Democratic Inclusion. A pluralistic theory of democratic citizenship

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Introduction

Who has a claim to be included in a democratic polity? This has been a vexing question for political theorists as well as legislators and judges. Philosophers have tried to make the problem go away by adopting one of two contrasting strategies.

The first response is that democratic principles cannot resolve the problem and therefore we have to accept the historical contingency of political boundaries and the powers of nation-states to determine themselves who their citizens are. To be sure, most contemporary political theorists have added some critiques of current state practices or suggestions why some categories of individuals cannot be legitimately excluded from citizenship. Yet they often have done so starting from the premise that the context within which the question needs to be addressed is the international system of states as we know it.² The problem is thus reduced to allocating territory and people to states in a way that does not challenge their boundaries and claims to self-determination.

The second response is to stick to a democratic principle and to use it for undermining the legitimacy of existing political boundaries. If boundaries are historically contingent, then they do not have deep moral significance and can also be radically questioned for the sake of democratic inclusion. Some theorists argue that the only democratically legitimate demos is a global one (Goodin 2007), others have suggest that the demos ought to change depending on who will be affected by a particular decision (Shapiro 2000), still others regard democratic inclusion principles as norms that allow to contest exclusion while not necessarily providing positive guidelines on how to construct alternative boundaries (Benhabib 2004, Benhabib 2006, Näström 2007).

It seems therefore that the theoretical debate is stuck between positions that give priority to existing democratic boundaries over democratic inclusion or the other way round. But this standoff suggests already that there is something wrong in the way the debate has been framed. Since inclusion conceptually presupposes an external boundary, a theory of legitimate inclusion claims depends on a theory of legitimate boundaries. In other words, there is no point arguing for the right of individuals to be included in a particular demos if the legitimacy of that demos itself is either blindly accepted as a contingent result of historical processes or fundamentally rejected based on inclusion claims that are per se incompatible with drawing legitimate political boundaries.

The other reason for revisiting the democratic boundary problem after forty years of debate³ is that it simply does not go away in democratic politics even if philosophers try to conjure it away in democratic

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¹ This is a first draft of the first part of a three part essay. I have included a general introduction in order to show what issues will be covered in parts 2 and 3. This essay is the result of many years of thinking on related topics. Several of the argument I develop here have been explored in earlier publications most of which are included in the list of references. I have generally not bothered to list each time the publication where a particular idea was first introduced. I have reframed all my older arguments and have not reproduced any part of a previously published text.

² See (Sager 2014) for a critical review of methodological nationalism in contemporary political theory.

³ Fredrick Whelan’s (1983) and Robert Dahl’s (Dahl 1970, Dahl 1989) major contributions can be taken as the starting point. There are of course many earlier references, beginning with Aristotle’s discussion of the principles for
Boundary and inclusion questions are among the most contested practical problems in contemporary democratic states. The rise of these problems on political agendas is arguably a result of democracies becoming more liberal and less self-confident in asserting quasi-natural boundaries of nation, territory, language and shared history. If the liberal transformation of democracy has contributed to making the boundary problem politically more salient, then the diagnosis that there is no cure for the problem that democratic theory can provide would be very bad news indeed.

Focusing on recent years in Europe alone, here is a very short sample of recent events in which problems of democratic boundaries and inclusions have come up and had to be addressed by courts, legislators or by citizens in the election booth: the massive global trend of extending voting rights to citizens living abroad and a comparatively weaker European and Latin American pattern of letting non-citizen residents vote in local elections; an ongoing standoff between the European Court of Human Rights and the British government about the exclusion of criminal offenders from voting rights; the introduction of conditional ius soli in Germany and Greece in 2000 and 2010 respectively and the abandoning of unconditional ius soli by constitutional referendum in Ireland in 2004; the widespread introduction of language and civic knowledge tests as a naturalisation requirement for immigrants in Europe since the late 1990s; the 2010 decision of the Court of Justice of the European Union that Member States have to take EU law into account when withdrawing their nationality and the more recent moves in several EU states to take away citizenship status from those joining a terrorist organization; the Scottish referendum on secession in November 2014 and the nearly simultaneous rejection by the Spanish government and Constitutional Court of a similar referendum in Catalonia. All these decisions rely implicitly on contested ideas about democratic boundaries and membership claims. Normative theories of democracy need not be prescriptive in the sense of proposing specific answers for each of these issues, but they should at least be able to spell out the principles that ought to guide decisions. Yet many of the contributions to the democratic boundary debate seem keen to avoid this test.

This essay attempts to show that the diagnosis that there is no theoretical answer to the democratic boundary problem that would allow to address its real-world manifestations is wrong. It takes the practical political manifestations of the boundary problem seriously by proposing that democratic inclusion principles must not only meet political theory tests, such as compatibility with broader principles of justice and democracy, internal coherence and providing coherent answers to objections raised by rival theories, but also a practical implications test that shows how the inclusion principles defended allow to address the boundary problems that arise within democratic politics.

My strategy is to argue that there is not a single principle of democratic inclusion but several ones and that it is important to distinguish them. I also argue that polities into which individuals can claim to be included are of different kinds and it is equally important to distinguish these. I do not argue, however, that there is an open-ended variety of inclusion principles or of kinds of polities and that inclusion always depends on context. That would be banal and undermine any effort at theorizing. The basic principles of democratic inclusion are limited and so are the basic types of democratic polities and in my discussion I will reduce each of them to three. This makes a theory of democratic inclusion possible and meaningful and also useful for identifying contexts where mixed principles apply or polities are of mixed types.

determining who is a citizen in the polis in chapters 1 and 2 of book III of the Politics (Aristotle 1962) but it seems that prior to the 1970s the potential circularity of democratic principles for determining membership in the demos had been noticed only by critics of national self-determination, such as Ivor Jenning, who famously remarked that “the people cannot decide unless somebody decides who are the people” (Jenning 1956: 56).
The essay is also split into three parts. The first part discusses what I call the “circumstances of democracy” and the principles of including all affected interests, all subject to coercion and all citizenship stakeholders. The upshot of my argument is that these principles are not rivals but friends. They complement each other because they serve distinct purposes of democratic inclusion. The second part explains how especially the interpretation and implementation of the third principle depends on the nature of the polity to which it is applied. I distinguish state, local and regional polities and their constitutive principles of citizenship, which I identify as birthright, residential and derivative membership. The conclusion is again that these are not alternative conceptions of political community but complementary ones. Taken together, local, state and regional polities form nested polities with multiple citizenship for all their members. The third part takes one step further towards contextualizing the theory by considering phenomena that threaten to upset the multilevel citizenship structure elaborated in part 2. The questions I will discuss here are citizenship claims of temporary migrants and of minorities with extraterritorial kin states. Many other contexts could be chosen, but I consider these to be among the most challenging ones for the theory that I propose.

Part One: Purpose-specific Inclusion Principles

1. The Circumstances and Contexts of Democracy

1.1. Diversity and Boundaries

So how should we think about democratic boundaries? Neither as quasi-naturally given and beyond contestation, nor as features of a non-ideal world that we set aside when discussing what justice requires in an ideal world. Instead, we should think of boundaries as belonging to the circumstances of democracy. In his theory of justice, John Rawls defined the circumstances of justice as “the normal conditions under which human cooperation is both possible and necessary” (Rawls 1999: 109). We can describe political boundaries in the same way as belonging to the normal conditions under which democracy is both empirically possible and normatively necessary. Without claiming that these two conditions exhaust the circumstances of democracy, I suggest that democracy would not be necessary in the absence of a diversity of interests, identities and ideas, and would not be possible in the absence of boundaries.

In a society where all members shared the same interests, a single and dominant identity as members of this society and the same ideas about the common good, democracy would be pointless, since collectively binding decisions could be adopted unanimously or be taken by each individual on behalf of all other members without any need for a procedure that aggregates their political preferences. Democracy is a system of political rule that provides legitimacy for collectively binding decisions and coercive government under conditions of deep and persistent diversity. Political ideologies that consider diversity as a non-ideal condition to be overcome through a transformation of society are therefore always potentially hostile towards democracy. This goes for orthodox Marxism and its ideal of a communist society without economic competition and religion as well as for nationalism and its ideal of matching boundaries of cultural and political communities. Boundaries are necessary background conditions for democracy for at least three reasons: First, without political and jurisdictional boundaries, democratic decisions would have indeterminate scope. This would

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4 Rawls subdivides these into objective conditions (a territorial concentration of human individuals with roughly similar physical and mental powers, each of whom is vulnerable to attack and to domination by the combined forces of others, and a condition of moderate scarcity of resources) and subjective conditions (a diversity of individual life plans and of moral, religious, social and political doctrines) (Rawls 1999: 110).
be true even if every human being were included in a single global polity, since there would then still be a political boundary between human beings and other animals that could potentially be included.

