

# 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

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## Abstract

This essay considers the role of the ‘all affected interests’ principle in democratic theory, focusing on debates concerning its form, substance and relationship to the resolution of the democratic boundary problem. It begins by defending an ‘all actually affected’ formulation of the principle against Goodin’s ‘incoherence argument’ critique of this formulation, before addressing issues concerning how to specify the choice set appropriate to the principle. Turning to the substance of the principle, the argument rejects Nozick’s dismissal of its intuitive appeal and considers the two arguments advanced in favour of the principle as a criterion of democratic inclusion: the *interlinked interests* argument and the *tracking power* argument. It is shown that neither of these arguments can substantiate a view of the principle as a criterion of democratic inclusion, although both ground a constitutional understanding of the principle as specifying the scope of a duty of justification. It is then proposed that the principle can play an important role in a two-stage resolution of the democratic boundary problem in which it addresses the question of who is entitled to inclusion in the ‘pre-political’ demos that determines whether to constitute a polity. The second stage of this resolution requires an answer to the question of who should constitute the ‘political demos’, that is, the demos of a constituted polity and it is argued that a version of the “all subjected persons” principle can appropriately play this role.

**Keywords:** *all affected interests; all subjected persons; democracy; boundary problem; demos problem*

Democracy may be understood, both descriptively and normatively, as a form of political governance, a way of making collectively binding decisions, in which ‘the people’ (considered collectively) governs itself through the entitlement of ‘the people’

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(considered severally) to participate as political equals in the decision-making process. But who legitimately compose ‘the people’? This is the ‘democratic boundary’ or ‘constituting the demos’ problem, a problem which is fundamental and yet, until recently, remained largely unexplored in the canon of political theory.<sup>1</sup> As Dahl famously remarks, ‘how to decide who legitimately make up “the people” ... and hence are entitled to govern themselves ... is a problem almost totally neglected by all the great political philosophers who write about democracy.’<sup>2</sup> The question itself generates a general paradox of founding for democracy in that any act of legitimate democratic constitution of ‘the people’ or ‘demos’ would itself already require a legitimately constituted ‘people’ or ‘demos’ to engage in that act—or, as the point has also been put:

In democratic theory, democracy is usually offered as the exclusively legitimate method of making binding decisions for a collectivity, yet brief reflection suffices to show that the boundary problem is one matter of collective decision that cannot be decided democratically.<sup>3</sup>

This is a topic which has acquired a certain amount of prominence in current political theory, a development which can be seen against the backdrop of increasing attention to issues such as secession, migration, global interdependence and democratic governance beyond the state which all intrinsically invoke the question of the legitimate constitution of the demos.

It is in the context of this question that this essay addresses the role of the ‘all affected interests’ principle as the most widely endorsed proposal of a criterion for constituting the demos, a criterion which appears to have immediate intuitive appeal in connecting interests, power and democratic inclusion.<sup>4</sup> This is not, however, to say that it is uncontested. On the contrary, there are several rival candidates within political theory for determining membership of the demos, most prominently, the ‘all subjected persons’ principle<sup>5</sup> (which like the ‘all affected interests’ principle comes in several variants) but also the ‘social membership’ principle<sup>6</sup>, the ‘stakeholder’ principle<sup>7</sup> and the ‘constituted identities’ principle<sup>8</sup>. The argument presented here will not attempt to provide a full consideration of the merits of all these various principles, rather it attempts to show that much of the intuitive appeal of the ‘all affected interests’ principle as a criterion of democratic inclusion arises from confusing this role with its role as grounding the claim that one has a right to have one’s legitimate interests treated impartially when choices are made that affect those interests, before drawing out the implications of this argument for the role of the ‘all affected interests’ principle in addressing the democratic boundary problem and proposing a two-stage solution to this problem.

In order to make this argument, I begin by seeking to identify the most defensible version of the ‘all affected interests’ principle in relation to two axes: (1) actually or possibly affected interests and (2) actual or possible choices. I then consider Nozick’s well-known attempt to counter the principle through examples appealing to compelling counter-intuitions and argue that his strategy fails. The following two sections focus closely on the intuitive grounds on which the appeal of the

‘all affected interests’ principle rests: (1) the idea of *interlinked interests* as grounding a claim to collective decision-making and (2) the idea that decision-making should *track power* relationships. In both cases, I show that these grounds are best understood in ways that do not support the ‘all affected interests’ principle as a principle of democratic inclusion. In the final two sections, I consider what, if any, role the ‘all affected interests’ principle may legitimately play within democratic theory and argue that it can contribute the first stage of a two-stage solution of the democratic boundary problem, before offering a solution to this problem through an account of both stages needed for such a resolution.

### **THE ‘ALL ACTUALLY AFFECTED INTERESTS’ PRINCIPLE AND THE INCOHERENCE ARGUMENT**

The standard ‘actually affected’ formulation of the all affected interests principle can be stated in its most general form thus:

(P) All whose interests are actually affected by a decision should have their interests impartially taken into account in the decision-making process.

The principle as a criterion of democratic inclusion can then be stated thus:

(Pd) All whose interests are actually affected by a decision should be able to participate as equals in the democratic decision-making process.

However, it has recently been argued that this ‘actually affected’ formulation of the principle is incoherent. Assuming the default democratic interpretation of the principle, the incoherence argument is presented thus:

Notice first that whose interests are ‘affected’ by any actual decision depends on what the decision actually turns out to be. Notice second that what the decision actually turns out to be depends, in turn, upon who actually makes the decision. Hence the ‘all actually affected interests’ principle ... is unable to tell us who is entitled to vote on a decision until after that very decision has been decided.<sup>9</sup>

Applying to (P) in its general form, the argument runs thus:

1. Whose interests are actually affected by any decision depends on what the decision turns out to be.
2. What the decision actually turns out to be depends, in turn, upon whose interests are impartially taken into account in the making of the decision.

Hence,

3. The ‘all actually affected interests’ principle is unable to tell us whose interests are to be impartially taken into account in the making of the decision until after that very decision has been decided.

What is most notable about this argument is that it takes (1) to express a truism. To see that this involves a specific (and, as we will see, implausible) interpretive move, we can begin by noting that the term ‘decision’ in (P) can be used to pick

out *either* the ‘deciding’, the process of choosing between options *or* the ‘decided’, the option that is the outcome of decision-process. Thus we can develop two versions of (P), which I’ll refer to as the *choice* (C) and *outcome* (O) interpretations:

(C) All whose interests are actually affected by a choice between a range of options should have their interests taken into account in the determination of the option chosen.

(O) All whose interests are actually affected by an outcome should have their interests taken into account in the determination of that outcome.

From which we can derive two statements of (1):

(C1) Whose interests are actually affected by a choice between outcomes depends on what the outcome turns out to be.

(O1) Whose interests are actually affected by an outcome depends on what the outcome turns out to be.

Hence, we are justified in the view that (1) is a truism only if (O) is the best interpretation of (P). But it is hard to see what would support this claim. Consider a decision-context in which there are three policy options, X, Y and Z being considered as possible alternatives to the current policy W (assuming for the sake of simplicity that W, X, Y and Z are mutually exclusive) and Z is chosen. In respect of this situation, (O) entails the following claim:

(O!) All whose interests are affected consist of all whose interests are affected by Z.

By contrast, (C) entails this claim:

(C!) All whose interests are affected consist of all whose interests are affected by the choice of Z *and not X or Y or W*.

