for such voting rights<sup>18</sup>. Bauböck develops an account where multiple and evolving forms of citizenship are explained as contributing to an emerging idea of “transnational citizenship”. In recent years, he notes, an increasing number of countries have changed their internal legal systems and constitutional settings in order to accommodate or even encourage the possibility of individuals having dual or multiple citizenship. An additional phenomenon that further allows Bauböck to articulate the idea of transnational citizenship is represented by the similar multiplication of “denizenship”. Significant numbers of long-term residents in western countries have not (yet) acquired legal citizenship, but enjoy a quasi-citizenship status: they are holders of welfare rights and civil liberties, are paying taxes, and may even vote in certain (usually local) elections. What is missing from the denizens’ status is the right to vote in the major national

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<sup>16</sup> David Miller, *National Responsibility and Global Justice*, Oxford Political Theory, Oxford, 2007.

<sup>17</sup> Thomas Pogge, “Priorities of Global Justice”, *Metaphilosophy*, vol. 32, no. 1-2, January 1, 2001, pp. 6-24; *Idem*, *Global Justice*, Wiley, London, 2002; Thomas Pogge, *World Poverty and Human Rights*, Polity, London, 2008.

<sup>18</sup> Rainer Bauböck, “Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting”, *Fordham Law Review*, vol. 75, no. 5, January 1, 2007, p. 2393; Christian List, Mathias Koenig-Archibugi, “Can There Be a Global Demos? An Agency-Based Approach”, *Philosophy & Public Affairs*, vol. 38, no. 1, 2010, pp. 76-110; Mathias Koenig-Archibugi, “Fuzzy Citizenship in Global Society”, *Journal of Political Philosophy*, vol. 20, no. 4, December 2012, pp. 456-480.

elections – but they are assumed to conserve their original citizenship status, with all the associated political rights.

Koenig-Archibugi's concept of "fuzzy citizenship"<sup>19</sup> is one that does more than build upon the ambiguities of denizenship. It is a normative proposition that aims to provide a solution from a cosmopolitan perspective to the problem of democracy's domain. Fuzzy citizenship, while still based on the territorial configuration of present states, grants participatory rights to "all those who are likely to be causally affected by any possible decision under any possible agenda" (p. 2); such rights vary according to the intensity of affectedness; and the suggested institutionalization of such proposals is that "the legislature of each state should grant voting power to representatives elected by all non-residents in proportion to the share of world income under the control of that state." (p. 3).

The main thrust of these (normative or empirical) account is based on the all affected interests principle, several readings of which are spelled out in the next section. Several other accounts similarly deploy this principle to argue for or assess the potential new contours of political citizenship in view of the cosmopolitan condition<sup>20</sup>. Lack of space prevents an exhaustive review here of the recent literature on this fundamental topic. These new modes of articulating the notion of citizenship are promising – as they allow thinking of citizenship as a *modular* quality. In the last section I offer an interpretation of modular citizenship, yet an important note is here essential:

The exclusive character of membership in a political community has thus been radically transformed and now both countries of immigration and countries of emigration routinely allow the migrating individuals to preserve their previous citizenship while acquiring a new citizenship. This is a phenomenon of a crucial importance as the multiplication of sites of political allegiances, political obligation and correlated notions of legitimacy, challenges and perhaps redefines the traditional elements of democratic theory articulated in the circumstances of, and grounded on the presupposition of, a singularity of political membership. The

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<sup>19</sup> Mathias Koenig-Archibugi, "Fuzzy Citizenship in Global Society", cit.