Second, in the absence of political boundaries there is no distinction between intra- and inter-polity relations. This distinction is, however, constitutive for the political as a distinct sphere of human activity. Carl Schmitt’s friend-enemy dichotomy is just an extreme and implausible version of this distinction. Hannah Arendt expresses the democratic version of this argument:

"A citizen is by definition a citizen among citizens of a country among countries. His rights and duties must be defined and limited, not only by those of his fellow citizens, but also by the boundaries of a territory... Politics deals with men, nationals of many countries and heirs to many pasts; its laws are the positively established fences which hedge in, protect, and limit the space in which freedom is not a concept, but a living, political reality. The establishment of one sovereign world state ... would be the end of all citizenship” (Arendt 1970: 81-2).

Third, the existence of boundaries is a precondition for the democratic feedback mechanisms of voice and exit (Hirschman 1970). In the absence of any boundary, exit is by definition impossible. While easy exit may weaken the incentives for voice (in Hirschman’s original hydraulic model), the absence of any possibility of exit fatally undermines the effectiveness of voice. A polity without boundaries is either like a polity with impenetrable boundaries, i.e. a prison, or like a spontaneous crowd that has no addressee for voice, since it does not have collective procedures for counting votes and taking decisions.

These three arguments why democracies need boundaries do not imply a defence of any existing ones. Instead, they suggest that we should imagine democratic citizenship always in a context where there is a plurality of other polities. The circumstances of diversity and boundaries can thus also be understood as referring to two sides of democratic pluralism: an irreducible internal plurality of interests, identities and political, moral and religious ideas and an equally irreducible external plurality of political communities.

Although this is not essential for my argument, which focuses on democratic legitimacy, I believe that similar conclusions emerge for theories of justice. A vision of a world without political boundaries is dystopian in the same way as a world in which all human beings share a comprehensive moral perspective or the same way of life. The plurality of bounded political communities is constitutive for justice in the sense of forming a background condition against which questions about justice are raised. If we drop the condition, our theory of justice becomes severely truncated, not in the sense that it will become more focused on ideal theory and unable to address questions of a non-ideal world, but in the sense that it impoverishes ideal theory itself by depriving it of crucial questions. Political boundaries structure theories of justice fundamentally by subdividing them into three distinct sets of questions: justice within political communities (domestic), justice between political communities (inter-polity), and justice across political communities (trans-polity and global).

Of course theorists of global justice and cosmopolitan democracy generally do not imagine a single undifferentiated polity encompassing all human beings. What they intend to challenge is not so much the existence and utility of political boundaries, but their moral status. They conceive of boundaries as instruments that allow for a top-down delegation of responsibility for specific territories and populations to particular governments (Goodin 1988, Goodin 2007) or the bottom-up aggregation of democratic votes in a global federation (Archibugi and Held 1995).

Philippe van Parijs summarizes the attitude of most global justice theorists towards political boundaries succinctly: “Nations, politically organized peoples ... are sheer instruments to be created and dismantled,
structured and absorbed, empowered and constrained, in the service of justice…” (van Parijs 2011: 139). This view regards political boundaries and democracy itself as institutional arrangements whose legitimacy is entirely derived from how well they serve the goal of justice.

Our attitude will be different if we consider democracy as a set of institutions the goal of which is to realize government of, for and by the people. In this view, popular self-government is a fundamental and intrinsic value the pursuit of which must be constrained by requirements of justice, but that is at the same time a free-standing value rather than derivative from justice. Boundaries will then still be regarded instrumentally, but as a background condition that enables self-government. Particular boundaries remain open to contestation, for example, if they are constructed in a way that denies some individuals full membership in a self-governing polity. Yet their democratic purpose is to create spaces of collective self-government of a people, which is incompatible with regarding the people itself as something ‘to be created or dismantled in the service of justice’.

This stance does not commit us to an essentialist conception of democratic peoples as nations. As I will argue in part 2 of this essay, democratic peoples can be vertically nested within each other and also share horizontally overlapping memberships. At the same time, self-governing peoples must have the capacity to endow governments with comprehensive powers of agenda-setting and decision-making and to hold them also comprehensively accountable. Such peoples cannot be merely functional aggregates of individuals who happen to share an interest in a particular political decision or public good. Some theorists have suggested extending the idea of democratic self-government to ‘weak’ or ‘functional’ demois whose scope is transnational and global and varies with the decision at stake (Bohman 2007). While I will argue below that including externally affected interests is indeed a moral imperative for democracy, letting affected interests determine the boundaries of the demos would create indeterminate or ephemeral demois that are structurally incapable of ruling themselves.

To sum up my argument so far: The three reasons for assuming boundaries as background circumstances of democracy point towards a plurality of polities at all levels. And asserting the intrinsic value of collective self-government points towards boundaries that demarcate comprehensive jurisdictions rather than issue-specific demois. Taken together, these ideas exclude the vision of a comprehensive global demos, even if we imagine it as federally or functionally subdivided into a plurality of dependent demois.

1.2. Territorial Jurisdiction and Sedentary Societies

Following Rawls’ terminology, I have tried to identify transhistorical and transcultural circumstances that make democracy both possible and necessary. In a next step, I will now propose that a theory of democratic boundaries and inclusion must also take as given the fact that political boundaries demarcating comprehensive jurisdictions have territorial borders and that contemporary human societies tend to be relatively sedentary within these borders.

Unlike diversity and boundaries, territorial jurisdiction is neither a primary normative requirement for democracy nor a historically invariable condition. What we know about early human societies of nomadic hunters and gatherers suggests that their relation to territory was radically different from that of any political order after the Neolithic agrarian revolution. In our present world we do find non-territorial forms of democracy; some of them are institutionally established and complement a dominant territorial design

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5 See also the discussion in (Koenig-Archibugi 2012)
of political rule, others flourish informally in the new virtual public spaces created by contemporary information and communication technologies. We can also imagine hypothetical future worlds in which territorial borders are much less relevant for democracy than today and individuals are identified as members of political communities based non-territorial criteria.

Nevertheless, there are pragmatic as well as normative reasons for assuming that the dominant boundary structures of democracy are territorial. The pragmatic reason is that a theory of democratic boundaries would fail the ‘implications for democratic politics’ test that I have emphasized in the introduction if it remained at such a general level that it did not even take into account how democratic polities are territorially structured.

The normative reason is that non-territorial boundary markers, such as shared descent, religion, political ideology, social class or ways of life, necessarily diminish internal diversity within such communities while greatly enhancing differences between them. If comprehensively self-governing polities were primarily demarcated by these criteria rather than by territorial borders, democracy would be less needed since members have been selected based on an assumed primary interest that they all share. At the same time, non-territorial polities would be so fundamentally dissimilar amongst each other that it would become very difficult to maintain support for any global political order based on norms to which they all subscribe, let alone global solidarity and redistributive justice across such boundaries (Bauböck 2004). The circumstances of both democracy and justice might thus be jeopardized in such a world. Although territorial jurisdiction is a weaker and more variable condition for democracy than diversity and boundaries are, this does not mean that it is a condition for non-ideal theory only. The tragic history of territorial conflicts between city republics, empires and nation-states should not delude us into assuming naively that territorial borders themselves are an obstacle rather than an enabling condition for democracy and peaceful relations between polities.

The territorial nature and borders of comprehensive jurisdictions provide a political-institutional background context for democracy. Yet there is also a closely related social condition that we need to spell out before we can address democratic inclusion problems. This is the assumption that territorial borders allow for categorizing human populations into residents and non-residents with most of the laws adopted within a territorial jurisdiction applying to the former but not to the latter.

Human societies have different relations to territory that we can describe as static, nomadic, mobile or sedentary. In territorially static societies (nearly) all members spend (nearly) all of their lives in the territory where they have been born; nomadic societies, by contrast, move collectively through geographic space without ever settling down and taking up permanent residence anywhere; mobile societies share with nomadic ones the feature that (nearly) all members are constantly on the move but in the latter individuals move independently from each other, so that there is not even a collective relation to a territory based on the shared experience of joint movement.

The fourth type, which we can call sedentary, is a mixed one. It is a society most of whose members spend most of their lives in a particular territory (not necessarily the one where they were born). Sedentary societies are fundamentally structured around territorial residence. This does not imply that they cannot have members residing outside their territory or that everybody residing inside the territory is automatically a member. Instead, in sedentary societies territorial borders generate distinctions between immigrants, emigrants and natives that cannot be distinguished at all in static, nomadic or mobile societies. Human societies since the invention of agriculture have been generally sedentary in this sense. My proposition is that we should accept relative sedentariness as a second background context for democracy.
Let me clarify this a bit further. First, the distinction between the four types of society depends on territorial scale. If we imagine the land mass of Planet Earth as a single territory, then all human societies have been static and will remain so as long as there they do not colonize extra-terrestrial spaces or create swimming island polities in the high seas. If we shrink the territorial units of observation to sufficiently small size, then all societies have been mobile, since human beings are migratory animals who have always moved their locations of residence when observed over a sufficiently long time period. If we examine patterns of movement instead at a mid-range geographic and temporal scale, then patterns of human mobility have changed strongly over time, mostly from nomadic to sedentary and increasing levels of mobility since the onset of the industrial revolution. Our previous discussion of boundary structures as circumstances of democracy suggests that a normative theory should indeed assume mid-level territorial scales that encompass neither the whole globe nor are so small that comprehensive forms of territorial self-government would become impossible.