Thus, we have reason to adopt (O) as the best interpretation of (P) if and only if we hold that the range of options from which the final policy is chosen has no relevance to whose interests are affected by a decision. But as a general claim advanced under any minimally plausible set of assumptions, this is false. As Goodin points out, the view expressed by (O!) represents ‘an indefensibly narrow construal of what it is to “be affected”’:

It is indefensibly narrow in two respects. First, it considers what it is to be affected as being ‘actually affected by the course of action actually decided upon.’ Second, the ‘all affected interests’ principle implicitly presupposes the status quo as a baseline and supposes that your interests that your interests are affected by a decision if and only if the decision alters your position from that.<sup>10</sup>

And as he also quite rightly states:

By any sensible standard, your interests are indeed affected by a decision to preserve the status quo if the alternative to doing that would have been to leave you far worse off than you are at present. . . . More generally, you are rightly said to be

‘affected,’ not merely by the ‘course of action actually decided upon,’ but also by the range of alternative courses of action from which that course was chosen.<sup>11</sup>

Acknowledging this point undermines the basis of the charge that the ‘actually affected’ formulation of the all affected principle is incoherent. It does so since this acknowledgment removes any motivation for endorsing (O) rather than (C) as an interpretation of (P) and, hence, for adopting (O1) rather than (C1) as the appropriate statement of (1). But (C1) cannot serve as the major premise of the incoherence argument for the simple reason that (C1) is false; we can perfectly well state whose interests are affected by the decision (choice) prior to the determination of outcome. Thus, to revert to our preceding example: in a decision-space characterized by policy options X, Y and Z as possible alternatives to the current policy W (where W, X, Y and Z are mutually exclusive), all whose interests are affected consist of all whose interests are affected by the choice of any of W, X, Y or Z. *How* their interests will be affected cannot be determined prior to the outcome, but *that* their interests will be affected in one way or another can be determined before the outcome is decided.

Hence the incoherence argument fails and we can endorse the all affected interests principle in its standard ‘actually affected’ formulation.

### **ACTUAL, POSSIBLE AND PLAUSIBLE CHOICES**

The preceding section established that we should adopt a formulation of the all affected interests principle which focuses on all whose interests are actually affected. However, it is important to notice that the same considerations of power that undermine (O) as an interpretation of (P) and, hence, lead to the rejection of the incoherence argument also raise a fundamental issue with respect to (C) as the favored interpretation of (P), namely, the demarcation of the relevant choice set. The point is a simple one in that if we are to specify those actually affected by a choice between a range of options, we cannot do so simply in terms of the final range of options that is chosen within the decision-making process, rather we need to acknowledge that one’s interests may be affected by the fact that this particular range of options is itself chosen in an agenda setting stage within the overall decision-making process. In other words, the argument made above concerning choices between policies W, X, Y and Z applies equally as an argument in which W, X, Y and Z refer to agendas (i.e. ranges of options) rather than single policy options. *Prima facie*, this supports a formulation of P thus:

All whose interests are actually affected by a choice between all possible options (i.e. any possible option on any possible agenda) should have their interests taken into account in the determination of the option chosen.

But this formulation is too broad. Consider that the primary purpose of this principle is to specify those who are entitled to have their interests taken into account in relation to the decisions of a polity. Polities may be various in terms of their purposes, functions and capacities—and, under conditions in which there are plural polities,

these features will be at least partly governed by the material and normative relationships between polities. Moreover, the decision-making of polities is situated with specific historical circumstances and characterized by particular histories of decision-making. This being so we need to distinguish within the general class of possible options between *real* and *notional* options, where the latter refer to options that the polity has the capacity to pursue but which there are no plausible grounds to suppose it will pursue. For this reason, it seems more accurate to refer not to possible options but to *plausible* options where this denotes the range of possible ‘real options’ (i.e. options compatible with the nexus of purposes, functions and capacities constitutive of a polity’s decision-making in the given circumstances and history of its agency). If this argument is cogent, we reach the following reformulation of P:

(P\*) All whose interests are actually affected by a choice between any of the range of plausible options open to the collective decision-making body should have their interests taken into account in the decision-making process.

Given this formulation, we can turn to the task of reflecting on the appeal of the ‘all affected interests’ principle as a criterion of democratic inclusion.

## NOZICK’S CHALLENGE

I have suggested (without argument) that the ‘all affected interests’ principle appears to have immediate intuitive appeal in connecting interests, power and democratic inclusion but how robust are our ‘immediate’ intuitions here? One famous attempt at a pre-emptive refutation of the ‘all affected interests’ principle as a principle of democratic inclusion is provided by Nozick’s attempt to generate counter-intuitions that undermine the appeal of the principle in this role. If successful, Nozick’s challenge would render any more complex consideration of the grounds of this appeal—and any confusions contained therein—redundant. Consequently, we need to take the measure of this challenge.

Here is Nozick’s best-known example:

If four men propose marriage to a woman, her decision about whom, if any of them, to marry importantly affects each of the lives of those four persons, her own life, and the lives of any other person wishing to marry one of these four men, and so on. Would anyone propose, even limiting the group to include only the primary parties, that all five persons vote to decide whom she shall marry?<sup>12</sup>

The question is rhetorical. It would, of course, be a breach of her personal autonomy to adopt such a practice and Nozick’s construction of the example is designed to bring forcefully to our attention the counter-intuitiveness of any appeal to ‘all affected interests’ in this context. However, on reflection, it is rather less clear what conclusions should be drawn from consideration of this example.

If we consider the ‘all affected interests’ principle as a principle of democratic inclusion that applies to collective agents such as democratic polities, Nozick’s challenge seems to be rather beside the point since in his example we know the composition of the rights-bearing agent, namely, the woman considering her offers

of marriage, whereas in the case of, say, a democratic state, it is precisely the composition of the agent—determining the demos—that is at stake. To say that the agent is ‘the democratic state’ tells us nothing about the composition of the demos and it is just this issue which the ‘all affected interests’ principle (on the default democratic interpretation) is seeking to address. The response to this point encouraged by Nozick’s example would be to say that the composition of the decision-making democratic state is just whatever it is (we might think of this as the Schumpeterian view) but that cannot be satisfactory since it makes the legitimate composition of the demos a function of the contingent factual composition of the demos. Such a move, as Dahl has pointed out, undermines any defensible normative criteria for distinguishing the democratic credentials of a state in which, say, all competent adult citizens are included and one in which, say, the existing demos has decided to exclude women or blacks.<sup>13</sup> Considered in this light, Nozick’s challenge seems to fail in virtue of being point-missing because failing to note a relevant disanalogy between the individual and the collective cases.

