Democracy might be characterized, semicircularly, as a matter of “groups of people making collective decisions in a democratic way.” I employ that circularity deliberately to bracket off the part of the formula that I do not want to focus upon for present purposes.

Of course, what it is to “make collective decisions in a democratic way” is precisely the part of the formula that traditionally preoccupies democratic theorists. Is that a matter of expressing opinions or of aggregating votes or of deliberating together? (And if “all three,” then combined how and in what proportions?) Insofar as it is a matter of aggregating votes, according to what rules? (Simple majority rule or something else?) Insofar as it is a matter of elections, what makes them free and fair? (How are campaigns to be conducted, electors apportioned to districts, and so on?) Are there any substantive constraints on what democracies may or must do? (Respect human rights, for example.) Such questions constitute the warp and the woof of democratic theory.

All that leaves to one side, however, the prior question of who exactly it is that is to be making those decisions in that democratic way. How do we specify the group making those decisions? That is what I shall call the problem of “constituting the demos.”

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1. I prefer that characterization to two others more common in the scant literature on this topic. Calling it “the Boundary Problem” makes the issue seem more a matter of geography than it necessarily is; cf. Frederick G. Whelan, “Democratic Theory and the Boundary Problem,” in Nomos XXV: Liberal Democracy, ed. J. R. Pennock and J. W.
Writing in 1970, the preeminent democratic theorist of the previous generation complained, “Strange as it may seem . . ., how to decide who legitimately make up ‘the people’ and hence are entitled to govern themselves . . . is a problem almost totally neglected by all the great political philosophers who write about democracy.” 2 Dahl himself subsequently managed only a little progress on that subject: a couple dozen pages on it in his seminal 1979 paper on “Procedural Democracy,” shrunken to half that in his consolidation text a decade later. 3 For an issue that he rightly saw as at one and the same time neglected yet central to democratic theory, that constitutes pretty scant coverage. Dahl is hardly alone in that respect, however. Virtually all democratic theorists find they have surprisingly little to say on the topic. 4

Neither do plausible solutions to the problem of “constituting the demos” fall straightforwardly out of any of the larger discussions in adjacent areas of political philosophy. There might, for example, seem to be a ready solution within contractarianism: the demos, like Nozick’s utopia, ought consist of all and only those persons each of whom is not


2. Dahl, After the Revolution?, pp. 60–61. He continues, “I think this is because they take for granted that a people has already constituted itself. How a people accomplishes this mysterious transformation is therefore treated as a purely hypothetical event that has already occurred in prehistory or in a state of nature. The polis is what it is; the nation-state is what history has made it. Athenians are Athenians. Corinthians are Corinthians, and Greeks are Greeks.”


rejected by any of the others as a member.\textsuperscript{5} However, that formula implausibly risks leaving large proportions of the world’s population blackballed and stateless. Were we to try to avoid that outcome by stipulating “could not be reasonably rejected,” we would simply be assuming (in the standard of what is “reasonable”) precisely what this analysis is supposed to provide, which is an account of what are and are not good grounds for excluding people and hence for constituting the demos one way rather than another.\textsuperscript{6}

Similarly, there is a large literature on political obligation that might be thought ought to bear fairly directly on questions of how to constitute the demos. The easy thought might be that all and only those persons who are (legally) obliged or (morally) obligated to obey a body of laws ought be entitled to membership in the demos making those laws. Upon reflection, however, there turn out to be all sorts of people who are legally and morally obligated to obey our laws but who are not (and rightly not) entitled to membership in our demos: the captain of a foreign ship anchored in our harbor; any visitor to our shores; or indeed any alien illegally living among us. All are rightly bound by our laws, but none is (or ought to be) entitled to a vote in making them. How to constitute the demos is thus orthogonal to what might have initially seemed the perfectly parallel problem of justifying political obligation.

“Constituting the demos” is therefore a problem that finds no ready solution, either within democratic theory or in any of the seemingly cognate areas of political philosophy. The natural place to look for a solution is indeed in the vicinity of democratic theory itself, and I shall argue that we can indeed find one there—but not without some surprises along the way.


\textsuperscript{6} This is akin to the now standard “Euthyphro objection” to T. M. Scanlon’s What We Owe to Each Other (Cambridge, Mass.: Harvard University Press, 1998). Michael Ridge’s way of “Saving Scanlon,” Journal of Political Philosophy 9 (2001): 471–80, is to point out that the reasons in question are (at least in important part) agent-relative, which is true and very much to that larger point. What matters for my argument here is simply that the test of what constitutes “reasonableness” in rejecting others as co-members on grounds of those (possibly agent-relative) reasons is itself a (presumably agent-neutral) analysis of what are and are not good grounds for excluding people and hence for constituting the demos one way rather than another.
I. A SILENCE AT THE HEART OF DEMOCRATIC THEORY?