This observation also makes it clear that in a nested multilevel structure of territorial polities the degree of mobility that we observe depends on which level we use as reference and generally increases strongly as we move down from state to substate regional to municipal level. This is so because internal borders at a higher level become external borders at the lower one. Municipalities have thus on average much higher percentages of immigrants and emigrants in relation to their sedentary populations than the provinces or states to which they belong because they add what counts for the state as internal migration to migration that the state classifies as international. We can thus describe multilevel polities without contradiction as simultaneously strongly sedentary and relatively mobile. In a multilevel polity, my normative proposition that sedentariness is a background context for democracy must therefore be specified as applying to the highest or strongest level of self-government. In a federal state, this level will be the federal one; in a confederal union of states, it could well be the level of member states rather than that of the union. The condition of sedentariness should thus not be interpreted too strictly. I have suggested elsewhere that democracy would be difficult to sustain only in hypermobile societies, which we can define as those in which at any point in time and at the strongest level of self-government a majority of citizens are non-residents and a majority of residents are noncitizens (Bauböck 2011).

Second, I need to clarify why distinctions between immigrants, emigrants and sedentary populations, and the proportions between these, are normatively salient for democracy. One reason is the need to determine the personal scope of territorial jurisdiction. The concept of territory does not refer to land as a physical object, but to a geographically defined space within which political power is exercised over human beings and laws are applied to them (Buchanan 2004, Stilz 2011, Angeli 2015). In a hypermobile society, territorial laws would apply mostly to transient populations whose primary political affiliation might be to some non-territorial political community. At the same time, if most citizens reside outside the polity, governments would have strong reasons to expand their extraterritorial jurisdiction by imposing ever more legal obligations (e.g. tax duties) on expatriates, which could eventually undermine the salience and stability of territorial political boundaries. A second reason is that democracy also needs a sense of “ownership” and belonging to the polity. It is difficult to imagine how hypermobile populations could also be citizens of the territorial polity who authorize the government that issues and implements the laws to which they are subjected. If there is a relatively sedentary core population, then immigrants can integrate into the society while emigrants can remain connected to it across borders. Where there is no such core, it will be difficult to generate among territorial populations a sense of responsibility for the common good of the polity. Their moral obligations towards co-inhabitants will be the same as towards all other human

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6 The US is an outlier among contemporary democracies in this regard by assuming global jurisdiction with regard to taxation of American citizens’ income.
beings outside the borders and the condition of subjection to a territorial government that they share with each other will hardly be sufficient to generate perceived duties of solidarity, political participation or even just voluntary compliance with the laws.

Third, we should once again consider how a condition of relative sedentariness relates to the two circumstances of democracy, as we did with regard to territorial jurisdiction. On the one hand, both static and nomadic societies, by definition, lack substantive exit options and provide therefore inhospitable environments for democratic diversity and the interplay between exit and voice. Hypermobile societies, on the other hand, make it difficult to create comprehensively self-governing territorial jurisdictions, or make it more likely that such jurisdictions will be nonterritorial, which creates a danger of diminished internal diversity. My conclusion is therefore that relatively sedentary societies are a normatively salient condition for democracy, even though this condition has not always been present, may be lacking in particular contemporary societies, and could be vanishing in a future hypermobile world.

A final observation is that the relation between the two territorial conditions for democracy is similar to that between the two circumstances of democracy. In both instances we have distinguished a political-institutional feature (boundaries and territorial jurisdiction) from a social one (diversity and relative sedentariness). And in both instances the two conditions are not independent from each other, but operate in tandem: boundaries distinguish internal diversity from an external plurality of polities, and territorial jurisdiction distinguishes internal mobility from external migration, while relative sedentariness creates the conditions under which citizens can collectively authorize and hold accountable a territorial government.

I have argued so far that we should address problems of democratic inclusion by assuming that democracies have boundaries of membership as well as territory. I have not argued that either of these boundaries must be sites where entry or exit is controlled and I have not argued that the two kinds of boundaries must match. In fact, I want to challenge both assumptions in part 2 of this essay: At local level, democratic polities have generally open territorial borders and automatic admission of residents to citizenship, which implies that territorial and membership boundaries more or less coincide, while at state level migration leads to discrepancies between territorial borders and membership boundaries by generating non-resident citizens abroad and non-citizen residents domestically.

The background assumptions I have made are fairly weak. They provide a minimalist description of the world as it is and as we should assume it to remain even for the purposes of ideal theory. We need this background because principles of inclusion can only apply if and where there are boundaries.

2. Three Principles of Democratic Inclusion

After sketching the background for a theory of democratic inclusion let me now move to the foreground. Inclusion does not merely refer to the crossing of a boundary, it also implies a relation of correspondence between an individual or collective claim and an associative purpose. We normally do not say that criminal convicts are ‘included’ in a prison, or that conquerors are ‘included’ in the society that they colonize because in these cases there is no correspondence between inclusion claims and purposes.

Let me explore this idea a bit further without developing a full conceptual analysis. The term inclusion strictly requires only one agent - the subject that includes – whereas the object that is included can be either an agent or a thing. A philosopher can include a particular argument in her analysis, a state can include a territory in its jurisdiction. However, democratic inclusion presupposes agency both on the side of
those who are included and those who include them. This agency need not be expressed through explicit acts of consent. Families, religious communities and states include those born into them without asking for their consent. Yet in each of these cases inclusion is based on the notion of birthright. The term ‘right’ makes it clear that there is a reference to a claim. The other agent in the relation is the association or collectivity that includes. A necessary condition for speaking about inclusion is that it serves a purpose pursued by this association. Where there are institutionalised rules for inclusion, they will reflect this purpose in the rules under which individuals or groups are included. A church will admit members based on their adherence to its doctrines and their contributions to the life of the congregation, a sports club based on their skills or their willingness to contribute to its budget and activities.

Once again, agency need not be expressed in explicit consent on the side of the including agent either. We can illustrate the difference between consensual and automatic modes of inclusion by considering the contrast between birthright acquisition of citizenship and naturalisation. Maarten Vink and I have argued elsewhere in a comparative analysis that states pursue multiple purposes through their citizenship laws (Vink and Bauböck 2013). One of these is to secure the intergenerational continuity of the citizenry and this is most effectively done through birthright rules referring to descent from citizen parents (ius sanguinis) or birth in the territory (ius soli). I am here, however, concerned with a more general purpose of democratic polities, which is to achieve legitimacy for political rule. I propose therefore that democratic inclusion principles specify a relation between an individual or group that has an inclusion claim and a political community that aims to achieve democratic legitimacy for its political decisions and institutions. Inclusion claims and purposes must correspond in such a way that satisfying the former is seen to contribute to the latter.

In the rest of this chapter I will elaborate a normative conception of democracy that relies on three distinct principles of inclusion, each of which serves a specific purpose of legitimation and operates within a specific perimeter. The principles are those of including all affected interests, of including all subject to the law, and of including all who have a legitimate stake in membership. In contrast to most political theorists who have analysed the democratic boundary problem, I claim that the three principles have different scope because they support different inclusion claims. Those whose interests are affected by a decision have a democratic claim that their interests be taken into account in the process of decision-making and implementation. Those who are subjected to the jurisdiction of a polity have a democratic claim to equal protection under the law. And those who have a legitimate stake in participating in the self-government of a particular polity have a democratic claim to be recognized as citizens.

It is tempting to imagine the scopes of these three inclusion principles as three concentric circles, with affected interests having the widest and citizenship claims the narrowest perimeter. This seem plausible when one considers that many political decisions have spill-over effects across the borders of jurisdictions and that in immigration states there are often significant shares of non-citizens who are subjected to the laws in roughly the same way as citizens. However, this image of concentric circles is also misleading. International migrants are citizens of their states of origin and today they mostly retain rights to political participation and representation there while being only weakly affected by political decisions or subjected to the laws of these countries. Is there any justification for drawing the boundaries of membership wider or narrower than those of impact or subjection? This is a puzzle that I will address in part 2. Yet the question is less puzzling if we consider that inside the territorial jurisdiction of representative democracies, too, decisions are taken on behalf of all citizens but often affect the interests of a particular subgroup much more strongly than the rest of the citizenry. Consider, for example, a law that prescribes a certain curriculum in public schools. If the law has merely regulatory and no fiscal impact, then elderly childless citizens can hardly claim that their interests are as strongly affected as those of citizens of minor age and
their parents, yet the votes of the former and the latter will count equally in a referendum (or in a parliamentary election) that puts this issue on its agenda while children of minor age who are most directly affected will not be directly represented in this decision at all.

In past writings (Bauböck 2007, Bauböck 2009b, a, 2015) I have argued that the all affected interests (AAI) and all subject to coercion (ASC) principles are morally attractive but suffer from two flaws: they cannot resolve the democratic boundary problem because the boundaries they suggest are necessarily indeterminate and unstable. And they are polity-indifferent, which means that they generate the same prescriptions for inclusion in local, regional or state polities, although these polities are constituted in different ways that necessarily affect their membership norms. I have contrasted these two and other democratic inclusion principles with an alternative principle of including all citizenship stakeholders (ACS) that is sufficiently determinate in its practical implications and sufficiently flexible to support different inclusion rules for different types of polities. This argument was to a certain extent lopsided because it focused nearly exclusively on defending ACS as the appropriate principles for determining who should be recognized as citizens. I now want to explore in more depth the virtues of the AAI and ASC principles and why we should take them as complementing my stakeholder account. But I will also try to show that AAI and ASC fail to meet the mark when they are considered as norms that by themselves cover the whole range of democratic inclusion claims.