But we can draw out the significant point of Nozick’s challenge by noting that it is a central part of Nozick’s claim that any autonomous agent is characterized by rights to do (or not do)  $x$  that are integral to their autonomy, where their exercise of these rights can be legitimately indifferent to the ways in which others are affected as long as the exercise of these rights do not breach the constraints of morality or of justice that apply between the relevant parties (for example, as long as it does not infringe on the autonomy of the affected others). Another way of putting this point is that it makes a difference whether the interests of those affected are ‘legitimate interests’ by which I mean interests that the affecting party has an *obligation in morality or in justice* to take into account. In respect of the woman considering marriage offers, the right that she bears places some constraints on her choices (for example, in polities where there are legitimate monogamy rules, she cannot accept more than one of these proposals at the same time) but she has no obligation of morality or of justice to take into account how her decision may affect the suitor’s future lives (although she may have moral obligations concerning how she expresses her decision, especially to those rejected). If we turn to consider the case of a democratic polity, the entailment of Nozick’s argument amounts to the claim that in cases where an autonomous polity is exercising a right to do (or not do)  $x$  that is integral to its autonomy, then insofar as the exercise of this right does not affect the legitimate interests of others, they have no entitlement to have their interests taken into account and what weight, if any, the polity grants to their affected interests and the decision itself are matters for the polity alone. This is a somewhat limited result since it rather dramatically restricts the scope of Nozick’s attack on the intuitive appeal of the ‘all affected interests’ principle and can be accommodated quite straightforwardly by reformulating the principle thus:

(P\*\*) All whose *legitimate* interests are actually affected by a choice between any of the range of plausible options open to the collective decision-making body should have these interests impartially taken into account in the decision-making process.

Given the limitations of Nozick's challenge, a more detailed analysis of the grounds of the intuitive appeal of the 'all affected interests' principle as a criterion of democratic inclusion remains necessary.

## INTERLINKED INTERESTS AND THE ALL AFFECTED INTERESTS PRINCIPLE

Let us turn then to arguments for the 'all affected interests' principle in this democratic role. In this section, I'll take up the *interlinked interests* argument proposed by Goodin and in the next I'll address the *tracking power* argument offered by Shapiro.

Goodin proposes the *interlinked interests* argument in his efforts to motivate the *prima facie* justifiability of the 'all affected interests' principle as a criterion of democratic inclusion. The argument can be reconstructed thus:

1. The reason that we consider territorial or historical or national groups to be appropriate units for collective decision-making is that 'typically if not invariably, the interests of individuals within those groups are affected by the actions and choices of others in that group'.<sup>14</sup>
2. Thus, these bases for constituting the demos are 'only an approximation to constituting it on the basis of what really matters, which is interlinked interests'.<sup>15</sup>
3. This supports a view of the 'all affected interests' principle as the criterion for determining the demos if we consider that:

Sometimes the approximation is overinclusive ... Sometimes the approximation is underinclusive ... The crucial thing to note at this point, however, is the characteristic form taken by critiques of those alternative ways of constituting the demos. Counterexamples are conjured up showing that each of those ways on constituting the demos is either (or both) over- or under- inclusive, wrongly conferring membership upon people whose interests are not affected by the decisions of the demos or wrongly denying it to people whose interests are affected. Notice, however, that that is just to say that the 'all affected interests' principle is the principle that is being implicitly employed in judging all those methods of constituting the demos, on the basis of territoriality, nationality, history, or whatever. The 'all affected interests' principle is the standard by which the adequacy of those other approximations is invariably assessed.<sup>16</sup>

The main point to note about this argument is that the appeal to interlinked interests invoked in (1) and (2) does not underwrite the principle of all affected interests as a criterion of democratic inclusion claimed in (3).

Reflect first on the claim that it is 'common reciprocal interests in one another's action and choices are what makes these groups [e.g. territorial, historical, national] appropriate units for collective decision-making'.<sup>17</sup> Another way of putting this point is to say that interlinked interests provide a normative basis for the legitimate constitution (or re-constitution) of a legal or political order. To illustrate this, consider the movement from an ungoverned to a governed condition, that is, for



the constitution of a legal order or a self-governing polity where such structures do not yet exist. Thus, for example, if a multitude exists in conditions of territorial proximity, then in virtue of that proximity, their actions and choices are liable to affect one another's legitimate interests, that is, their interests become interlinked. Where the legitimate interests concerned are morally significant, this grounds a common entitlement to the impartial treatment of their interests and, hence, in the absence of appropriate institutions, a right to constitute a structure of impartial governance which can regulate the relevant classes of actions and choices to secure the impartial treatment of their interlinked interests. There are two points to notice here.

First, this appeal to interlinked interests does not *require* the construction of a structure of impartial governance. If all those whose interests are interlinked have shared reasons rationally to endorse a legally and/or politically unregulated condition (perhaps because each can confidently trust the other to take their legitimate interests into account or perhaps because the circumstances are such that the interlinking of their interests is systematically beneficial to all parties), they are entitled to decide to remain in an ungoverned condition regulated only by consensually established social norms. What the appeal to interlinked interests does entail is that each and every agent whose legitimate interests are interlinked possesses a right to the constitution of a structure of impartial governance if such a structure is required to ensure the impartial treatment of their interests (and we may suppose on broadly Lockean grounds that it is likely that such a structure will be required).

Second, although this argument supports claim (2), namely, that what matters for polities are interlinked interests, the appeal to interlinked interests legitimates only the right to impartial treatment of their interests and, hence, the right to constitute a structure of impartial governance to secure such impartial treatment; it does not itself underwrite the claim that the right to impartial treatment or, even, the right to constitute a structure of impartial governance *must* find expression in the foundation (or re-formation) of a polity, let alone one in which all those interests are interlinked *must* be included in the demos.<sup>18</sup> Structures of impartial governance may, for example, also take the form of legal governance, that is, the joint subjection of those whose interests are interlinked to a judicially sanctionable regime of legal rules that all those whose interests are interlinked can rationally endorse.

We can come at this point a second way by noting that the appeal to interlinked interests is ecumenical with respect to the relevant agents whose interests are interlinked. Thus, for example, in a context in which it is not individuals but groups or, indeed, polities whose interests are interlinked, recourse to interlinked interests suggests that these groups or polities are similarly characterized by a common entitlement to the impartial treatment of their interests *qua* groups or polities and, hence, where necessary, to a structure of impartial governance. This entitlement may be given expression in a wide range of different structures of impartial governance depending on the depth, extent, type and seriousness of the interests concerned. Thus, in the case of two polities, each of whose decision-making relevantly affects the

other, the fact that their legitimate interests are interlinked entitles them to engage in those governmental relations that can be rationally endorsed as sufficient to secure the impartial governance of their relevantly interlinked interests, where such relations might include, for example, adopting treaty arrangements that regulate their actions and choices with respect to each other or setting up standing arrangements for ad hoc joint decision-making or merging within a larger federal polity or subjecting themselves to the binding arbitration of an international court. Put formally, what the appeal to interlinked interests underwrites can be stated thus:

Any agents (individual or collective) whose legitimate interests are interlinked have, with respect to the relevant range of interests, an entitlement to the impartial treatment of their interests as interlinked and, hence, a right to constitute an impartial structure of governance that can regulate the actions and choices that they can make with respect to one another where this is necessary to secure such treatment.

If we now turn to consider the ‘all affected interests’ principle in relation to the decision-making of a polity, it is clear that it does not *entail* that persons whose legitimate interests are actually affected by a choice between the plausible options available to that polity should be entitled to membership of this polity. Rather it establishes that they share a common entitlement with all other persons whose legitimate interests are so affected by the decision-making of this polity to the impartial treatment of their interests and, hence, a right to constitute a structure of impartial governance. This could be accomplished through the subjection of the polity to either a legal order or to a second-order polity which has the authority to regulate the actions and choices of the first-order polity in order to secure the impartial treatment of the legitimate interests of all affected. Does this allow for the possibility (if not necessity) of the incorporation of affected non-members into the demos of the relevant polity?