<sup>20</sup> David Held and others, *Democracy and the Global Order*, Polity Press, London, 1995; Daniele Archibugi, David Held, Martin Köhler, *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*, Stanford University Press, Redwood City, CA, 1998; Raffaele Marchetti, *Global Democracy: For and Against: Ethical Theory, Institutional Design and Social Struggles*, Reissue edition, Routledge, London; New York, 2008; Hans Agné, "Why Democracy Must Be Global: Self-Founding and Democratic Intervention", *International Theory*, vol. 2, no. 3, November 2010, pp. 381-409; Paulina Ochoa Espejo, "People, Territory, and Legitimacy in Democratic States", *American Journal of Political Science*, vol. 58, no. 2, April 1, 2014, pp. 466-478.

uniqueness of political membership has a rather tragic dimension to it – and precisely because of this tragic dimension the burdens of public justification of political authority were raised so high in political liberalism and democratic theorizing. If individuals are conceived as born in a given political community and under the presupposition of a one-time exit option (definitive emigration), then the legitimacy concerns are quite considerable. If, on the other hand, their possible political memberships are multiple and even ambiguous, then the very notion of political legitimacy can be redefined accordingly.

An oft-invoked line of argument for addressing the democratic boundary problem consists in trying to deploy a version of the all-affected interests' principle. This principle, part of the core democratic intuitions itself, mandates that those whose relevant interests are affected by a decision should be included into the decision making process. It can take multiple forms and meanings according to what we may consider to be the "relevant" interests, what "affected" presupposes, and also what "inclusion" entails. The recent literature has explored the different connotations and implications of the principle – and more specifically of the first two terms: "relevant" and "affected". After recapitulating some of the formulations that advanced the discussion, we turn to the third term whose meaning determines the overall relevance of the principle: "inclusion". Supposing we agree on which decisions affect which interests and to what degree, the all affected interests principle then mandates inclusion. Does "inclusion" mean granting voting rights? Since such rights would be extended to individuals that are not members of (but affected by decisions taken by) the original demos, these would thus be extraterritorial voting rights.

## THE ALL AFFECTED INTERESTS' PRINCIPLE, BORDERS, AND MIGRATION

We see a particularly vivid discussion of the nature and implications of the all affected principle in the recent exchange between David Miller and Arash Abizadeh on the matter of frontiers and immigration<sup>21</sup>. According to Abizadeh, the

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<sup>21</sup> Arash Abizadeh, "Democratic Theory and Border Coercion No Right to Unilaterally Control Your Own Borders", *Political Theory*, vol. 36, no. 1, 2008, pp. 37-65; David Miller, "Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh", *Political Theory*, vol. 38, no. 1, February 1, 2010, pp. 111-120; Arash Abizadeh, "Democratic Legitimacy and State Coercion: A Reply to David Miller", *Political Theory*, vol. 38, no. 1, February 1, 2010, pp. 121-130.

reach of the principle is such that it effectively contests a state's traditional unilateral right to police its own borders: "According to democratic theory, the democratic justification for a regime of border control is ultimately owed to both members and nonmembers"<sup>22</sup>. The sequence of the argument is apparently simple:

"First, a democratic theory of popular sovereignty requires that the coercive exercise of political power be democratically justified to all those over whom it is exercised, that is, justification is owed to all those subject to state coercion. Second, the regime of border control of a bounded political community subjects both members and nonmembers to the state's coercive exercise of power. Therefore, the justification for a particular regime of border control is owed not just to those whom the boundary marks as members, but to nonmembers as well" (p. 45).

The implications of this proposal have not remained without challenge: David Miller questions<sup>23</sup> the conception of autonomy that pervades Abizadeh's account of the nature of political coercion at the border. According to Miller, the very acts of border control are not inherently coercive, and hence cannot generate entitlements for democratic justification for nonmembers. The analytic distinction between coercion ("forcing a person *to do* some relatively specific thing") and prevention ("forcing a person *not to do* some relatively specific thing while leaving other options open") marks, for Miller, the appropriate moral and political context for thinking the limitations to personal autonomy posed by a state's policing its own borders. Since borders (and states' specific actions to maintain them) merely prevent potential migrant from crossing them, and typically do not coerce them to choose a unique course of action, the democratic entitlements emerging from such contexts are weak.