### 2.1. Affected Interests

For each of the three principles we have to specify further their scope (inclusion of whom?) and their object (inclusion in what?). With regard to scope, AAI can be interpreted in two contrasting ways: does it refer to actually affected or potentially affected interests? Robert Goodin has argued that the former principle is incoherent: “[W]hose interests are ‘affected’ by any actual decision depends upon what the decision actually turns out to be” (Goodin 2007: 52). In his view, interests are 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 (ibid.: 54). He concludes that “[m]embership in the demos ought to extend to every interest that would probably be affected by any possible decision arising out of any possible agenda” (ibid: 61-2).

This interpretation of AAI begs the question why an interest in agenda-setting should count as relevant for purposes of democratic inclusion. If we regard agenda-setting as the core power of a democratic legislator, then only those who have a right to authorize this legislator can be seen as having a legitimate interest in agenda-setting. Goodin’s claim that only a global demos can be legitimate is thus derived from an implausibly wide conception of AAI that builds the conclusion already into the premise. A principle of including all potentially affected interests assumes from the very start the existence of a global demos whose members have a legitimate interest in participating or being represented in setting a global political agenda.

Goodin’s theory may be implausible in its consequences but it is certainly coherent: The members of a self-governing demos (or the representatives they elect) must have agenda-setting powers rather than merely the power to pick a decision from an already set agenda. If AAI is the only valid principle for determining membership in a demos, then all those whose interests are affected by any possible decision arising out of any possible agenda must be included in the demos. A demos with agenda-setting powers formed under the AAI principle must therefore be global in scope. In order to refute the conclusion we must either adopt a weaker conception of democracy in which the demos does not have agenda-setting powers and is thus no longer self-governing, or we must reject the claim that AAI is the appropriate inclusion principle for
determining membership in a demos. I propose to stick to strong democracy and drop the AAI claim to be the all-encompassing inclusion principle.

If we accept the circumstances of democracy and the plural structure of political boundaries, then the core power of agenda setting can only belong to particular demoi at the sub-global level. There will then be from the very start a distinction between those who have the power to set the political agenda and those whose interests are affected by political decisions. Persons whose interests are externally affected are those who suffer or benefit from a political decision without belonging to the group whose members have a legitimate interest in agenda-setting in a self-governing demos. Externally affected interests are thus, by definition, actually affected interests, since otherwise there would be no external boundary whatsoever that distinguishes a self-governing demos from those whom it might affect through its decisions.

The distinction between externally and internally affected interests is rather obvious if we consider that some of the most significant interests that democratic governments have to track emerge only because of the existence of political territories and government institutions. This basic fact explains also why government action normally affects the interests of those who reside permanently within its territory much more comprehensively than those living outside the border. We should thus not imagine political communities as being solely responsible for tracking interests that exist pre-politically, i.e. before or independently of the structure of political boundaries and territorial jurisdiction.

While rejecting Goodin’s claim that any attempt to limit democratic inclusion to actually affected interests is incoherent, David Owen has pointed out that a principle of actually affected interests must not be interpreted so narrowly that it refers only to the impact of the decision actually taken. Any plausible interpretation of actually affected interests must include interests in the choice between alternative decisions on an already set agenda (Owen 2012). Tracking affected interests requires taking these into account in decision-making, not after that decision has already been taken. This suggests already what it is that affected interests have a claim to be included in. The answer is: the process of deliberation that precedes the decision and not only the process of implementation that follows. In other words, actually affected interests have a claim to voice. They must be heard and taken into account by those who take the decision. Those whose interests are affected by democratic decisions, no matter whether they are citizens, subjects or completely outside the jurisdiction, have a right to justification of the decision (Forst 2012) that respects them as autonomous sources of valid claims.

It is obvious that the current international state-system is deeply flawed in this respect. It is designed to reduce the duty of states to justify their decisions towards those on whom they impact outside their territorial borders and boundaries of citizenship. At most, it supports duties of justification towards other states. The representation of externally affected interests depends then on these being effectively represented by a government that has the power to confront the authorities of the state that takes a contested decision. Moreover, the mechanisms of intergovernmental representation of externally affected interests operate in most cases only ex post rather than in the run-up to the decision and thus do not satisfy the condition that actually affected interests must be heard before a decision is taken. If inclusion of affected interests is a requirement of democratic legitimacy, then the flaws of the international state system, which is not itself democratically structured, is no excuse for a democratic polity to ignore the interests of those who are outside its jurisdiction. Instead of delegating this task to a global demos, it must be regarded as one that each polity is morally obliged to address whenever the decisions on its agenda are likely to have significant external impact.
The task could be met in different ways, of which intergovernmental consultations and negotiations is only one. A second, and increasingly important, response is government participation in the creation of regional or global governance institutions on issues that systematically spill across jurisdictional boundaries, such as climate change, refugee protection or the persecution of crimes against humanity. The third response is to directly represent externally affected interests in the decision-making process itself.

This might be done, for example, through transborder referendums on issues such as the opening or closure of nuclear power plants close to an international border. Note, however, that transborder referendums presuppose legitimately constituted separate demoi on both sides of the borders. A simple majority in a referendum involving two polities in which each vote is counted equally on either side of the border is not a defensible decision rule since the outcome would be determined by the citizens of the larger polity. Creating two constituencies of equal size on either side of the border would involve highly arbitrary boundary decisions and would again fail to meet democratic standards of legitimacy since there would be no legislators who are accountable to voters for implementing their decision. A reasonable procedure requires thus separate majorities in both polities. The decision rule may vary depending on the nature of the issue at stake, but generally the most plausible one is that majorities in both polities must agree to a new policy that has significant impact on the other one. Granting veto power over a political decision to the citizens of a neighbouring state is obviously a proposal for which it will be hard to get political support. My point here is, however, that doing so does not merge the two demoi into a single issue-specific demos, but retains their identity as separate and self-governing political communities.

The most ambitious idea is to include actually affected interests in the decision-making process through special delegates with voting power in legislative assemblies. Matthias Koenig-Archibugi has suggested a scheme of representing externally affected interests through delegates in each national parliament elected by all non-residents with seats allocated in proportion to the share of world income under the control of that state. In order to take into account that all humans would be equally affected by the rules determining their external representation in every particular demos, he adds to this proposal a globally elected global constitutional assembly that determines these rules (Koenig-Archibugi 2012). By distinguishing coercively subjected individuals with full and equal citizenship claims from externally affected interests with partial citizenship (ibid: 462), this model tries to combine the notion of a global demos constituted by affected interests with self-government claims of particular demoi. However, it is not obvious how externally affected interests could be involved in the self-government of every demos without undermining the very idea of self-government. Koenig-Archibugi’s proposal aims at simultaneously achieving option-inclusiveness and agenda-inclusiveness. Yet if agenda-setting is a reserved power for the members of a self-governing demos, then letting the delegates of externally affected interests participate in agenda-setting generates necessarily over-inclusiveness with regard to membership.

Distinguishing between the two circles of inclusion could lead to alternative institutional proposals, such as issue-specific mandates for the representatives of externally affected interests to participate in consultative bodies. Even granting them votes in particular legislative decisions would still be compatible with the separation between agenda-setting and option-choosing powers. Extending a model developed for local jurisdictions within states (Frey and Eichberger 1999), such solutions have sometimes been advocated under the label ‘functional demoi’, but this terminology is misleading if the issues and functions with regard to which a decision can be delegated to a demos are themselves determined by a territorially bounded and agenda-setting demos.

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7 See (Kuper 2004, Bohman 2007, McDonald 2008) for proposals how to design global governance institutions democratically so that they are responsive to externally affected interests.
My preliminary conclusion is thus that reasonable versions of AAI that respect the plurality of self-governing polities as a background condition cannot be accepted as comprehensive answers to the democratic boundary problem, since they fail to provide a principle for the legitimate constitution of such polities and claims to inclusion in them.

AAI theorists have replied to this objection that the principles of including all subject to coercion and of including all citizenship stakeholders can be easily restated as particular applications of AAI. In this view, AAI is the broader formula that encompasses the others. In Goodin’s words, what really matters for constituting a demos is interlinked interests (Goodin 2007: 49). A reductionist strategy can thus simply include individuals’ interests in protection of their rights by a particular government as well as their interests in membership in a particular polity among those interests that governments have to track. While these are logically coherent moves that make ASC and ACS appear to be merely special versions of AAI, they obscure the essentially different kinds normative claims that each of the three principles generates. Maintaining these differences is crucial for democracy and therefore we should consider the three principles as complementary to each other rather than as broader or narrower versions of the same principle.

This requires clarifying that as a democratic inclusion principle AAI refers specifically to interests in decisions rather than to interests in rights protection by government institutions or to membership in a political community. These latter two interests are the domains of the ASC and ACS principles respectively.