An objection to this claim concerning democratic inclusion as an option emerges if we come at the point by envisaging the relevant agents involved in this case as those affected individuals who are not members of the polity and the polity itself. Then, it might be argued, the interests of these non-members are not interlinked with the interests of the members of the polity considered severally, as individual agents, but with their interests considered collectively, as a group agent. If this is right, the common entitlement of these individual (non-member) agents and this group agent to the impartial treatment of their interests and, where necessary, a structure of impartial governance is an entitlement which applies to their relationship as a relationship between individual agents and a group agent. The entitlement is possessed by these agents *in this form*. If sound, this objection would rule out the democratic inclusion of non-members as a way of meeting their entitlement to the impartial treatment of their affected interests.

However, the objection is not sound. The error lies in the implicit picturing of the scenario as one in which the membership of the self-governing polity have already made a collective decision which then affects the interests of various non-members, but this is not the scenario which is pertinent to our concerns.

Rather we are addressing a hypothetical situation in which the interests of a range of individuals—current members and non-members alike—are interlinked in virtue of the fact that their interests will be affected by a choice between the plausible options open to the decision-making polity. In this context, the requirement of treating the interests of all affected impartially can presumptively be met by the inclusion of all affected individuals within the decision-making process. However, it remains the case that the requirement can also presumptively be met through a variety of other structures of impartial governance ranging, for example, from contestatory courts in which those affected can challenge decisions of the polity as failing impartially to consider their interests through to second-order polities which have the power to regulate the decisions of the relevant first-order polity.

In sum, the interlinked interests argument provides a normative basis for specifying who shares an entitlement to the impartial treatment of their legitimate interests as interlinked and, hence, a right to constitute a structure of impartial governance with respect to a relevant range of actions and choices. In cases where *all* those affected determine that this common entitlement is best served through the constitution of a polity (or the incorporation of those affected into the decision-making polity with respect to this decision), the ‘all affected interests’ principle will also contingently specify who will constitute the demos of that polity but, crucially, the ‘all affected interests’ principle as applied to the decisions of a given polity does not entail a right to inclusion in the demos of *this* decision-making polity.

Having critically reviewed Goodin’s argument, we can note that, for all its limitations in its intended role, Goodin’s recourse to the *interlinked interests* argument provides a helpful way of approaching and resolving the paradox of founding that pertains to the ‘all affected interests’ principle as a principle of political legitimacy. The problem runs thus:

1. The ‘all affected interests’ principle applies to the decisions of a polity (or collective decision-making agent).
2. The legitimate constitution of a polity (or collective decision-making agent) is an interest-affecting collective decision.

Hence,

3. The ‘all affected interests’ principle applies to the legitimate constitution of all polities (or collective decision-making agents).

Yet

4. The ‘all affected interests’ principle cannot apply to the legitimate constitution of all polities (or collective decision-making agents) since it requires that there is such an agent to whose decision-making it has initial application.

The *interlinked interests* argument helps to resolve this paradox because, as we have seen, the appeal to interlinked interests as basic entails taking the ‘all affected interests’ principle to apply to the choices between plausible options of any agents (for example, individuals or groups), where those choices affect the legitimate interests of others and, hence, in virtue of this interlinking, ground an entitlement to

a structure of impartial governance such as a polity. It is only in virtue of the extension of the ‘all affected interests’ principle from application solely to polities to application to agents in general that the paradox sketched can be resolved by providing a basis of legitimacy for an initial polity to which the ‘all affected interests’ principle in its polity-specific form can then apply.

## THE TRACKING POWER ARGUMENT

Addressing the problem of the constitution of the demos, Shapiro argues:

... the democratic tradition contains distinct resources for tackling this issue, because the basis for its legitimacy rests on the causal notion of having an affected interest. That is, the reason why democracy is argued to be justified is that people should have a say in the decisions that affect them. ... The causal principle of affected interests suggests that ideally the structure of decision rules should follow contours of power relationships, not that of memberships or citizenships: if you are affected by the results, you are presumptively entitled to a say.<sup>19</sup>

While Shapiro’s formulation of the principle in terms of being ‘affected by the results’ is too restrictive given a minimally plausible view of power (and may perhaps have encouraged Goodin’s mistaken criticism of the ‘actually affected interests’ formulation of the principle?), the fact that he, like Goodin, stresses the significance of power suggests that the *tracking power* argument expresses a basic intuition behind the proposal of the ‘all affected interests’ principle as a criterion of democratic inclusion. However, before we turn to the major problem with this argument, it is worth noting that reflection on it helps us to refine the formulation of the all affected interests principle one last time.

To see this, consider the point that while it may be true that being subject to power means being affected (in a suitably expansive sense), it is not the case that being affected means being subject to power. In aiming to map inclusion in decision-making onto the contours of power relations, the *tracking power* argument construed in terms of Shapiro’s ‘results’ formulation presumes that the decision-making agent bears some salient degree of outcome-responsibility for the ways in which the interests of those causally affected are actually affected, but the fact that one’s interests are actually affected by a decision may simply be a matter of (mis)fortune, a contingent and unintended outcome of the conjunction of choices made in the decision-making process and unforeseen, perhaps unforeseeable, circumstances. Simply being affected by the outcomes of the polity’s decisions-making process is not thereby sufficient grounds for the attribution of responsibility to that polity, where it is such responsibility that is assumed to ground a claim to membership. However, once we drop the ‘outcome’ interpretation advanced by Shapiro in favour of the ‘choice’ interpretation of the all actually affected interests principle that I have proposed, the problem confronted by Shapiro’s view disappears. Recall the formulation proposed thus far:

(P\*\*) All those whose legitimate interests are actually affected by a choice between any of the range of plausible options open to the collective decision-making body should have their interests taken into account in the decision-making process.

In the course of the critique of the incoherence argument, I pointed out that we can give an abstract determination of those whose interests will be affected: for example, in a decision-space characterized by the mutually exclusive plausible options W, X, Y and Z, all whose interests are affected consist of all whose interests are affected by the choice of any of W, X, Y or Z. But an abstract determination is just that: abstract. How do we specify the actual persons to whom this abstract determination concretely applies? The simple point here is that the only reasonable basis on which to do so is given by the notion of outcome-responsibility for reasons that David Miller has noted:

Causal responsibility is being invoked when we ask the question ‘why did O occur?’ We want to know which among the many conditions that had to be fulfilled in order for O to occur to single out as the cause of O. As Hart and Honoré among others have pointed out, there is no single correct answer to this question. . . . In the case of outcome responsibility, our interest is different. We want to know whether a particular agent can be credited or debited with a particular outcome—a gain or loss, either to the agent herself or to other parties. . . . Because the underlying notion is of an outcome being credited or debited to the agent, the nature of the causal chain matters for such attributions of responsibility. *As the chain becomes longer and more tortuous, responsibility dissipates.*<sup>20</sup>

This discussion is, then, perhaps a rather long-winded way of saying that the all affected interests principle needs a final reformulation thus:

(P\*\*) All whose legitimate interests can be *reasonably foreseen* to be actually affected by a choice between any of the range of plausible options open to a collective decision-making body should have their interests taken into account in the decision-making process.<sup>21</sup>

With this point made, let us turn to the main objection to the *tracking power* argument.