Constituting the demos is the first step in constructing a democracy. That is true temporally. Until we have an electorate we cannot have an election. That is not just a temporal observation; it is a logical truth.7

It is simply incoherent to constitute the electorate through a vote among voters who would be entitled to vote only by virtue of the outcome of that very vote. That is like saying the winning lottery ticket will be pulled out of the hat by the winner of that selfsame lottery.

Logically, constituting the demos—in the very first instance, at least—cannot itself be a product of ordinary democratic decision making.8 At later stages we can reconstitute the demos in that way. Once we have the initial demos, its members can then vote on whom else to make members. The initial membership of the demos, at least, must itself be constituted according to some principle independent of any decision of the demos, however.

That is simply to say that the decision of how the initial demos is to be constituted cannot be “made in a democratic way.” Anyway, it cannot be made in the “usual” democratic way, or at least not the very same ways in which the group makes its subsequent democratic decisions.

A. How Bad Would It Be?

Seen in one light, that observation might seem to suggest that democracy is inherently founded on a fraud. Democratic though the subsequent decisions may be, the initial decision of how to constitute the demos can never be democratic; and that might be thought to contaminate all subsequent democratic decisions in the same way that, for Rousseau, the initial fraud upon which property rests contaminates all subsequent transfers and titles.

Seen in another light, that observation might make us more comfortable with democracy as we know it. The need to appeal to some principle

8. “Ordinary” here, and “usual” in the next paragraph, in contrast to the possibility canvassed in Section I.D below that there might be some “deeper principles” (perhaps even “deeper democratic principles”) underlying both the decision as to how to constitute the demos and the decision as to what procedures the demos should use in making decisions.
outside democracy to constitute the demos does not render democratic theory incoherent, merely incomplete. The chastening force of that observation is more akin to that of Gödel’s Theorem than of Arrow’s.

Democratic theory being incomplete in this regard actually renders it powerfully permissive. It means that we do not (indeed, cannot) offend against democratic principles by organizing the demos in any manner that we choose. The upshot would be that any group of people constituted on any basis whatsoever could constitute a perfectly proper demos for democratic purposes.

B. Democratically Bootstrapping a Demos

Arbitrariness ordinarily makes moralists nervous. The proposition that we should simply take the demos as given, on any old basis it happens to have been given to us, would ordinarily be a source of unease. There might be one way to overcome that unease, however.

Suppose it simply does not make any difference where we start, in the first instance. Once the initial demos has been constituted, among the decisions to be taken democratically is how to reconstitute the demos. Suppose there is some internal dynamic within democratic decision-making processes that naturally leads the demos to be changed over time in such a way as to include all those and only those who ought to be included.9 Further suppose that this process is not at all path-dependent: it does not matter where you start; thanks to those internal dynamics of democratic decision making, you always eventually end up settling on precisely the right composition of the demos.10 Were all that true, we need not worry about how the demos is initially constituted. We could

9. Jürgen Habermas, for example, supposes that we can “break out of the circle of a polity’s groundless discursive self-constitution only if this process . . . can be understood in the long run as a self-correcting learning process.” “Constitutional Democracy: A Paradoxical Union of Contradictory Principles?” *Political Theory* 29 (2001): 766–81, at p. 774.

constitute that initial demos on any basis whatsoever, and set the democratic process underway to refine it; the correct composition of the demos would then automatically eventuate.11

On the face of it, this would seem to be an essentially empirical claim about inexorable tendencies within democratic politics. Someone arguing along these lines might, for example, point to the inexorable tendency for democratic decision procedures constantly to expand the demos, leaving ever fewer groups disenfranchised. That empirical observation, however, does the normative work this argument carves out for it if and only if we have some independent reason for supposing that a maximally extensive franchise is indeed the right way to (re)constitute the demos.

More generally, unless we know what the right way to constitute the demos is in the first place, we have no way to know whether any given empirical tendencies within democratic politics will, as this argument asserts, lead them to (re)constitute the demos in precisely the right way. This argument was trying to save us from any need to stipulate appropriate principles for constituting the demos from the start. In the end, however, it requires us to be in possession of precisely such principles in order to assess the validity of its own claim that democratic politics will (re)constitute the demos in precisely the right way.

The only alternative I can see would be for someone running this line to insist that the “right way to constitute the demos” should be defined in purely procedural ways, and that democratic decision-making procedures invariably satisfy these procedural criteria, and furthermore that they do so regardless of the composition of the demos implementing them.12 It is a brave democratic theorist, however, who would go the “pure proceduralist” line, repudiating any substantive constraints on what counts as a democratic decision. It is an even braver one who would persist in that line, confronted with any conceivable decision-

11. Consider the analogy to Bayesian decision theory: it does not matter what prior probabilities people start with; as they update their beliefs in light of new evidence as it comes in, everyone will eventually converge on the same sets of beliefs over time, wherever they started from.