2.2. Subjection to Coercion

Democratic governments have special responsibility for those whom they govern. They must treat them with equal respect and concern (Dworkin 1977) and must secure their basic rights and freedoms. This is at least true for all liberal versions of democracy under the rule law. Government is by its very nature coercive. The ASC principle captures the idea that the democratic legitimacy of government coercion depends on securing equal liberties for all whose autonomy it restricts.

This principle differs from AAI in important ways. First, it distinguishes between those who are subject to government coercion and those who are not and attributes special inclusion claims to the former only. Not everyone whose interests are affected is subjected to coercion. All governments have limited jurisdiction over a particular territory and to some extent also over their citizens outside the territory. Recent developments in human rights have created universal jurisdiction of national courts for a strictly limited set of issues, such as crimes against humanity. These are exceptions that confirm the rule. At least prima facie, the scope of ASC is limited by the scope of jurisdiction. Second, ASC entails a stronger claim to equality. As explained above, the impact of democratic decisions on individuals’ interests is notoriously unequal and varies from one decision to the next. By contrast, ASC refers to subjection to government institutions rather than exposure to particular legislative outputs. Residents within a territorial jurisdiction are unequally affected by government decisions but – with minor exceptions, such as diplomats or tourists – equally coerced by government institution. This suggests, thirdly, that the proper object of inclusion under ASC is representation of their interests in protection of their rights within government institutions.

Robert Dahl refers to both principles (Dahl 1989), although his account seems more consistent with an emphasis on ASC (López-Guerra 2005, Owen 2012). Beckmann believes, however, that “there is an impressive degree of consensus on the ‘all affected’ principle” (Beckman 2009: 36) and suggests that the all subjected persons principle is essentially a legal interpretation of all affected interests (ibid.: 47).
The first of these features, the limited scope of ASC, means that the principle is better adapted than AAI to what I have called the circumstances and territorial contexts of democracy. However, the problem with ASC in this respect is that it is systematically biased towards existing boundaries. If inclusion claims are derived from the scope of current jurisdiction, then ASC may be too conservative in taking for granted borders as they are. Consider how it would apply to colonial contexts. Until independence in 1962, Algeria was legally incorporated into the French territory. If ASC is interpreted as a claim for membership inclusion, then the colonial subjects in Algeria had a right to equal citizenship in France rather than to independence from France. A democratic principle of membership must link individual inclusion claims to collective self-government claims in order to avoid a status quo bias in favour of unjust territorial borders and jurisdicctional boundaries.

This argument can be generalized beyond the colonial context. Some decisions taken by governments do not only affect external populations’ interests but subject them comprehensively to coercion in a way that fundamentally restricts their autonomy. This is most obviously true for military interventions and explains why these are legitimate only for purposes of self-defence or for humanitarian reasons. In such cases, the ASC principle would support our moral intuitions that states engaging in such forms of extra-jurisdictional coercion have special duties to admit refugees. It would also require that military authorities exercising coercive rule in a foreign territory have to treat the civilian population there with equal respect and concern. Yet the overriding duty of democratic states engaging in military interventions is not one of inclusion; it is a duty of non-interference with the local population’s right to self-government. Limiting the protective duties of democratic governments to populations within their jurisdiction is thus necessary to avoid that the citizens of independent polities are curtailed in their rights of self-government.

Equal protection must be offered to all residents but territorial boundaries ought to be interpreted with some flexibility. The duty of equal protection for all within the jurisdiction needs to track the impact of being subject to coercive legislation on individuals’ freedom. While tourists will hardly qualify, temporary migrants may experience significant restrictions of their autonomy, especially if they do not enjoy the same freedom of movement and legal protections as long-term residents. Citizens and residents who are temporarily outside the jurisdiction are clearly covered by ASC and so must be coerced emigrants who have been driven into exile by a non-democratic predecessor regime. In these cases, the situation of individuals is comprehensively marked by subjection to coercion that they have experienced in the past and this creates an ongoing duty of protecting their rights. The situation of emigrant citizens who live permanently abroad is less clear in this regard. In the standard case they will have interests affected by legislation concerning their diplomatic protection, their right to return and their property rights and tax duties in countries of origin. Yet they are not comprehensively subjected to the legal order of these countries. Claudio López-Guerra insists therefore that voluntary long-term emigrants should lose their citizenship status and voting rights (López-Guerra 2005) while David Owen has argued that they remain subjected to those laws that concern their status as citizens abroad as well as to the general constitutional order and have thus at least a claim to political participation in constitutional referendums. My own view is that ASC does not provide a solid basis for citizenship status rather than some form of partial membership for long-term emigrants and their offspring born abroad. As I will argue more extensively in part 2, their claims can

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9 The duty is a negative one of non-interference rather than a positive one of creating conditions for self-government, since democratic states cannot promote regime change towards democracy as a legitimate goal in military intervention.

10 See (Bauböck 2007, Owen 2010) for arguments that temporary absentees and coerced emigrants should enjoy also voting rights.
be better understood from a stakeholder perspective applied to the specific context of citizenship in the international state system.

Most ASC theorists invoke the principle in order to determine who has a claim not only to equal protection but also to citizenship status and voting rights. These are two different questions the answers to which need not be derived from the same inclusion principle. The distinction is clearly drawn in section 1 of the 14th amendment to the U.S. Constitution:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The ‘citizenship clause’ of the 14th amendment specifies a set of rules for determining who the citizens of the polity are. These are territorial birthright, naturalisation, and linkage between state and federal citizenship. It also includes a ‘subject to the jurisdiction’ condition that has in the past been invoked restrictively in order to permit citizenship revocation for naturalised U.S. citizens who took up permanent residence abroad. After World War 2, the U.S. Supreme Court has reinterpreted the 14th amendment in such a way that today U.S. citizenship can only be lost through relinquishment or voluntary renunciation (Aleinikoff 1986, Weil 2013). While the ‘privileges and immunities’ clause still refers specifically to citizens, the two subsequent clauses speak about persons rather than citizens. The distinction is clearly intended and important: due process of law and equal protection of the laws are owed to any person within U.S. jurisdiction, not only to those whom the first clause identifies as U.S. citizens. Conversely, not all who have a claim to due process and equal protection have thereby also a valid claim to citizenship.

This is not yet a conclusive normative argument. First, there is no reason for privileging the U.S. Constitution as an authoritative source for interpreting democratic inclusion over other constitutions or international legal documents. Second, the rules listed in the citizenship clause are legal mechanisms rather than normative principles. So we still need to find normative reasons why those who have a claim to equal protection should not also have a claim to citizenship status. This will be the task of the following section on stakeholder citizenship.

Before embarking on it, we need to consider further the object of inclusion under ASC and which institutional arrangements can track the interests of those subject to coercion. The potential problem with the equal protection claim is that it does not explain why democratic governments can be trusted to secure the freedom of those whom they coerce. The democratic answer to the old question: ‘who will watch the watchmen?’ must be: those who are watched by the watchmen. In order to qualify as democratic, the protection of rights through government institutions must include rights to contest government authority and decisions. In other words, democratic institutions must not only provide equal protection to those subjected to them, but must also open up channels for contestation.

The contemporary version of republicanism that has been called ‘neo-Roman’ and is best represented by intellectual historian Quentin Skinner and political theorist Phillip Pettit provides a solid normative grounding for this interpretation of the ASC principle. Pettit has put special emphasis on contestability as a condition for non-domination. He distinguishes between “authorial” and “editorial” control of governments and tends to privilege the latter: “Government will be authorially controlled by the collective people under electoral arrangements whereby issues are decided by plebiscite or representatives are chosen to decide them. And government will be editorially controlled by the people under arrangements of a broadly
contestatory kind” (Pettit 2006: 3). Both types of control are relevant for democratic legitimacy but the collective people that exercises them is not necessarily the same. The normative claim to be able to contest government institutions and their decisions follows directly from being coercively subjected to them, whereas the claim to be included in the demos that exercises “authorial control” does not. The very term “control” is also somewhat misleading in the latter context, since governments have to be authorized through popular vote before they can exercise power that is then controlled by the people.

Pettit’s theory is in this respect at odds with other republican traditions, such as Rousseau’s, Kant’s and to a certain extent Arendt’s, who have emphasized the link between individual and collective self-government. Pettit’s exclusive focus on domination defined as vulnerability to arbitrary interference that fails to track one’s interests (Pettit 1997) risks losing sight of the regulatory ideal of popular sovereignty and its – always imperfect – realization through democratic procedures for electing governments instead of only for controlling them. This shortcoming makes neo-Roman republicanism a somewhat limited perspective for a comprehensive theory of democratic inclusion, but one that has elective affinity with the ASC principle and is well-suited to provide normative support for it. Although Pettit’s general description of domination seems to be compatible with AAI, vulnerability to arbitrary interference is a condition in which individuals find themselves as the result of exposure to coercive government institutions rather than to negative externalities of particular decisions.