The objection is simply this: the *tracking power* argument is not sufficient to generate an entitlement to membership in the decision-making polity. To elucidate the grounds of this objection, we can begin by noting that the normative basis of this argument can be expressed as the claim that when an agent *A* exercises power over another agent *B* and affects *B*’s legitimate interests, then *A* has a duty of justification with respect to *B* and *A*’s action is legitimate only insofar as it can be justified *in the relevant way* to *B*. However, as Baubock has argued, the ‘all affected interests’ principle:

builds on the plausible idea that democratic decisions have to be justified towards all those who are affected by them, but implausibly derives from such a duty of justification a criterion of participation and representation in the decision-making itself. (2009: 15)

To see this, consider that what links the normative basis that generates the duty of justification to the view that the ‘all affected interests’ principle serves as a criterion of

democratic inclusion is the claim that in cases where *A* is a polity and *B* is an individual, discharging this duty *requires* inclusion in the demos of the interest-affecting polity. But what is the basis for this claim?

To say that *A* owes a duty of justification to *B* in virtue of the fact that *B*'s legitimate interests can be reasonably foreseen to be actually affected by *A*'s choice between any of the range of plausible options open to *A*, is to say that *A* has bears the duty that correlates to *B*'s right for his legitimate interests to be impartially treated within the decision-making process. Thus, on the one hand, insofar as *B*'s legitimate interests are impartially treated within *A*'s decision-making process, the duty of justification is discharged and *B* has no entitlement to inclusion within the demos of *A*; while, on the other hand, insofar as *B*'s legitimate interests are not impartially treated in the decision-making process, the duty of justification grounds a right on the part of *B* to the constitution of a structure of impartial governance that can regulate *A*'s choices and actions to ensure that *B*'s interests are given the appropriate consideration. For a judgment as to whether *B*'s legitimate interests have been or have not been impartially treated within *A*'s decision-making process to be justified in the relevant way, all that is required is a process of impartial adjudication between *A* and *B*. (Thus, for example, the institution of a contestatory court that considers claims concerning the impartial treatment of interests would suffice to generate the relevant kind of justification.) These considerations undermine the claim that the *tracking power* argument suffices to ground the 'all affected interests' principle as a criterion of democratic inclusion, where 'grounding' implies that the principle logically entails that *B* is included in the demos of *A*.

A possible objection to this argument focuses on the claim that 'insofar as *B*'s legitimate interests are impartially treated within *A*'s decision-making process, the duty of justification is discharged and *B* has no entitlement to inclusion within the demos of *A*'. The objection would be that *B*'s legitimate interests can be impartially treated within *A*'s decision-making process *if and only if* *B* is included in the demos of *A*. In response to this objection, we can note that it is certainly the case that there are necessary conditions of the possibility of discharging the duty of justification. Thus one may reasonably argue that the possibility of the impartial treatment of *B*'s legitimate interests requires, first, a *duty of publicity* on *A* such that *B* has open access to knowledge concerning *A* as a polity that allows *B* to identify whether or not his or her legitimate interests are likely to be affected by any of the plausible options available to *A* and, second, a *communicative right* on the part of *B* to express the legitimate interests that can reasonably be foreseen to be affected to *A* so that they can be given impartial consideration in the decision-making process. These conditions are individually necessary and jointly sufficient to secure the basic conditions of possibility of discharging the duty of justification; hence while the inclusion of *B* in the demos of *A* may be a sufficient condition for the possibility of discharging the duty of justification, it is not a necessary condition. Thus, the *tracking power* argument does not establish the case for the 'all affected interests' principle as a

criterion of democratic inclusion; the duty to provide a justification does not amount to a duty to include democratically.<sup>22</sup>

## **THE PLACE OF THE 'ALL AFFECTED INTERESTS' PRINCIPLE IN DEMOCRATIC THEORY**

The preceding two sections have attempted to undermine the credentials of the 'all affected interests' principle as a criterion of democratic inclusion for the polity. This raises the question of what normative role, if any, this principle does play in democratic theory and what implications, if any, this has for the democratic boundary problem. This section addresses these two concerns.

Our reflections on both the *interlinked interests* argument and the *tracking power* argument resulted in the claim that the 'all affected interests' principle specifies those to whom a duty of justification is owed in respect of a polity's decision-making, where discharging this duty requires the impartial treatment of the relevant legitimate interests within the decision-making process and where the absence of such impartial treatment triggers a right to constitute an impartial structure of governance that can ensure such treatment. Our consideration of the *interlinked interests* argument also showed that in relevantly ungoverned circumstances where there is no collective decision-making agent, the 'all affected interests' principle applies to the plurality of agents present in this politically unregulated condition and grounds a right to impartial treatment and, hence, a right to constitute an impartial structure of governance where this is needed to secure impartial treatment. Thus, on the arguments given, the 'all affected interests' argument has a quite distinctive role to play in democratic theory. How, though, does this role bear on the democratic boundary problem?

Consider, first, the context of relations between a plurality of agents (individuals or groups or states) who occupy a relevantly ungoverned condition in their relations to one another and who, in virtue of their interlinked interests, enjoy a common right to the impartial treatment of their interests and, hence, to the constitution of a structure of impartial governance to secure such treatment. In this context, all those whose interests are interlinked legitimately constitute a very specific kind of demos, namely, the 'pre-political' demos that has the right to determine whether to constitute a structure of impartial governance and, if so, what kind of structure of impartial governance—whether, say, to constitute a polity. Notice, however, that in contrast to the decision-making of the demos of a constituted polity (a 'political' demos), the decision-making of this 'pre-political' demos cannot legitimately be collectively binding on all members of this demos at either the first stage (whether to adopt a structure of impartial governance) or the second stage (what kind of structure to adopt) of decision-making unless those concerned have *unanimously* pre-committed themselves to taking the decisions as collectively binding.<sup>23</sup> Thus, for example, in the absence of any such pre-commitment, if a majority decide to constitute a structure of impartial governance, then those who do not consent to the decision are morally

entitled to remain outside whatever structure is (or structures are) chosen in the second stage of decision-making but, by the same token, can legitimately be excluded from the second-stage demos for the determination of what kind of structure of impartial governance to adopt. Similarly, in the absence of any pre-commitment, if a majority of the second-stage demos choose to constitute a self-governing polity, then those who do not consent are morally entitled to remain non-members of the polity and to adopt other structures of impartial government in regulating their own relations to one another. Why does consent become significant here? Why cannot we legitimately regard the decisions of such a 'pre-political' demos as collectively binding? The reason that dissenters are legitimately entitled not to be bound by the majority decision is that such a requirement would violate their personal autonomy, that is, their right to determine what their own interests are and, specifically, what their own interests are in respect of the governance of their affected legitimate interests. The imposition of 'collective bindingness' without the prior consent of those bound would be a form of domination, that is, subjection to the will of others. The rationale at stake here is precisely the same as that which grounds the entitlement of someone who has consented to membership of a polity to choose later to withdraw their consent and exit the polity.

The same logic applies in the case where the relevant legitimate interests of some of those affected are not—or where we have good reasons to believe that they are unlikely to be—impartially treated within the decision-making process of the polity. In this context, all those whose legitimate interests are affected similarly constitute a 'pre-political' demos with the right to determine whether to constitute an impartial structure of governance and, if so, what kind of impartial structure of governance—and, again, the decisions of this 'pre-political' demos are not collectively binding in the absence of any pre-commitment to their being collectively binding.