David Miller, of course, has for a long time filtered the cosmopolitan commitments through a healthy dose of liberal nationalism. In an article assessing the nature of Dahl's democratic paradox<sup>24</sup>, he lists a series of possible interpretations of the all affected interests principle. They are structured along the lines of competing conceptions of democracy – since, according to Miller, "answers to the domain question depend on the conception of democracy that is being invoked to resolve it" (p. 205). Liberal democrats understand democracy instrumentally, as conducive to the independently worthy values such as freedom and welfare. Radical democrats, on the other hand, see democracy as intrinsically valuable: a democratic process which allows everyone to have agency and be

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<sup>22</sup> Arash Abizadeh, "Democratic Theory and Border Coercion...cit.", p. 44.

<sup>23</sup> David Miller, "Why Immigration Controls Are Not Coercive...cit."

<sup>24</sup> *Idem*, "Democracy's Domain", *Philosophy & Public Affairs*, vol. 37, no. 3, 2009, pp. 201-228

empowered is valuable irrespective of the other values it may advance. In considering the potential extension of the boundaries of a demos when decisions “are likely to make a significant impact on people who are not currently entitled to participate” (p. 213), Miller lists two applicable principles:

“The first is the *affected interests principle*: a democracy’s domain should extend to include all those whose interests will be affected by the decisions it takes. The second is the *coercion principle*: the domain should extend to include all those who will be coerced by its decisions. Since one can be affected by a decision, in the relevant sense, without being coerced by it, but not vice versa, the first principle is likely to extend the domain more widely than the second.”(p. 213-14)

The quest is then for stipulating coercion proper, instead of more expansionary and inherently ambiguous notions such as affected interests, as legitimate criterion for deciding on democracy’s domain; if the latter is used, the results are problematic: the demos may “expand in all directions, depending on which possibilities are contemplated in the deliberation leading up to the decision” (p. 215); or, it may create an indeterminacy problem because of the binary or ternary circularity problems described above – when democracy’s scope (ever-evolving content of decisions) is seen in mutual determination with democracy’s domain (ever-evolving membership).

For Robert Goodin, there are also *prima facie* reasons to rely on the all affected interests principle to address the problem of democracy’s domain<sup>25</sup>. Yet articulating the possible interpretations thereof leads us again to some unsettling results. Thus, the principle can refer to the “All Actually Affected Interests” or to the “All Possibly Affected Interests”; and to “All and Only Affected Interests” or to “All Probably Affected Interests”; the latter two being further elaborations of the former pair of significations.

## **INCLUSION AND VOTING RIGHTS: EXTRATERRITORIAL, VIRTUAL POLITICAL REPRESENTATION**

We turn now to the third key term of the all affected interests principle: inclusion. The fundamental question here is whether inclusion calls for voting

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<sup>25</sup> Robert Goodin, “Enfranchising All Affected Interests...cit.”

rights. Again, since we speak of the right to vote of non-members of a political community whose interests are affected by its decisions, the question is most often framed in terms of extraterritoriality. Of course, this is based on the assumption that voting rights are coextensive with *territorial* rights, which means that the default constituency for electoral processes is the territorially-defined constituency; and, also, that *voting* is the necessary, constitutive element of inclusion. I will look into both these assumptions in turn.

### *Territorial Definitions of Political Constituency*

Part of the significance of the problem of democracy's domain is precisely that it allows for a distinction between political and geographical borders of a demos. Political borders are those that are defined by the (exclusionary) criteria of citizenship. Territorial borders are rather physical demarcations or obstacles to entry (or exit) meant to control access within a given jurisdiction. Sometimes, the two meanings are compounded, as when questions of political membership are translated into questions of residence (and even persistent, continuous, proven residence as an element of the criteria for obtaining citizenship); but they are obviously logically distinct.