In contrast with the representation of externally affected interests in political deliberations and decisions, the institutional devices for securing equal protection of the law and opportunities for contestation are rather conventional and do not have to be newly invented. They include constitutional protection of fundamental rights and judicial review of ordinary legislation by constitutional courts as well as institutionalized complaints and contestation procedures for individuals in courts and ombudsman bodies and, finally, the rights to protest against governments and their decisions through political speech and activities.

From an inclusion perspective the important question is who should be protected and have access to contestation opportunities. If the answer is: all subjected to government jurisdiction, then citizens and noncitizen residents must enjoy these rights equally. In a landmark judgment of 1982 the U.S. Supreme Court extended the scope of equal protection even to irregular immigrants and their children arguing that “no plausible distinction with respect to Fourteenth Amendment ‘jurisdiction’ can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful.” U.S. legislators have since then often tried to subvert this ruling. In Europe a principle of non-discrimination on grounds of nationality with regard to protection fundamental rights is enshrined both in the European Human Rights Convention and in EU law. Yet the scope of such protection is continuously under dispute. Concerning contestation rights, restrictions on aliens’ rights of political association and activity were very common throughout the 20th century and linger on in a number of contemporary European states with regard to rights to membership in political parties.

On some interpretations, however, the scope of ASC is even wider than this. Arash Abizadeh has argued that immigration control is coercive towards non-citizen non-residents in a way that gives them a claim to be included in the demos for the purpose of making legitimate immigration law (Abizadeh 2008, 2010). The idea that outsiders have a right to participate in the making of the very laws that exclude them is a good

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12 The case concerned a Texas statute that denied public education to children of irregular migrants.
13 add references
14 add reference
example how standard versions of the democratic boundary problem can generate rather perplexing paradoxes. David Miller’s reply to Abizadeh is that would-be immigrants are not coerced if immigration control merely removes one option from their choice set of potential destinations (Miller 2010). If one accepts Miller’s response, one may still hold on to ASC while avoiding the consequence that immigration control subjects the rest of the world to coercion and generates thus a global issue-specific demos for purposes of regulating immigration.

Yet even under Miller’s interpretation, very significant numbers of actual rather than potential migrants could claim to be coerced because they do not have sufficiently robust opportunities to choose alternative destinations. This argument would apply to refugees as well as to dependent family members of immigrants and possibly also to large numbers of poverty or environmentally driven migrants. Abizadeh’s argument has the merit of drawing our attention to the fact coercive jurisdiction is not only exercised within territorial borders, but that borders themselves are potentially coercive instruments if they are not only used for demarcating jurisdictions but also for controlling migration flows. No matter whether this happens at the border or coast, inside the territory, at the high seas, or through ‘remote control’ points of departure in other countries It is hard to see how state responsibility for the protection of migrants whom they turn away – and who have stronger claims to admission in this country than anywhere else – could be denied under any plausible version of ASC. This suggests a somewhat more expansive scope of the ASC principle but does not yet support Abizadeh’s conclusion that immigrants have to be included in the demos already before entry. This conclusion relies on interpreting ASC as a membership principle, which is what I intend to question.

I close this section by pointing to another problem with such an interpretation of ASC: it is likely to support not merely voluntary but also mandatory inclusion in the demos. Since the end of the 19th century, states have generally refrained from naturalizing first generation immigrants against their will. Yet if a legitimate demos has to include all who are subject to political coercion, then foreign nationals belong to it already by virtue of residing within the jurisdiction. So it is not clear why they should have a freedom to opt out while staying in the territory. At the same time, democracies may have relevant interests in naturalizing foreign residents. They may lack legitimacy if they rule over large numbers of foreign residents who do not participate in elections. A persistent internal boundary between foreigners and citizens may also undermine social cohesion and a sense of joint responsibility for the common good. Finally, foreigners who refuse to naturalize may do so in order to free-ride on public goods to which only citizens contribute (such as military defence where there is a citizen draft). All these are serious concerns and the idea of mandatory citizenship for immigrants has therefore found a few defenders among political theorists (Rubio-Marín 2000, López-Guerra 2005, de Schutter and Ypi 2015). As I will argue in part 2 of this essay, the problem is not with the idea as such, but with its application to the specific context of citizenship in the international state system under conditions of relative sedentariness. It is in this context that mandatory citizenship for immigrants clashes massively with their right to choose between alternative citizenship statuses as well as with mutual obligations between independent states. The problem with ASC is not that it supports automatic acquisition of citizenship based on residence within

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15 See also my brief discussion in (Bauböck 2015)
16 Thomas Nagel’s argues that “[i]mmigration policies are simply enforced against the nationals of other states; the laws are not imposed in their name, nor are they asked to accept and uphold these laws” (Nagel 2005: 129-30). This presupposes that states’ relations with foreigners at their borders is a Hobbesian state of nature. Yet contemporary democracies generally recognize their human rights obligations towards foreigners and consider their immigration laws as legally binding for those who wish to be admitted.
17 Add references to Carens and Owen
a jurisdiction, which is entirely appropriate for citizenship at the local level, but that it does not allow for distinguishing between these contexts.

2.3. Stakeholder Citizenship

The versions of AAI and ASC that I have outlined and supported above cannot be accepted as sufficient for democratic inclusion because they could potentially be fulfilled also by non-democratic regimes. Imagine an enlightened and benevolent autocratic government that does not have any democratic mandate but whose sole aim is to govern well according to liberal standards of justice. Such a government would fully take into account all interests that are actually affected by policies that it has put on its agenda and would invite representatives of groups whose interests could be impacted to its deliberations. Its decision would then be based on a careful calculation in which these voices are weighted by the strength of preferences and potential impact. The government would also make sure that it protects the full panoply of civil and social rights for anybody in its jurisdiction while refraining from interfering in this regard with the jurisdiction of neighbouring governments. It would expose its policies to strong forms of judicial review by independent courts, would provide multiple opportunities for complaints and would not curtail freedom of political speech, association and activity. But this liberal government would be appointed by an enlightened monarch. In the absence of a popular mandate we would not call such a government democratic.

Proponents of AAI and ASC will of course protest that their versions of the two inclusion principles are democratic because – in contrast to my account – they are not limited to giving voice to affected interests and protection to the subjects of coercion, but identify also the members of the demos who elect the government and to whom it must be accountable. Yet if we stick to a strong version of democracy as popular self-government, then we end up in circular reasoning: the demos is constituted through the impact of a government that can itself only be constituted through the very same demos. In order to avoid this circle, we would have to accept that governments create democratic peoples rather than the other way round. Elections would then be just another device for ‘editorial control’ over governments rather than an original source of their legitimacy. And when constitutions invoke the ‘people’ as the ultimate constitutional law-giver this would be little more than empty political rhetoric. So it seems AAI and ASC can maintain their democratic credentials only at the price of accepting weak versions of democracy that abandon the normative ideal of self-government and replace it with a supposedly more realistic conception according to which democracy is about controlling government power rather than authorizing it. Since such control comes ex post, the role of the demos is then effectively similar to that of an independent judiciary.

If we understand citizenship instead not merely as a bundle of rights and duties but as a status of membership in a self-governing polity, then a democratic inclusion principle that determines who has a claim to citizenship has to focus on the relations of individuals to a particular political community rather than to a government and its decisions. The stakeholder principle that I have defended is only one among several inclusion principles that satisfy this formal condition. Elsewhere I have distinguished pre-political

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18 See (Goodin 2007: 43). In email correspondence, David Owen has raised the objection that there is no contradiction in saying: “I am entitled to choose whether and what to promise because I am the one who will be bound by my promise” and by analogy: “We are entitled to choose whether and what laws to have because we are the ones who will be bound by these laws.” Yet in the former case, my identity as an individual that has the capacity to make promises in no way depends on the fact that I will be bound by the promises I make; it is given prior to me making any promises. In the same way, the identity and composition of a collective ‘we’ as law-makers must be given independently of and prior to us being bound by the laws we have given to ourselves.
principles and political principles (Bauböck 2015). Democratic and liberal nationalists propose that the political community should be understood as a nation with a historically stable cultural and territorial identity. The nation is a pre-political community not because of its origins, since national consciousness is often the result of nation-building policies pursued by states. It is pre-political because of the cultural content of shared identity and the corresponding criteria for membership. Constitutional patriotism is not enough. In order to be included into the imagined community of the nation, individuals must either be born into it or adopt cultural repertoires shared by its members. By contrast, social contract theories that imagine the political community as a voluntary association of individuals are political in the sense that they ground the identity and legitimacy of a polity in a shared political purpose. The problem with both ideas is that they are difficult to square with liberal conceptions of democracy.

From a nationalist perspective, admitting new members to the political community must serve the purpose of nation-building. In some historical contexts, this meant inviting immigrants from diverse origins, in others it meant selecting them on the basis of presumptive cultural fit or prior national membership, in still others it meant closing the borders and denying access to citizenship for the sake of preserving national identity. If political community can only be achieved through nation-building, then the inclusiveness of the polity for minorities and newcomers is not a matter of democratic principle but of historically contingent circumstances.