In respect of the democratic boundary problem, this is a significant result because it offers the first step in a two-stage solution to that problem. If we recall Whelan's claim that democratic theory cannot resolve the democratic boundary problem, we can notice that logical basis of this claim rests on the presupposition that there must be a one-stage solution to the problem. Effectively what Whelan is claiming is that the democratic boundary problem arises because the composition of a 'political' demos (the demos of a *constituted* polity) cannot be democratically determined without ultimately presupposing a prior 'political' demos that has not been democratically determined. But we have no compelling reason to adopt this one-stage presupposition. For democratic theory to offer a solution to the democratic boundary problem, it needs to be able to give an account of how a 'political' demos can be composed in a democratically legitimate way which does not presuppose that this 'political' demos must be the product of a legitimately constituted 'political' demos. Our reflections on the 'all affected interests' principle provide the first step in giving such an account because, on the argument given, this principle provides a way of specifying the 'pre-political' demos who are entitled to decide whether to constitute a structure of impartial governance and, when combined with a principle



of consent, a way of specifying, first, the ‘pre-political’ demos who are entitled to decide whether to constitute a polity and, second, the initial membership of any such polity. This is, however, only the first step because we also need an account of what entitles members of a self-governing polity to be members of the demos of that polity and to draw out the implications of such an account for the constitution of the ‘political’ demos.

## **RESOLVING THE DEMOCRATIC BOUNDARY PROBLEM**

In considering what entitles members of a self-governing polity to be members of the demos of that polity, we can begin by noting (1) that the normative point of constituting such a self-governing polity for its members is to secure the impartial treatment of their interlinked interests and (2) that in consenting to membership of the polity, that to which they consent is being bound by the collective decisions of the polity, being subject to its coercively-enforceable authority, insofar as this can be justified to them in terms consistent with their autonomy (as, for example, a rule against the individual’s right to withdrawal from membership of the polity is not).<sup>24</sup> These elements provide the basis for Dahl’s classic argument for the ‘principle of full inclusion’: ‘The demos must include all adult members of the association except transients and persons proved to be mentally defective’ (1989: 129), where ‘adult members of the association’ refers to ‘all adults subject to the binding collective decisions of the association’ (1989: 120). The argument, as Lopez-Guerra notes, can be summarized thus:

(1) governments must give equal consideration to the good and interests of every person bound by their laws (principle of intrinsic equality); (2) unless there is compelling evidence to the contrary, every person should be considered to be the best judge of his or her own good and interests (presumption of personal autonomy); therefore (3) all adults [who are not merely transients and are not shown to be mentally defective] should be assumed to be sufficient well-qualified to participate in the collective decision-making processes of the polity (strong principle of equality). (2005: 219, my insertion)<sup>25</sup>

There are a range of issues raised by Dahl’s argument, not least that of the position of transients and the mentally incompetent,<sup>26</sup> but the first issue for our concerns is the *duality* of the notion of ‘being bound’ by laws in relation to personal autonomy, namely, ‘being bound’ as subjection to the *political authority* of laws and as subjection to the *coercive power* of laws. Both of these aspects of ‘being bound’ have normative significance for democratic theory. The normative significance of the former can be elucidated by imagining a hypothetical scenario in which the law has no coercive power over a person (either because the coercive apparatus of the polity has ceased to be operative or because the person concerned is so much more powerful in all relevant respects than the polity in question). In such a context, we would still want to say two things. First, the members of the demos are normatively bound by their collective decision because they have authorized it. The fact that they are not subject to the coercive power of the polity does not alter this situation. Second, only those

who are members of the demos are normatively bound by this decision because only those included within the demos have authorized the polity to bind them in the specified way; thus even if, as a result of non-coercive mechanisms of ideological persuasion, a person who is not included in the demos does, as a matter of fact, accept the entitlement of the polity to bind them, they are *de facto* subject to the will of another and, hence, the claimed authority is illegitimate. The normative significance of the *coercive power* dimension of being bound by law has been elucidated by Abizadeh in terms of the point that being subject to coercive power (whether in the form of coercive acts or coercive threats) always invades personal autonomy as independence (i.e. not being subject to the will of another) and hence, requires justification. The appropriate form of justification for a democratic polity is that the law is democratically legitimate but this can only be the case if all those who are subject to coercively-enforceable law are entitled to inclusion within the demos and, thereby, co-author(ise) the laws to which they are subject.<sup>27</sup> Put another way, democratic justification is required when the issue is subjecting someone's will to a law because democratic justification ensures that that person's will is engaged in determining the terms of the subjection to which they are bound.<sup>28</sup>

The key point to emerge from these reflections on the grounds on which a member of the polity is entitled to be a member of the demos of that polity is that *any* person subject to potentially autonomy-violating forms of political power, whether coercive or not, by a polity in respect of a given domain of law is entitled to inclusion within the demos with respect to the relevant domain of law since only such inclusion renders the exercise of political power compatible with autonomy. The crucial normative difference between the *tracking power* argument considered earlier in the context of the 'all affected interests' principle and this *tracking domination* argument is that whereas the former generates only the demand that one's legitimate interests are impartially considered, the latter grounds the requirement that one is entitled to participate in the polity's decision-making process with respect to the laws to which one is subject.

Let me now consider a well-known and, for some, decisive objection to this argument which is raised by the issue of transients, that is, those persons who are only temporarily subject to the rule of the polity such as tourists. In Dahl's argument for full inclusion, transients are ruled out of the demos but it is rather unclear why this is the case since transients are also subject to at least some of the laws of the polity for the duration of their presence within it. The objection is that it is simply counter-intuitive to include transients in the demos as political equals alongside non-transients whose subjection to the decisions of the polity is (in certain respects at least) more consequential in virtue of being of greater temporal duration as well as, typically, more encompassing with regard to the various dimensions of their life. There are relatively sophisticated ways in which one's account of democracy can be gerrymandered to avoid this problem<sup>29</sup> but I think it is worth addressing it head on.

To begin, notice that this objection makes various assumptions about the democratic polity: (1) that its existence is characterized by significant temporal duration (otherwise drawing a distinction between transients and non-transients would have no practical point), (2) that it is liable to be characterized by a significant population of non-transients as well as by transients (since if it was characterized simply by an ever-changing stream of transients, drawing the distinction between non-transients and transients would also have no purpose) and (3) that the subjection of non-transients is likely to be of greater duration and/or more encompassing with respect to their lives (since otherwise there would be no normative substance to the distinction and, hence, no force to the objection). It is not my concern here to reject this assumption (although it does not strike me as asserting a necessary truth about politics) but, rather, to draw attention to the point that this assumption has normative significance for our understanding of what is entailed by the ideal of democracy as a form of political self-rule in which each member of the polity participates as a political equal, and it does so in a way that bears on the force of the objection. The point is that the objection's intuitive force hangs on picturing *an equal right of participation* in the demos as corresponding to *a right of equal participation* in the demos. But this need not follow. If one's autonomy is infringed by a law, that grounds an entitlement to be included in the demos with respect to that law; it does not imply, for example, the equal weighting of the votes given to transient and non-transient members of the demos. It does not do so because while it is the mere fact of subjection to autonomy-violating political power that grounds an equal right to be a member of the demos with respect to the relevant law (or range of laws), this does not license the claim that the scope, degree and temporal extent of subjection has no normative significance with respect to what it is to treat persons as political equals. On the contrary, it is perfectly compatible with this view to hold that treating people as political equals requires taking subjection as a *non-scalar* property in terms of entitlement to membership of the demos and as a *scalar* property in terms of, say, the weighting of their votes within the demos. On such a view of political equality, the intuitive force of the objection to the 'all subjected persons' principle on the grounds that it licenses the inclusion of transients in the demos is dissolved.