12. The most plausible version of that argument would perhaps be the “consent” argument: “people should rule and be ruled together with such people as they agree to rule and be ruled together with” (cf. Whelan, “Democratic Theory and the Boundary Problem,” pp. 24–28).
making group. Does anyone really imagine that a free and fair vote among the Hitler’s Cabinet would be sufficient for us to conclude that the German demos had been (re)constituted in just the right way?

C. Can It Really Not Matter?

Some commentators seem resigned simply to accepting that democratic theory is silent on the issue of how to constitute the demos. Most are mildly embarrassed by the fact and tiptoe lightly around it. A few—Schumpeter conspicuously among them—trumpet the fact that we must “leave every populus to define [it]self” on whatever basis it chooses:

[I]t is not relevant whether we, the observers, admit the validity of those reasons or the practical rules by which they are made to exclude portions of the population; all that matters is that the society in question admits it. . . . In a commonwealth of strong religious conviction it may be held . . . that dissent disqualifies or, in an anti-feminist commonwealth, sex. A race-conscious nation may associate fitness with racial considerations. And so on. 14

Schumpeter does not approve of any of those exclusions, necessarily. He merely wants to say that we cannot “call such societies undemocratic” by virtue of those exclusions alone.

For Schumpeter and those following him, “characteristics . . . associated with democracy” pertain purely to how decisions are made, not to who makes the decisions. For Schumpeter and those following him, any group that “makes decisions in a democratic way” counts as a democracy, however that group is itself constituted.

Most democratic theorists, however, are not as prepared as Schumpeter to bite the “incompleteness” bullet quite so hard, and to follow it quite so far in endorsing “anything goes” conclusions when it comes

13. Whelan, e.g., writes, “Boundaries comprise a problem . . . that is insoluble within the framework of democratic theory, and . . . democracy is practicable only when a historically given solution of this issue (justifiable or not, by some theory other than democratic theory) is acceptable. The following argument to this effect is not intended to discredit democratic theory, but only to establish one of its inherent limitations” (‘Democratic Theory and the Boundary Problem,” p. 16).

to constituting the demos. Robert Dahl protests, in uncharacteristically purple prose, “the absurdities to which we may be led by the absence of any criterion for defining the *demos*.” He offers a litany of telling *reductios*:

Suppose that in the [American] South, as in Rhodesia or South Africa, Blacks had been a preponderant majority of the population. Would Schumpeter still have said that the Southern states were “democratic”? . . . If the rulers numbered 100 in a population of 100 million, would we call the rulers a demos and the system a democracy? . . . Or suppose that the Politburo were internally democratic, and ruled by the party, which ruled over the State, which ruled over the people. Then the members of the Politburo would constitute the Soviet *populus*, and the Soviet State would be, on Schumpeter’s interpretation, a democracy.15

**D. Tracing Shared Roots**

Notice that Dahl is not simply saying that those ways of constituting the demos are evil or immoral or absurd or preposterous. He is suggesting instead that they are “not democratic.” That, in turn, is to suggest that there are indeed principles somehow internal to the standards of democracy for preferring the demos be constituted one way or another, even in the first instance.

Recall the logical conundrum that tempted us to think otherwise. It is logically incoherent to let the composition of the initial demos be decided by a vote of the demos, because that demos cannot be constituted until after the demos votes. “Ordinary democratic ways of making decisions”—voting and such like—cannot therefore be used to make decisions about how to constitute that initial demos. We need to constitute that initial demos on the basis of some principles other than those.

Might we find some connection, however, one level down, between the “how” and the “who” of democratic politics? Might our standards of what are “democratic ways of making decisions” and of what are “democratic ways of constituting the demos” both be derived somehow from one and the same underlying principle? If so, what might that principle be?

In looking for hints, we might begin by examining the bases upon which real-world demoi are most commonly constituted. Territoriality, nationality, and history—“blood and soil,” as the slogan goes—16—are undoubtedly the most common. There is no principled reason for settling on any of those, in and of themselves. It is arbitrary, from a moral point of view, where we draw the lines on the map. It is arbitrary, from a moral point of view, to whom we happen to feel sentimentally attached or with whom we happen to share a common history or ancestry.

What makes those factors matter, in ways that justify constituting our demoi around them, is the way that those factors lead to people’s interests being intertwined. Geographically, people who live in close proximity to one another are typically (if not invariably) affected by what one another does. People bound by shared histories or nationalities typically (if not invariably) care about what one another does and conceive their interests as being affected by that. The reason we think that territorial or historical or national groups ought make decisions together is that, typically if not invariably, the interests of individuals within those groups are affected by the actions and choices of others in that group. Those common reciprocal interests in one another’s actions and choices are what makes those groups appropriate units for collective decision making, at least in a rough-and-ready way.17

Rough-and-ready, because (as flagged by the recurring qualifier, “typically if not invariably”) the correlation between territoriality or nationality or history and shared interests is far from perfect. Not every person who lives in a given territory is affected by the actions and choices of every other person in that territory; not every person in the territory is