The idea that a democratic polity should be imagined as a voluntary association of citizens leads to similar problems. A voluntary association is self-governing if its members are not only free to exit, but also to admit or exclude outsiders who are willing to join. This is a political and at first glance also democratic conception if it leaves decisions about membership to democratic procedures that track the collective will of current members. As pointed out by Robert Dahl when rejecting Schumpeter’s claim that “we must leave it to every populus to define himself” (Schumpeter 1942/1976: 245), this would entail that any polity is democratic if it is governed by a body that is internally democratic but excludes the vast majority of those subject to its laws (Dahl 1989: 121-2). Christopher Wellman’s conclusion that states deriving their legitimacy from a principle of voluntary association and dissociation are free to select immigrants on grounds of race and “entitled to reject all potential immigrants, even those desperately seeking asylum from corrupt governments” (Wellman 2008: 141) must be equally disturbing for liberal democrats.

The stakeholder principle starts from a different conception of political community that consists of both empirical and normative assumptions. I have already spelled out the empirical assumption when introducing the circumstances of democracy: a plurality of bounded political communities is part of the human condition. Humans are social animals. They have strong stakes in being recognized as members of particular political communities because being an outsider who does not belong to any such community is a condition of extreme precariousness. To put it positively: membership in a polity is a necessary condition for human autonomy and well-being. It is, however, not a sufficient condition because political rule can also destroy freedom and deprive people of their subsistence, as it has done in most of its manifestations over the course of human history. A person’s stake in being a member of a particular polity depends thus on that polity being governed in a way that protects its members’ autonomy and well-being. So far, this seems like another version of the ASC principle. The democratic twist comes with the further assumption that those who have an interest in protection of their individual freedom and well-being by a particular polity thereby share with each other an interest in the collective freedom and flourishing of that polity. Citizens are stakeholders in a democratic political community insofar as their autonomy and well-being depends not only on being recognized as a member in a particular polity, but also on that polity being governed democratically. Political legitimacy in a democratic polity is not derived from nationhood or voluntary
association but from popular self-government, i.e. its citizens’ participation and representation in democratic institutions that track their collective will and common good.

Unlike AAI and ASC, the stakeholder principle (ACS) derives inclusion claims from a correspondence between individual’s interests in autonomy and well-being and the collective interests of all citizens in their polity’s self-government and flourishing. The term ‘stakeholder’ can be easily misunderstood as referring to a stake in particular democratic decisions or in the protection of one’s rights by a particular government (see e.g. Beckman 2009: 41). It should instead be understood as having a stake in membership, which is why I refer to ‘citizenship stakeholders’. Assuming that individuals have a general interest in membership in a self-governing polity is much less demanding than those versions of republicanism that attribute intrinsic value to political participation in the polis. As pointed out by Will Kymlicka, this ideal is unattainable in contemporary liberal states. It conflicts with liberal toleration of a plurality of conceptions of the good and can serve to justify citizenship exclusion based on lack of civic virtue (Kymlicka 2001: ch. 7). The idea that membership in a self-governing political community is a universal and intrinsic value is, instead, fundamentally inclusive and compatible also with ways of life that are inherently apolitical. Even the members of reclusive monastic orders will be better off as citizens of a democratic polity than as stateless persons or as subjects of autocratic rule.

At the same time, and unlike AAI, ACS provides reasons against over-inclusiveness. The relation between individual and collective self-government is bidirectional. Individuals have a claim to inclusion if their autonomy depends on the collective freedom of the polity. But the polity can also reject the inclusion of non-stakeholders on grounds that it would undermine the capacity of citizens to govern themselves. One illustration for over-inclusiveness is provided by current laws in many European states that allow for unlimited descent-based transmission of citizenship status across generations born abroad. Such perpetual ius sanguinis generates selective openness to immigrants based on national origin for individuals who have no stronger stake in the polity than others that are denied entry. Moreover, since in a majority of democratic states citizenship status is today sufficient for exercising the franchise, the votes of outsiders are counted together with those of citizenship stakeholders, which infringes the self-governing rights of the latter. I will explore more fully in part 2 how the boundaries of stakeholder citizenship should be drawn for states, local and regional polities.

The reference to collective claims to self-government means that, unlike, ASC, ACS is not inherently conservative with regard to existing borders. If these borders prevent a particular political community from governing itself, they infringe thereby also on the claims of individuals to citizenship in that community. The question of how conflicting claims to self-government can be sorted out where territories and populations intersect will be briefly addressed in part 3. The general answer must be that collective self-government claims are legitimate only insofar as they accept territorial and membership arrangements that allow for simultaneous fulfilment of all legitimate claims. Such a composibility principle will in many cases lead to territorially nested forms of self-government, in which claims of national majorities to self-government within a territory that includes national and indigenous minorities will depend on accepting a constitutional identity of the state as a plurinational polity and territorial autonomy for these minorities. Conversely, under these conditions territorial minorities can be morally and legally obliged to respect the territorial integrity of a state that grants them sufficient autonomy and accepts them as constitutive communities in a plurinational polity (Bauböck 2000, Bauböck 2002).

Once territorial borders are regarded as democratically legitimate according to this interpretation of ACS, the claims of individuals to inclusion in a particular polity can be decided on the basis of a ‘genuine link’
principle. ‘Genuine link’ is a doctrine in public and private international law that is invoked to establish or dispute the right of states to award their nationality and to grant diplomatic protection to or impose duties on individuals whom other states also claim as their nationals. For purposes of democratic theory, genuine link can serve instead as a critical standard for assessing the strength of ties between an individual and a particular polity. Keeping in mind that the substantive purpose for citizenship attribution is to secure political conditions for individual autonomy and well-being, this strength cannot be measured in a uniform way either as a subjective sense of belonging or through objective indicators such as duration of residence or family ties in the territory. What counts as genuine link depends also on the nature of the polity itself and will be different for citizenship in states, municipalities or regions. Having been born and raised in the jurisdiction will generally be irrelevant for claims to local citizenship, whereas it may be sufficient for claims of first generation emigrants to retain their nationality of origin and the right to return.

Let me conclude this section by considering a major challenge for a stakeholder perspective. Even if the link between individual autonomy and collective self-government need not imply that citizens have a duty to participate actively in the political life of the polity, it does imply that they must have the opportunity to do so. But this opportunity in turn depends on their capacity to participate. The citizenship status of minor children or cognitively disabled persons might then be in jeopardy under this conception whereas AAI and ASC would have no difficulty in arguing for their inclusion. For AAI, individuals must be capable of having interests, which presupposes sentience, a sense of selfhood and purposive action. As Donaldson and Kymlicka point out, not only minor children and most cognitively disabled persons but also many animal species meet these criteria (Donaldson and Kymlicka 2011). Policies could then be regarded as democratically inclusive for these human and non-human individuals if they track their interests through mechanism of indirect representation. ASC may be somewhat more demanding, since being subject to coercion presupposes a will that can be coerced. A will cannot be reduced to the mere avoidance of pain and seeking of pleasure and must be able to form and pursue projects. Still, even this condition does not plausibly draw a line between intelligent human and non-human beings, nor between minor children and mentally disabled humans and adults. Does a view of citizens as stakeholders in a self-governing polity exclude any or all of these categories?

The case of minor children seems easiest, since they are expected to develop the cognitive capacities that will allow them to participate politically. Children’s rights activists have, however, rejected a view according to which children are merely in need of protection and without capacity to participate. Instead, they see them as having a right to participate according to their capacities in shaping the conditions under which they live and grow up (Donaldson and Kymlicka 2015). This cannot mean that minor children have a claim to voting or standing as candidates in legislative elections. And giving parents proxy votes that they can cast on behalf of their minor children looks more like a violation of the one person one vote principle in favour of a particular category of adults than like a vehicle for children’s participation in the polity. If there is no democratic way how children below a certain age can be provided with opportunities to participate in electoral politics, does this mean that from a stakeholder perspective they are just partial citizens? And what about newborn children? How can they be considered citizens rather than persons whose interests and wellbeing democratic states have a duty to protect?

I think the answer lies in the conditions for continuity of a self-governing polity over time. Newborn babies are attributed citizenship not only because they we regard them as future citizens. If this were the case, one might as well wait until they have reached the age of majority and consider them until then as subjects

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19 The doctrine was first established in the 1955 Nottebohm judgment of the International Court of Justice. For a critical discussion of the scope of the doctrine see (Sloane 2009).
within the jurisdiction that have a claim to equal protection. The reason why we recognize them as citizens is that political communities are transgenerational human societies. The status of membership in such communities is acquired at birth and does not depend on age-related cognitive or other capacities. In democracies, it is the larger transgenerational society that collectively governs itself and not the subcategory of adults who have the capacity and opportunity to vote or hold public office. Minor children are citizenship stakeholders because of their belonging to a transgenerational political community.

This does not mean that voting rights are irrelevant for democratic inclusion. They are the most important power that citizens hold equally and restrictions of access to this power must be justified. The benign liberal autocracy that I have introduced at the beginning of this section treats adult citizens as if they were minor children and this is deeply degrading no matter how wise and benevolent the decisions taken by the government are. By contrast, there is nothing degrading about treating children as children, which includes responsibilities to allow them to participate in all decisions concerning them. For adults this is not enough.