## CONCLUSION

The central claims of this article concerning the 'all affected interests' principle are threefold. First, the actually affected interests formulation of the 'all affected interests' principle is, contrary to recent argument, coherent. Second, the 'all affected interests' principle is not an appropriate criterion for democratic inclusion in a polity and that its apparent intuitive appeal as such a criterion rests on confusing its role as grounding a duty of justification with respect to those whose legitimate interests are affected by the decision-making of a polity with the role of generating an entitlement to inclusion in the demos of the decision-making polity. Third, the

all affected interests principle does retain two important roles in the context of democratic theory. On the one hand, applied to polities, it specifies the scope of the duty of justification. This is what we may now call the *constitutional* interpretation of the ‘all affected interests’ principle. I have argued that the most defensible formulation of the all affected interests principle in its most general form runs thus:

(P\*\*) All whose legitimate interests can be reasonably foreseen to be actually affected by a choice between any of the range of plausible options open to the polity should have their legitimate interests impartially taken into account in the decision-making process.

The role of the ‘all affected interests’ principle proposed as grounding a duty of justification accommodates this principle as so formulated. On the other hand, as applied to individuals or groups or polities, the ‘all affected interests’ principle grounds an entitlement to establish impartial structures of governance to secure the impartial treatment of affected legitimate interests, where such structures may include a democratic polity which encompasses all the individuals or groups or polities who consent to submit to its political authority.

On the basis of this argument, I have proposed that the ‘all affected interests’ principle contributes to the first stage of a two-stage resolution of the democratic boundary problem by providing an account of the legitimate formation of a ‘pre-political’ demos and, when combined with the principle of consent, of the legitimate constitution of a self-governing polity. I then argued that the second stage of this resolution requires an account of how members of a polity can legitimately claim an entitlement to membership of the demos of this polity and that providing such an account enables us to determine, more generally, who is entitled to membership of the demos of a polity. Drawing on Dahl and Abizadeh, I argued that the appropriate principle for the constitution of a ‘political’ demos is a version of the ‘all subjected persons’ principle which holds that *any* person subject to autonomy-violating forms of political power, whether coercive or not, by a polity in respect of a given domain of law is entitled to inclusion within the demos of that polity with respect to the relevant domain of law. I have also sought to show that the force of standard ‘transients’ objection to this view can be countered.

It is, finally, worth noting that this discussion of the democratic boundary problem touches only on one dimension of political legitimacy, namely, democratic legitimacy—and, important though this is, democracy is not the only significant political value. If we consider the near universal practice of the exclusion of transients from the demos, for example, we may want to say that this compromises the democratic legitimacy of the polity, but if it is the case that another important value such as political stability supports such exclusion and the context is one where the relative weighting of the vote of a transient is, justifiably, very low compared to that of a permanent resident, then the exclusion of transients from the demos can be understood as a reasonable trade-off between these values and one which does not undermine the claim to political legitimacy of the polity.

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## NOTES

1. Early treatments can be found in Robert Dahl, *After the Revolution? Authority in a Good Society* (New Haven, CT: Yale University Press, 1970), 60–1 and his *Democracy and its Critics* (New Haven, CT: Yale University Press, 1989), 119–31 as well as Frederick Whelan, ‘Prologue: Democratic Theory and the Boundary Problem’, in *NOMOS XXV: Liberal Democracy*, ed. R.J. Pennock and J.W. Chapman (New York, NY: New York University Press, 1983), 13–47.
2. Dahl, *After the Revolution?*, 60
3. Whelan, ‘Prologue’, 22
4. Recent arguments for the principle can be found in Ian Shapiro, *The Moral Foundations of Politics* (New Haven, CT: Yale University Press), 219–20 as well as Robert Goodin, ‘Enfranchising All Affected Interests, And Its Alternatives’, *Philosophy and Public Affairs* 35, no. 1 (2007): 40–68. For more sceptical views, see Sofia Näström, ‘The Challenge of the All-Affected Principle’, *Political Studies* 59, no. 1 (2010): 116–34 and Johan Karlsson Schaffer, ‘The Boundaries of Transnational Democracy: Alternatives to the All-Affected Principle’, *Review of International Studies*, available on CJO 2011. doi: 10.1017/S0260210510001749.
5. For consideration of the ‘all subject to coercion’ principle, see Arash Abizadeh, ‘Democratic Theory and Border Coercion’, *Political Theory* 36, no. 1 (2008), 37–65 and his exchange with David Miller in *Political Theory* 38, no. 1 (2010): 111–30. For discussion of the ‘all subject to political authority’ principle, see Claudio Lopez-Guerra, ‘Should Expatriates Vote?’, *Journal of Political Philosophy* 13, no. 2 (2005): 216–34; David Owen, ‘Resident Aliens, Non-resident Citizens and Voting Rights’, in *Citizenship Acquisition and National Belonging*, ed. Calder et al. (Basingstoke: Palgrave, 2010), 52–73 and ‘Transnational Citizenship and the Democratic State’, *CRISPP* 14, no. 5 (2011): 641–63.
6. For discussions of the social membership principle, see Rainer Baubock, *Transnational Citizenship* (Cheltenham: Edward Elgar, 1994), Joseph Carens, ‘Membership and Morality:

- Admission to Citizenship in Liberal Democratic States', in *Immigration and the Politics of Citizenship in Europe and North America*, ed. W.R. Brubaker (New York, NY: University Press of America, 1989), 39–61 and 'The Integration of Immigrants', *Journal of Moral Philosophy* 2, no.1 (2005): 29–46, and Ruth Rubio-Marin, *Immigration as a Democratic Challenge* (Cambridge: Cambridge University Press, 2000) and 'Transnational Politics and the Democratic National-state: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants', *New York University Law Review* 81, (2006): 117–47.
7. The stakeholder principle has been developed by Rainer Baubock in a series of articles: 'Towards a Political Theory of Migrant Transnationalism', *International Migration Review* 37, no. 3 (2003): 700–23; 'Expansive Citizenship—Voting beyond Territory and Membership', *Political Science and Politics* 38, no. 4 (2005): 683–7; 'Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting', *Fordham Law Review* 75, no. 5 (2007): 2393–447; 'The Trade-off between Transnational Citizenship and Political Autonomy', in *Dual Citizenship in Global Perspective*, ed. T. Faist and P. Kivisto (Basingstoke: Palgrave Macmillan, 2007), 69–91; 'The Rights and Duties of External Citizenship', *Citizenship Studies* 13, no. 5 (2009): 475–99; 'Global Justice, Freedom of Movement and Democratic Citizenship', *European Journal of Sociology/Archives européennes de sociologie* 50, no. 1 (2009): 1–31.
8. The principle of constituted identities has been proposed by Rogers Smith, 'The Principle of Constituted Identities and the Obligation to Include', *Ethics and Global Politics* 1, no. 3 (2008): 139–53.
9. Goodin, 'Enfranchising All Affected Interests', 52. Notably this claim concerning the incoherence of the all actually affected formulation has been accepted even by some who reject the principle, see David Miller, 'Democracy's Domain', *Philosophy and Public Affairs* 37, no. 3 (2009): 201–28 at 215.
10. Goodin, 'Enfranchising All Affected Interests', 53.
11. *Ibid.*, 54.
12. Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974), 269
13. Dahl, *Democracy and its Critics*, 120–2.
14. Goodin, 'Enfranchising All Affected Interests', 48
15. *Ibid.*, 49
16. *Ibid.*
17. *Ibid.*, 48
18. I return to this point later.
19. Shapiro, *The Moral Foundations of Politics*, 219–20
20. David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 86–8.
21. Note that this need not rule out forms of compensation for those whose legitimate interests are affected but where this cannot be reasonably foreseen despite due diligence.
22. The argument against the 'all affected interests' principle as a criterion of democratic inclusion presented thus far has, in addressing a range of philosophical arguments for and against this principle in this role, been conducted without reference to empirical considerations and it might plausibly be thought that this is unhelpful. The idea here would be that we can offer a defense of the 'all affected interests' principle as a criterion of democratic inclusion by noting that this principle does ground a right to the impartial treatment of their legitimate interests and appealing to the empirical claim that the lesson of history is that inclusion within a democratic polity is the most reliable way of ensuring the impartial treatment of the interests of all affected by a decision-making process of that polity. This prudential argument, if successful, bridges the gap between the right to impartial treatment of interests or the right to an impartial structure of governance, on the one hand, and a right to democratic inclusion in the decision-making polity, on the other hand. But how persuasive is this argument? It would be beyond the scope of this essay to address