17. This is what defines a “people” that is to be “self-determining.” The convergence of views found among such a people is what sometimes gives credence to notions of a “common good” or “general will” that is sometimes taken to be required to ground the demos. See Cohen, Democracy, chap. 2; Sartori, Democratic Theory, chap. 2, and Theory of Democracy Revisited, chap. 2; J. S. Mill, Representative Government (London: Parker, Son, and Bourn, 1861), chap. 16; Brian Barry, “Self-government Revisited,” Democracy, Power and Justice (Oxford: Oxford University Press, 1989), pp. 156–86; and Avishai Margalit and Joseph Raz, “National Self-determination,” Journal of Philosophy 87 (1990): 439–61.
affected by every collective decision of the demos constituted on the basis of residence in that territory. Ditto for historical or national groups.

Constituting a demos on the basis of shared territory or history or nationality is thus only an approximation to constituting it on the basis of what really matters, which is interlinked interests.\(^\text{18}\) Sometimes the approximation is overinclusive, including in the demos someone whose interests are not affected by the decision of the demos (either in the case of this particular decision, or in general). Sometimes the approximation is underinclusive, excluding from the demos someone whose interests are affected by the decision of the demos (either in the case of this particular decision, or in general).

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

Such critiques can be extended even to the rule that “all those who will be bound by a rule should have a say in making the rule.” On the face of it, that looks like an attractive principle in its own right, with a robustly democratic pedigree traceable to the notion of what it is to “give laws to ourselves.”\(^\text{19}\) Yet (unless we illicitly equate “will be bound by” with “will be affected by”) that method of constituting the demos is invariably open to the same sorts of counterexamples that plague the others. Lots of laws have extraterritorial effects without having, literally, extraterritorial application. Imagine a German law that requires polluting factories there to build chimneys tall enough to ensure that their emissions fall to ground only in Scandinavia: legally, that law binds only manufacturers in

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19. Or, as Dahl phrases it, “the moral axiom that no person ought to be governed without his consent . . . ” (“Procedural Democracy,” pp. 112–13).
Germany; but it clearly affects Scandinavians, and is indeed designed to do so. Giving only Germans (the only ones who are literally “bound” by the law) a vote on the law, as the principle here in view envisages, would be adjudged fatally underinclusive in consequence.  

Protecting people’s interests is thus the most plausible candidate principle for bringing the “who” and the “how” of democratic politics into alignment. That principle dictates who should constitute the decision-making group (“all affected interests should have a say”). It also dictates how that group should be governed (“making decisions democratically,” which well-established results tell us is the best way to protect and promote people’s interests).

Is that principle for constituting the demos itself a democratic principle, or do both those strands of democratic theory derive from a principle that is not itself “democratic”? Well, arguably it is: the “all affected interests” principle is fundamentally egalitarian, counting all interests equally; and equal political power is arguably the cornerstone of democracy. But whether or not the “all affected interests principle” is itself a democratic principle—and hence whether we can truly be said to be constituting the demos on a “democratic” basis when adhering to it—is ultimately probably a purely terminological question of little consequence. What matters is that constituting the demos in that way is consonant with our settled views about what it is to “make collective

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20. Arrhenius, “The Boundary Problem in Democratic Theory,” p. 26. Examples of overinclusiveness are harder to produce, here, precisely because anyone who is bound by (subject to) a law is ipso facto affected by it. Yet consider transients, who are indeed bound by a country’s laws (at least for the duration of their stay in that country) but are not (sufficiently) affected by them over the long haul to deserve a say in making those laws. (This is to put a different gloss on Dahl’s example in “Procedural Democracy,” p. 123, n. 20 and Democracy and Its Critics, p. 128, n. 11.)

21. Or at least “have a right to have a say”: I leave it as an open question here whether democratic theory requires, or permits, making it obligatory for those who have such a right to exercise it.


decisions in a democratic way” at the procedural level. Both derive from a shared root, and both are linked in that way.

II. APPLYING THE “ALL AFFECTED INTERESTS” PRINCIPLE

“The Principle of Affected Interests is,” thus, as Dahl says, “very likely the best general principle of inclusion that you are likely to find.”24 In its most generic form, the “all affected interests” principle simply says that “everyone who is affected by the decisions of a government should have the right to participate in that government.”25

There are many possible fine-tunings of that basic “all affected interests” principle. Perhaps, for example, not every old interest ought automatically entitle one to a say in the matter; we may, for example, want to disenfranchise “external preferences” (at least when they take a malevolent rather than benevolent form).26 Perhaps other sorts of interests particularly entitle you to a say (when your basic needs or fundamental human rights are at stake, for example). Perhaps, for yet another example, people ought be given a say not simply if their interests are affected but also in proportion to the degree to which their interests are affected.27

All those finer details are interesting and important in the actual application of the “all affected interests” principle. For present purposes, however, I want to set all those to one side, in order to focus upon more fundamental issues that arise in choosing among various alternative forms of that principle.