In democracies, governments do not allow citizens to participate politically insofar as they are fit to do so. It is the other way round: citizens allow governments to govern them insofar as governments are fit to do so. By contrast, there is nothing degrading about treating children as children, which includes responsibilities to allow them to participate in all decisions concerning them.

A stakeholder conception does therefore suggest a distinction between the demos consisting of all those who have the franchise and the citizenry composed of all who have a stake in being members of a transgenerational political community. But this distinction does not exclude either minor children or mentally handicapped persons from citizenship on ground of cognitive incapacity. What it does, however, is cast some doubt on the idea promoted by Donaldson and Kymlicka that domesticated animals should also be considered as citizens. It is hard to reject this idea on the basis of AAI and ASC and it is difficult to accept it from a stakeholder perspective. As Donaldson and Kymlicka explain convincingly, domesticated animals can and should be treated with respect and concern as members of the oikos. Duties of care towards such animals should also be backed by public policies and laws. But the plurality of bounded and transgenerational political communities is part of the human and not of the animal condition. Membership in such communities is therefore species specific. Challenging this political boundary will do little to improve the conditions of domesticated or other animals and might do great harm to the idea of equality of membership that is fundamental for democracy.

2.4. Synthesis

I have examined three different types of democratic boundaries: those marked by the impact of political decisions, boundaries of government jurisdiction, and boundaries of membership in a self-governing polity. For each of these there is a corresponding principle that identifies individuals who have claims of inclusion: those whose interests are affected, those who are subject to government coercion and those who have a stake in citizenship. Finally, each of these principles includes individuals in different democratic activities: in the deliberation and decision of policies, in the exercise and contestation of government authority, and in the authorization of governments through democratic elections. Since democratic inclusion serves different normative purposes, there is no compelling reason why the three boundaries ought to be congruent. On the contrary, expanding the boundaries of jurisdiction and membership to the widest circle of all affected interests would unjustly invade the self-government rights of the plurality of political communities that has always populated the political map of the world. Conversely, shrinking the scope of inclusion of affected interests to the internal ones of resident citizen would unjustly ignore the pervasive interconnectedness of human affairs across political boundaries in the present world.
The three inclusion principles have mostly been considered as rivals because they tend to be linked to different conceptions of democracy. AAI is rooted in a public choice view of democracy according to which its legitimacy and advantage over alternative forms of political rule lie in its capacity to resolve collective action dilemmas in the production of public goods. ASC is rooted in a liberal conception of democracy as the system of political rule that is most likely to guarantee fundamental rights if it is constrained by the rule of law. And the stakeholder conception is rooted in a republican conception of democracy that regards it as the always imperfect but closest possible approximation of collective self-legislation. While there are clearly tensions between these views of democracy, they are not irreconcilable. On the contrary, it is rather plausible that – as in the story about the blind men describing an elephant based on the parts that they touch – from each of these perspectives an important aspect of democracy can be perceived, but not the whole.

Synthesis requires abandoning holistic claims raised in defence of each of the three inclusion principles. The elephant is not a snake, a rope, a pillar, a wall or a spear, it does not even consist of any of these parts. The three inclusion principles can be reconciled with each other only if they are stated in such a way that the claims they support can be analytically separated. The crucial step is to drop the idea that AAI and ASC serve the purpose of determining membership in a demos. The following versions of the three principles can be endorsed simultaneously and without conflict:

AAI: All whose interests are actually affected by a decision on the agenda of a democratic legislator have a claim to representation of their interests in the decision-making process.

ASC: All who are subject to the jurisdiction of a government have a claim to equal protection of their rights and freedoms by that government and a right to contest its decisions.

ACS: All whose individual autonomy and wellbeing depends on the collective self-government and flourishing of a polity have a right to citizenship in that polity.

Table 1 summarizes how the three principles apply to the policy, government and membership domains and provide democratic legitimacy for each of these.

<table>
<thead>
<tr>
<th>inclusion principle</th>
<th>policies</th>
<th>governments</th>
<th>political communities</th>
</tr>
</thead>
<tbody>
<tr>
<td>affected interests</td>
<td>track all affected interests</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>subjected to coercion</td>
<td>track the common good of all subjected to the laws</td>
<td>provide equal protection and opportunities for contestation</td>
<td>-----</td>
</tr>
<tr>
<td>citizenship stakeholders</td>
<td>track the will of the people</td>
<td>are accountable to citizens</td>
<td>include all citizenship stakeholders</td>
</tr>
</tbody>
</table>

When reading the table horizontally, a feature that may seem surprising at first glance is that I attribute to the three principles not only different scope but also different capacity to provide legitimacy. Three cells in the upper right corner remain empty. The underlying claim is that AAI is a single purpose principle, whereas ASC and ACS serve dual and triple purposes respectively. In my view, AAI is uniquely suited to provide legitimacy for policy responses on issues with dispersed and border-crossing impact. For this reason, it has been invoked mostly in theories of global or transnational governance. Yet governance is not the same
thing as government. The latter needs stable and bounded jurisdiction, mostly of a territorial kind and AAI is therefore not capable to provide legitimacy for government. Even less is it a useful principle for specifying the legitimate boundaries of self-governing political communities.

By contrast, ASC does not only convey legitimacy to governments if they provide equal protection and opportunities for contestation for all within their jurisdiction. This would be rather meaningless if it cannot be connected to norms for policy. And democratic governments must take decisions that go beyond the task of securing fundamental rights. To gain the kind of legitimacy that I have suggested would also be available to an enlightened liberal autocratic government they must be guided by equal concern and respect for all those included in their jurisdiction, and this means pursuing their common good. An ASC conception of democracy can therefore account for the tension between securing rights and promoting the common good that is inherent to contemporary democracy and is institutionally articulated through divisions of power and mutual checks and balances between government institutions.

The table suggests that the stakeholder principle is the only one that applies across all three domains. It is the only principle among the three that addresses the membership question independently from a prior account of policy and government legitimacy, which is in my view the condition for resolving the democratic boundary problem. And the stakeholder principle yields also specific conditions for legitimacy of governments and policies: governments are authorized by citizens and therefore accountable to them. Citizens and only citizens have the power to elect and change democratic governments. This implies also a standard for democratic policies: they must not only serve the common good of all who are subjected to the law, they must also track the will of the people with regard to the law. There is again a potential for tension here, for example if the will of the people conflicts with the inclusion of citizenship stakeholders that must be translated into admission policy.

If we read the table horizontally, the incompleteness of AAI and ASC and the inherent tensions within ASC and ACS suggest that we can indeed not accept any of the three principles as a freestanding and sufficient account of democratic legitimacy. Instead, we must try to combine them, which means reading the table vertically. Yet doing so reveals quickly that even more tensions emerge.

When taking policy decisions, tracking all affected interests will often conflict with giving priority to the common good of all included in the jurisdiction. And the common good of all may conflict with the will of the people as expressed through democratic procedures. These tensions cannot be simply resolved through theoretical fiat by giving priority to one or the other inclusion principle. They must instead be worked through in democratic processes of contestation and deliberation. With regard to policies that aim at securing fundamental rights of those inside or outside the jurisdiction, the will of the people must sometimes be bound through constitutional guarantees that cannot be overruled by popular mandate (i.e. through referendum or ordinary parliamentary legislation). Yet, constitutional constraints on the popular will must be ultimately also accepted by the people as expressing its constitutional identity and thus its higher order will to respect such rights and protect them.

A potential tension between the two conceptions of government emerges also from combining the ASC and ACS principles. A democratic government must show equal respect and concern for all within its jurisdiction, but its democratic mandate is derived from those who are citizens of the polity. Under two conditions the answers to the second question (whose fundamental rights is a democratic government responsible to protect?) and third question (whom must democratic governments be accountable to?) will yield the same practical answer. First, if there is no migration between societies and, second, if citizenship is residence-based, as I claim it ought to be in municipalities. Under these two conditions, the answer to
both questions will be: all persons residing in the jurisdiction. The condition of static societies is, quite obviously, hypothetical and therefore cannot guide our judgment about citizenship in the current world with its significant international migration flows. In other words, if in static societies all residents and only residents would be citizens, this cannot determine the citizenship status and claims of immigrants and emigrants in societies that are relatively sedentary. The second condition needs some broader normative reflection that I will present in part 2 of this essay. Why should citizenship not be derived from residence in all societies that are significantly mobile? My answer will be that principles for determining citizenship vary with the nature of the political community and that the conditions that make it appropriate that local citizenship is based on residence are absent in the international state system.

The outcome of these reflections does not suggest a simple and elegant theory of democratic legitimacy and inclusion. My attempted synthesis has not revealed a meta-principle from which all three inclusion principles could be derived. But this does not mean that the attempt has failed. We can read the result of this analysis in different way: A normatively attractive conception of democracy must be pluralistic not only in two senses, as I have initially suggested, but in three senses: it presupposes a diversity of interests, ideas and identities; it also assumes an plurality of bounded democratic polities; and it ought to accept a plurality of inclusion principles that apply in different ways to democratic policies, governments and political communities. The task of political theory is to articulate the tensions between these principles rather than to resolve them. The task of coping with them is a practical one of institutional design and political prudence.

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