this question in any great empirical depth but I want to enter two different kinds of considerations that arise through reflection on this claim. The first concerns the empirical basis of the prudential argument in respect of its robustness and generality. The second draws attention to a consequence which, under plausible conditions, arises if we take the argument to be compelling and which poses a problem for endorsing normative desirability of the 'all affected interests' principle as a criterion of democratic inclusion.

With respect to the empirical basis of the prudential argument, we have some grounds for skepticism concerning its robustness and its generality. In regard of its robustness, we can note that the basis of the empirical claim that democracy is the best way of ensuring the impartial treatment of the interests of all affected is largely grounded in studies of a type of demos that is relatively stable across a range of decisions and over several iterations of decision-making (i.e. citizens of the modern democratic state). The concern here is that we cannot reasonably expect those conditions to pertain if the 'all affected interests' principle is adopted as a criterion of democratic inclusion. On the contrary, the most likely outcome of adopting this principle is that a wide range of different demoi would be constituted in relation to different decisions by a given polity. This matters if we have reason to think that the reliability of the democratic process as a mechanism for ensuring the impartial treatment of the legitimate interests of those included within the demos is linked to, for example, relations of trust that are constitutively tied to the knowledge that the demos are bound together across multiply iterated decisions in a given area of policy and across multiple areas of policy. In regard of its generality, we can note that the history of democratic decision-making concerning, for example, protection of the legitimate interests of indigenous peoples, migrants and a range of other minority groups is not distinguished, and often owes rather more to judicial actors and constitutional protections than democratic majorities. These two considerations should at least give us pause for thought before we endorse the claim that inclusion in the demos is the most reliable practical route for ensuring the impartial treatment of all affected interests across all policy areas.

But suppose, *ex hypothesi*, that the prudential argument is robust and general. In such circumstances, I suggest, under a set of plausible assumptions, a further problem—as yet unconsidered—with the 'all affected interests' principle as a criterion of democratic inclusion comes into view. This issue arises in the context of the demoi constituted with respect to the decisions of a polity within a context of plural polities with overlapping decision-making concerns. To draw it out notice that, as a matter of basic democratic equality, those who are entitled to participate as equals in a collectively binding decision-making process must also be bound as equals by the outcome of this process. It follows that the legitimate jurisdictional authority of a polity ought to be membership-based. If you are a member of the decision-making demos, then you are legitimately bound by the decision and subject to the coercively-enforceable authority of the polity. This being the case, consider an individual, George, whose legitimate interests in a given policy area can be reasonably foreseen to be affected by the choice between the range of plausible options in a given decision process available to polity A and also available to polity B (where polity B does not encompass polity A). On the prudential argument, George is thereby constituted as a member of the relevant demoi both of both polity A and of polity B, and is legitimately subject to the coercive authority of these polities in respect of the collectively binding outcomes of the relevant decision processes. Now suppose that the outcomes of the decisions taken by polity A and polity B are incompatible or, even, impossible. At best, George confronts problems of democratic integrity and, at worst, he is caught in a tragic democratic dilemma in which complying with his obligations to one polity necessitates breaching his obligations to the other polity. Now it is, I take it, a serious objection to a candidate criterion for the constitution of the demos that, under plausible conditions, it can straightforwardly generate such a situation. Hence, if we take the prudential argument to be robust and general, and we add some plausible

- conditions, we have reason to worry about the normative desirability of the ‘all affected interests’ principle as a criterion of democratic inclusion.
23. In the absence of unanimity, such pre-commitments could still be collectively binding on all those who have signed up to pre-commit. The point is simply that if this is less than everyone, the decision is not collectively binding on all. Note that there may be good reasons for pre-commitment in that we may think that only a binding commitment to constitute a polity, for example, is able to ensure the impartial treatment of our interests.
  24. In formulating it this way, I leave myself open to a charge from philosophical anarchists of conflating moral justifiability and political legitimacy, however, I leave that aside here.
  25. Such an argument can be taken to underwrite Walzer’s claim that the denial of full political rights to legally-admitted habitual residents amounts to citizen tyranny Michael Walzer, *Spheres of Justice*, New York, Basic Books, 1983, 55 (Walzer, 1983: 55).
  26. I will return to the case of transients, however, in the case of the mentally incompetent we should note that their exclusion from the demos does not entail that they should not be represented in the demos.
  27. More precisely, Abizadeh follows Raz in arguing that there are three necessary conditions of autonomy: (1) the requisite mental capacities for conceiving and pursuing personal project, (2) can avail themselves of an adequate range of valuable options and (3) is independent in the sense of being from subjection to another’s will. As Abizadeh has insightfully pointed out: ‘Being subject to coercion can invade an agent’s autonomy in three ways, corresponding to the three conditions of autonomy. First, being subject to coercion sometimes simply destroys (or hinders the development of) the requisite mental capacities. Second, it inherently eliminates options otherwise available to the person. It is true that autonomy does not require the maximization of the number of options, but only an adequate range of valuable options—neither any option in particular nor a maximal quantity. Thus the coercive reduction of options undermines the second condition of autonomy only sometimes: only if the agent is left with an inadequate range of other valuable options. But the third condition of autonomy—independence—is always invaded by subjection to coercion, because it subjects one agent to the will of another’. (2008, 40)
  28. It might plausibly be thought (1) that laws which are necessary conditions of democracy are exempted from such democratic justification and (2) that human rights that are not captured by (1) are also exempt. The latter point is more controversial but the issue raises two further points. In relation to (1), we can note that the range of laws that are exempted will depend on how much we build into our account of democracy. In relation to (2), the question of the reach of liberal hypothetical justification in relation to democratic justification needs to be further explored. Notice though that even if we hold that some political norms are exempted from democratic justification, the specific action-guiding forms that such norms take in particular contexts are not. This point has been nicely made by Seyla Benhabib in her recent work on transnational democracy, for example *Another Cosmopolitanism* (New York, NY: Oxford University Press, 2008).
  29. Thus, for example, Cristiano’s proposal of a ‘common world’ context as an empirical condition of the desirability of democracy represents a sophisticated way of avoiding this issue, see Thomas Cristiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2010).