24. Dahl, After the Revolution?, p. 64. Whelan thinks it is “perhaps the most intuitively plausible proposal,” even though he ends up rejecting it as “fundamentally untenable” (“Democratic Theory and the Boundary Problem,” pp. 16, 19).

25. Dahl, After the Revolution?, p. 64. It is often added: “and only those who are affected by a decision should have a say in it.” In Section III.A below, however, I argue that that clause can be safely omitted.


A. The “All Actually Affected Interests” Principle

According to what I shall call the “all actually affected interests” principle, the decision-making body should include all interests that are actually affected by the actual decision. This is probably the most common form of the principle. It can be quickly shown to be simply incoherent, however, in the same way it is incoherent to say that the electorate should be constituted from the outset by a vote of that self-same electorate.

The demonstration is straightforward. Notice first that whose interests are “affected” by any actual decision depends upon what the decision actually turns out to be. Notice second that what the decision actually turns out to be depends, in turn, upon who actually makes the decision. Hence the “all actually affected interests” principle suffers the same incoherence as discussed at the outset: it is unable to tell us who is entitled to vote on a decision until after that very decision has been decided.

Here is one example. Imagine we are in the process of democratizing an old feudal order, and the newly established House of Commons will henceforth be sovereign. The question now is, Who ought be entitled to vote for members of the House of Commons? Specifically: Ought we enfranchise nobles as well as commoners? The “all actually affected interests” principle instructs us to enfranchise everyone whose interests are actually affected by the decision that is actually made. If the decision is to exclude the nobles, then their interests will be affected: a House of Commons constituted in that way will (let us assume) enact legislation dispossessing nobles of their excess lands. If the decision is to include...
the nobles, however, then their interests will not be affected: they will (let us assume) have sufficient voting power to block seizure of their lands.\textsuperscript{30}

Here is another example. Imagine a U.K. referendum on the question, Should the United Kingdom transfer 5 percent of its GDP as restitution to its former African colonies get to vote in that referendum? On the “all actually affected interests” principle, they ought if their interests are affected by the outcome that actually occurs in that referendum. If the decision is to give them a vote, then interests are affected: there will (let us suppose) be enough African votes in favor of the proposal to swamp the British ones against it. If the decision is to deny the Africans a vote in that referendum, their interests are not affected: the referendum will fail (let us suppose) and they will be no better or worse off than they are at present.

The general point is just this: which interests are “actually affected” depends on who gets to vote. Hence it is incoherent to try to determine who should get to vote by asking whose interests are actually affected by the course of action actually decided upon. It is like the winning lottery ticket being pulled out of the hat by whomever has won that selfsame lottery.

\textit{B. The “All Possibly Affected Interests” Principle}

That, clearly, is an indefensibly narrow construal of what it is to “be affected.” Indeed, it is indefensibly narrow in two respects. First, it construes what it is to be affected as being “actually affected by the course of action actually decided upon.” Second, the “all affected interests” principle implicitly takes the status quo as a baseline, and supposes that your interests are affected by a decision if and only if the decision alters your position from that.

By any sensible standard, your interests are indeed affected by a decision to preserve the status quo if the alternative to doing that would have been to leave you far worse off than you are at present. You are surely “affected” in the relevant sense by a decision to compensate you fully for

\textsuperscript{30} The narrow, literal understanding of what it is to “be affected” upon which I am concentrating for the moment takes the status quo as the baseline, and assumes that a decision “affects” someone or something only if it causes deviations from the status quo. The expansive “possibilistic” construal to which I turn in the next section drops that assumption, which is obviously unduly restrictive.
property expropriated for some public purpose, rather than just taking the property without compensation. You would surely have been “affected” in the relevant sense by the decision to “open the floodgates and submerge your farm if there is another six inches of rain,” even if the rain stopped and the floodgates were never actually opened.

More generally, you are rightly said to be “affected,” not merely by the “course of action actually decided upon,” but also by the range of alternative courses of action from which that course was chosen. Furthermore, you are rightly said to be “affected,” not merely by what the consequences of that decision actually turn out to be, but also by what the consequences might have turned out to be. That is simply to say that we ought broaden our analysis of what it is to be affected by a decision to include anything that might possibly happen as a result of the decision. To decide what interests are affected in the U.K. referendum discussed above, we must therefore ask what interests would or could be affected by any possible outcome of that decision process. Even if the actual outcome of the referendum goes against the Africans, leaving them “unaffected” in the sense of “no better and no worse off than they are at present,” the decision nonetheless ought be seen as “affecting” them in a broader sense because, had it gone the other way, their interests would have been greatly advanced.

In the case of a referendum, it seems simple enough to determine what “any possible outcome of that decision process” might be. After all, there are only two boxes on the referendum’s ballot paper to choose between. The outcome of the referendum decision has to be either one or the other, either “Yes” or “No.”