One tacit but profound way in which geographical determination and political membership are compounded is when assuming that the default, standard form that a political constituency can take is precisely a territorially defined one. In a volume focused on the nature and significance of political representation, Andrew Rehfeld sets out to question this default expectation: the territorial definition of electoral constituencies is among the democratic institutions and practices that "have become so familiar that we risk treating them as somehow natural and therefore 'obviously' preferable to those we have yet to consider".<sup>26</sup>

The importance of this territorial understanding of electoral constituencies in contemporary democracies has a profound impact on the ways on which we conceive and realize the normative expectations of our democratic intuitions. The reconsideration of the contours of territorial electoral constituencies determines directly the result of elections, referenda and establishes the political domination of partisan, ethnic or religious majorities. Therefore, treating them as "natural" is a common yet problematic attitude. Fundamentally, the very meaning of majority and minority is given by the territorial limits of the constituency within which the

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<sup>26</sup> Andrew Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design*, Cambridge University Press, Cambridge, 2005, p. xi.

decisions are voted upon. A particular majority in a specific territorial configuration may be transformed into a systematic or structural minority in another configuration of such given constituency. Gerrymandering is a tumultuously criticized practice precisely because it exposes the ultimate potential arbitrariness of the process of drawing and re-drawing electoral constituency demarcations – hence the potential arbitrariness of the majority rule settings, otherwise an essential democratic decision making procedure. Calls for ending gerrymandering are not only heard in the US Congress and think tanks, but also in those multiethnic societies where the local proportions among different ethnicities may ensure either the conditions for self-government, even self-determination or, by the reconfiguration of electoral lines, of fragmentation, dispersion, and acculturation.

Moreover, the shifting shape of electoral constituencies determines a crucial aspect of the democratic mode of government: not only can it transform majorities into minorities and vice versa, but even more fundamentally, it may determine who is in and who is out of the constituency. To extrapolate the discussion at a national level, it is the case that the configuration of present borders (the larger scale contours of the national constituency) may be the result of similarly arbitrary relations of power and force. Drawing and redrawing boundaries – especially, but not limited to the post-colonial transformations – results in the famously arbitrary “straight lines” of borders in Africa, Asia or North-America. Such straight lines epitomize the randomness and arbitrariness of certain borders, which even decades after being drawn are unable to produce correspondingly separate political realities.

Such and other kind of borders are obviously leaving parts of the same communities out of each other’s political institutions; their existence does not nullify the shared fate of individuals across and beyond the borders; and the ultimate authority of territorial criteria for demarcation of political communities is increasingly challenged.

The point here is not that territorial constituencies are anomalies of democratic practice. Rather, it is that they should not be considered as “normal”, hence in no need of justification. The justificatory burden is not exclusively on the claims for extraterritorial voting rights, as the very territorial definition is in more than one way disconcerting. In actual fact, “extraterritorial” can mean both “beyond a specific territory” and “without relation to any territory”. Most accounts build on the first understanding and look for extending the initial territorial configuration that is deemed too restrictive. Yet on the second reading of the meaning of “extraterritoriality” the very primacy (or *prima facie* role) of the territory is under scrutiny.



### *Inclusion, Voting and Virtual Representation*

The last issue to consider is whether voting is the obligatory element of political inclusion – as mandated by the all affected interests principle. The act of voting was itself deemed to be a core element in any understanding of modern representative government, and later democracy<sup>27</sup>. This electoral/elective dimension was replacing selection by lot in ancient democracy in order to become the staple democratic act. Moreover, political representation (and voting as its privileged mode) *is* inclusion<sup>28</sup>.