Things might not be quite so simple even in that simple case. Although there are only two possible outcomes of the vote, it might not be straightforward determining who might possibly be affected and how much by each possible outcome of the referendum. People can disagree about that, too, giving rise to yet further hard questions. (Should “all affected interests” include anyone who believes his or her interests could or would be affected by some possible outcome of the decision process, or ought we limit it to those who really would?)

Let us set these complications aside, however, once again, to focus on a more fundamental matter.

That more fundamental issue is who gets to formulate the referendum question?—or to set the political agenda more generally? Clearly, that is a decision to which the “all affected interests” principle must be applied, as well. Yet once we do that, it turns out (on the “possibilistic” analysis I am here advocating) that we will have to give a say in that decision to anyone who might possibly be affected by any possible outcome of any possible question that might possibly appear on any possible ballot. That is, we will have to give a say to anyone who might possibly be affected by any possible decision arising out of any possible agenda.

By embracing all possible worlds, politically, this expansive conception of “all possibly affected interests” causes the franchise to balloon dramatically and the scope for legitimate exclusions to shrink accordingly. Virtually (maybe literally) everyone in the world—and indeed everyone in all possible future worlds—should be entitled to vote on any proposal or any proposal for proposals. A maximally extensive franchise, virtually (perhaps literally) ignoring boundaries both of space and of time, would be the only legitimate way of constituting the demos to this more defensible version of the “all possibly affected interests” principle.

III. AMENDMENTS AND EVASIVE MANEUVERS

As between those two, the “possibilist” version is the only coherent interpretation of the “all affected interests” principle, and that principle is the best one anyone has yet come up with for how to constitute the demos. The upshot, however, would be to extend membership in the demos to “all interests possibly affected by any possible decision under any possible agenda.”

For those who are uncomfortable with the idea of a genuinely global, timeless democracy, the challenge is to come up with some alternative:

either an alternative to, or an alternative formulation of, the “all affected interests” standard. Here I shall canvass three possible responses along those lines.

The first suggests an amendment to the “all affected interests” principle that, if accepted, would block the radical expansion of the demos suggested above. Upon closer inspection, however, there prove to be no grounds for that amendment. The second response suggests an amendment to the “all affected interests” principle that, if accepted, would reduce (but not eliminate) the expansionary tendencies of my argument above. One part of that proposal ought (usually) be accepted; but the remaining parts must be rejected, with consequences almost as expansionary as those sketched above. The third response suggests that the “all affected interests” principle be deployed for a different purpose, for specifying the decisional power of the demos, rather than for constituting the demos. The radical expansion of the demos is thus avoided, but at the cost of reducing the decisional power of the demos just as radically.

A. The “All and Only Affected Interests” Principle

The first response suggests that the “all affected interests” principle be construed as enfranchising all and only those whose interests are affected. Then the expansive rendering sketched in Section II.B could be blocked on the grounds that it falls afoul of the “and only” clause in that very principle itself.

Under the more expansive “possibilistic” rendering of the principle in Section II.B, virtually everyone would get a vote on virtually everything, virtually everywhere in the world. They would do so on the grounds that their interests could or would be affected by some possible outcome of some possible question that might be put on some possible ballot.

For a great many of those people, however, their interests will not actually be affected by the most likely outcome of any given ballot. Their interests may not even be affected by any possible outcome of the present ballot. Their interests might be affected by some possible amendment to the present proposal, or by substituting some other proposal for the present one. That is simply not going to happen, however.

33. Implicitly, “all and only actually affected interests”: thus raising all the objections discussed in Section II.A.
Their interests are simply not going to be affected by any possible outcome of the ballot presently taking place. Giving them a say in the matter, when it does not affect them, looks like a classic case of over-inclusiveness, judged according to the “actually affected” version of that standard, anyway.

Note in passing that even on that analysis, lots of people who are not currently entitled to vote should still be entitled to a vote: Lebanese in Israeli elections; Iraqis (and just about everyone else worldwide) in U.S. elections; and so on. Without doubt, those people are actually affected by the actual outcomes of ballots that are actually taking place there. So even without the “possibilistic” extension, merely an “all actually affected interests” principle would lead to some pretty radical extensions of many of the more powerful demois. That much is common ground between “actualist” and “possibilist” readings of the “all affected interests” principle. The issue between them is merely how far we should go beyond that already substantial extension of those demois.

Previous commentators have noted various inconveniences with the principle that “all and only interests that are affected should be enfranchised.” If “affected” is taken to mean “actually affected by the course of action actually decided upon,” then a different set of people would be affected by each different decision; and if the “all affected principle” enfranchises all and only those who are affected, that “would require a different constituency of voters or participants for every decision.” In consequence, “the status of fellow-citizens would not be permanent, . . . but would shift in relation to the issue proposed.”34 That sounds like bad news for a democratic polity. It may be a little less bad if we recall that already “there are 1,467 political entities in the New York Metropolitan Region.”35 Still, were a different decision-making unit required for literally every political decision, the proliferation would exceed that many, many times over.