My contention is that the corollary of the problems raised when discussing the possible interpretations of the all affected interests principle is that citizenship and inclusion should rather be thought of as *modular*. Modular citizenship and modular inclusion are compatible with both elective and non-elective dimensions of representative democracy – the latter being theorized as ‘virtual representation’ by Edmund Burke<sup>29</sup>. For Burke,

”Virtual representation is that in which there is a communion of interests, and a sympathy in feelings and desires between those who act in the name of any description of people, and the people in whose name they act, though the trustees are not actually chosen by them. This is virtual representation. Such a representation I think to be, in many cases, even better than the actual. It possesses most of its advantages, and is free from many of its inconveniences”<sup>30</sup>.

Virtual representation, also theorized by Hanna Pitkin<sup>31</sup>, defined as “surrogate representation” by Jane Mansbridge<sup>32</sup> and further explored by Saward<sup>33</sup>

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<sup>27</sup> Bernard Manin, *The Principles of Representative Government*, cit.

<sup>28</sup> David Plotke, “Representation Is Democracy”, *Constellations*, vol. 4, no. 1, 1997, pp. 19-34.

<sup>29</sup> Edmund Burke, Hercules Langrishe, *A Letter from the Right Hon. Edmund Burke ... to Sir Hercules Langrishe, on the Subject of Roman Catholics of Ireland and the Propriety of Admitting Them to the Elective Franchise, Consistently with the Principles of the Constitution as Established at the Revolution [microform]*, Goldsmiths'-Kress Library of Economic Literature ; No. 15432, Printed for J. Debrett, London, 1792.

<sup>30</sup> Edmund Burke, *The Works of ... Edmund Burke*, F. & C. Rivington, 1803, p. 360.

<sup>31</sup> Hanna Fenichel Pitkin, *The Concept of Representation*, University of California Press, Oakland, CA, 1967.

<sup>32</sup> Jane Mansbridge, “Rethinking Representation”, *American Political Science Review*, vol. 97, no. 4, 2003, pp. 515-528.

<sup>33</sup> Michael Saward, “Authorisation and Authenticity: Representation and the Unelected”, *Journal of Political Philosophy*, vol. 17, no. 1, March 2009, pp. 1-22; Michael Saward, “The Representative Claim”, *Contemporary Political Theory*, vol. 5, no.3, pp. 297-318.

and Pârnu<sup>34</sup>, may offer significant avenues for rethinking the inclusionary potential of modular citizenship. As a de-territorialized form of political representation, it eschews the limits and potential arbitrariness of territorial constituency; furthermore, it can be rendered compatible with strong readings of normative procedural legitimacy in deliberative democracy by adopting criteria similar to those proposed by Robert Goodin in his paper on “Democratic Deliberation Within”<sup>35</sup>: his emphasis is on each participating individual, not simply on the representatives. And “deliberation within” means “less a matter of making people ‘conversationally present’ and more a matter of making them ‘imaginatively present’ in the minds of deliberators” (p. 83).

Virtual representation, deliberation within, or modular citizenship are related concepts permeated by purposes of including those that find themselves in a relevant normative circumstance of democratic concern – yet are not extended, for reasons pertaining to the ambiguities of the all affected interests principle, formal, extraterritorial voting rights.

## CONCLUSION

The normative challenges of the various solutions put forth in order to address the boundary problem illustrate the limits of political inclusion when articulated as an application of the all affected interests principle. Modular (or “fuzzy”) conceptions citizenship and virtual representation, when corroborated with deliberative standards that encourage “making others imaginatively present”, allow for extraterritorial democratic processes that could, if properly expounded, contribute to generate significant opportunities to rethink the range of entitlements, duties and responsibilities involved in the current debates on international development.

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<sup>34</sup> Camil Alexandru Pârnu, “The Avatars of Virtual Representation. An Assessment of the Burkean Notion’s Contemporary Relevance”, *Studia Politica. Romanian Political Science Review*, vol. 10, no. 1, 2010, pp. 9-25.

<sup>35</sup> R.E. Goodin, “Democratic Deliberation Within”, *Philosophy & Public Affairs*, vol. 29, no. 1, 2005, pp. 81-109.