This problem, notice, arises from the conjunction of the overly narrow “actualist” construal of what it is to be “affected,” together with an “all and only” version of the “all affected interests” principle. I have criticized

35. Dahl, After the Revolution?, p. 64.
the former already. Let me now turn a critical eye to the latter. In so doing, I will be arguing not so much that it is wrong as that it is unnecessary to add the “and only” rider to the “all affected interests” principle.

Here is what is at stake. If we can find good grounds for dispensing with the “and only” rider, then overinclusiveness would cease to be a problem, although of course underinclusiveness would remain problematic. An “all (but not necessarily only) affected interests” principle would require us to make sure that anyone whose interests could or would be affected is included. It would make no objection, however, to including, as well, various people whose interests are not affected. Notice that the most reliable way of ensuring that no one who should be included is excluded is simply to include everyone.36 Were there no objection to including people whose interests might not be affected, that would clearly be what we should do for the sake of ensuring we do not omit someone who ought be included. That in turn would yield a demos that was stable, in the sense that its composition would not change from issue to issue.

What argument might be given for thinking that overinclusiveness is not a problem? The best one is as follows. Suppose that people vote one way or the other purely on the basis of their interests (remembering the expansive construal of “interests” I am working with here, embracing sentiments as well as material interests). Now suppose that people are required to vote on some issue that does not affect their interests. How will they vote? Randomly, given the first hypothesis. Remember furthermore: a large number of people voting randomly distribute themselves equally across all options, leaving the overall outcome unaltered.37

It makes no difference to the political outcome, therefore, if we enfranchise people whose interests are not affected. All that we have to

36. As Arrhenius observes, “there is an obvious end to the regress: when everybody is included” (“The Boundary Problem in Democratic Theory,” p. 22).

37. Assuming decisions do not require any “special majority.” If only 1,000 of 1,001,000 voters are affected, and all those affected support the proposal, the statistically expected outcome of the ballot would be 501,000 for and 500,000 against. The proposal would be enacted if voting were by simple majority rules, but it would fail if, e.g., a two-thirds majority were required, despite the fact that it got well over two-thirds of those who actually had a stake in the matter.
worry about is ensuring the inclusion of everyone whose interests are affected. Omitting them can change the outcome, and from the viewpoint of the “all affected interests” principle change it for the worse. Including those whose interests are not affected does not.

Restricting the “all affected interests” principle to “all and only affected interests” can thus be rejected as otiose. If the purpose of the “all affected interests” principle is to ensure protection of affected interests, there is no need to add the “and only” clause. On the contrary, if we want to be sure of protecting “all affected interests,” we have good reason to err on the side of overinclusiveness, with the expansionary effects on membership in the demos noted above.

B. The “All Probably Affected Interests” Principle

In Section II.B, I argued that the “all affected interests” principle requires us to include in the demos every interest that might possibly be affected by any possible decision arising out of any possible agenda. Those wanting to resist any such radical extension of the demos might try to do so, secondly, by substituting “probably” for “possibly” in that formulation.

They might begin by putting pressure on the notion of “possibility” at work there. Consider analogous issues arising in connection with the Precautionary Principle in environmental policy making. One strong formulation of that Principle would be this: if we know that it is possible that a certain course of action might lead to a major catastrophe, but we do not know how probable that is, we ought treat that catastrophic outcome as if it were certain until we have sufficient evidence about probabilities to justify doing otherwise.38 There are limits, though, on what can count as “possible” for purposes of triggering even so strong a Precautionary Principle as that. It is logically possible that the laws of physics might have been other than they actually are, for example; but “possibilities” arising under laws of physics governing some possible world very different from our own actual world are surely insufficient to trigger the

Precautionary Principle.39 So too, most people would say, are possibilities below “a certain threshold of scientific plausibility.”40

Critics of the Precautionary Principle, like those of the “maximin” rule that it mimics, insist more generally that we ought decide on the basis of probabilities, not sheer possibilities. Recall Harsanyi’s famous riposte to Rawls:

If you took the maximin principle seriously you could not ever cross the street (after all, you might be hit by a car); you could never drive over a bridge (after all, it might collapse); you could never get married (after all, it might end in disaster); etc. If anybody really acted in this way he would soon end up in a mental institution.41

Sooner than Harsanyi imagines, perhaps, since “refusing to do [each of] those . . . things has worst-case scenarios of its own (including death and disaster).” In Sunstein’s view, that renders the Precautionary Principle “literally incoherent. . . . [Because] there are risks on all sides . . . it forbids the very steps that it requires. . . . [T]he Precautionary Principle forbids action, inaction, and everything in between.”42

39. “Ordinarily we think of possibility as an all-or-nothing matter,” David Lewis observes. “Given the notion of comparative overall similarity of worlds, however, there is a natural comparative concept of possibility. It is more possible for a dog to talk than for a stone to talk, since some worlds with talking dogs are more like our world than is any world with talking stones. It is more possible for a stone to talk than for eighteen to be a prime number, however, since stones do talk at some worlds far from ours, but presumably eighteen is not a prime number in any world at all, no matter how remote,” Counterfactuals (Cambridge, Mass.: Harvard University Press, 1973), p. 52. Strictly speaking, therefore, in specifying what is or is not “possible” for purposes of the Precautionary Principle or my “all possibly affected interests” principle, we ought think in terms of some “threshold” defined in terms of degrees of similarity in certain relevant respects to our actual world; and the dimensions in which we would demand above-threshold similarity, in order to call something “possible” for these purposes, would include the laws of nature, logic, and metaphysics (but would conspicuously exclude political or social arrangements).


42. Sunstein, Laws of Fear, pp. 111, 4.
From discussions of the Precautionary Principle and the maximin rule, we have thus learned to talk in terms of “probabilities” rather than mere “possibilities” wherever we reasonably can. Can that sort of thought help avoid the radical expansion of the demos to include every interest that might possibly be affected by any possible decision arising out of any possible agenda?

“Possibly” figures in that “all possibly affected interests” formula at three distinct places. There is only one, I think, at which it might plausibly be substituted by “probably.” What agendas are probable, and what outcomes under them are probable, is a function of who has voting power within the demos. That being so, however, it would be incoherently circular to let who is a member with voting power in the demos depend on what is probable in those two ways. (That is just like saying, “The person who draws the winning number out of the hat is the person who wins that very draw,” once again.)

That leaves only one place in the formula where “probably” might plausibly replace “possibly”: that concerns the question of whether the interest in question would actually be affected (by any of the possible decisions arising out of any of the possible agendas). That is exactly the sort of issue giving rise to arguments over the Precautionary Principle and maximin; and the right answer here is whatever the right answer there turns out to be. Most of the time, we ought indeed judge that sort of issue on the basis of probabilities rather than possibilities alone. Where (as occasionally happens) we have no reliable probability information, however, we are forced back to reliance on possibility-based reasoning of some sort or another.

How much would it help to replace “possibly” with “probably” at only one of the three places it appears in the formula? Membership in the demos, on that revised account, ought extend to every interest that would probably be affected by any possible decision arising out of any possible agenda.

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43. “Reasonably can” rather than “possibly can,” because even if you have absolutely no evidence bearing on probabilities it is always possible for you to assign subjective probabilities completely groundlessly. If subjective probabilities are completely (or very substantially) groundless, however, it is not at all clear that we are better off thinking in those terms than we are thinking in terms of possibilities.

any possible agenda; and “any possible decision” and “any possible agenda” still seem likely to expand the demos very substantially indeed. Restricted as it (usually) is to interests that “would probably be affected,” the revised formula might not extend membership in the demos quite as far as the version of the formula that operated in terms of “possibly” rather than “probably” at that point. Yet even the revised formula seems highly expansionary.

C. Limiting the Decisional Power of the Demos

Ordinarily, the “all affected interests” principle is taken to be a standard for defining the scope of membership in the demos. Alternatively, or additionally, it might be used to delimit the scope of the “decisional power” of the demos.46 There are of course many other things (human rights, for example) that might also legitimately limit the decisional power of the demos. Even if, per the “all affected interests” principle, we give a vote to everyone who is affected, that does not necessarily imply that the demos is empowered to decide by voting upon everything that affects its members. You may be affected by (or anyway have preferences over) what I read or the color I paint my bathroom, but I have a right to decide those matters myself without intervention of your “nosy” preferences.47 Those who would want to resist the implication that the “all affected interests” principle should give workers (and consumers and neighbors and even competitors) a right to have a say in the operations of a firm that affects them would presumably try to point to some analogous right to “privity” within the firm.

In introducing his initial discussion of the “all affected interests” principle, Dahl recalls the old U.S. Revolutionary-era slogan, “No taxation without representation.”48 One way of meeting that demand would have been to give U.S. colonists seats in the U.K. Parliament responsible for

45. When henceforth I refer to my preferred “possibilist” version of the “all affected interests” principle, it is to this revised version that I shall be referring.
46. Whelan, “Democratic Theory and the Boundary Problem,” p. 20 canvases a version of this.
enacting the taxes in question. That is what is suggested by the “all affected interests” principle as I have been discussing it up to this point. But a second way of meeting that demand (and what one suspects the U.S. colonists really wanted) would have been for the U.K. Parliament to refrain from enacting taxes that apply to people like them who lacked representation in that Parliament.

The “all affected interests” standard can thus be satisfied in either of two ways. One is by expanding the franchise, giving a say to all those who would be affected. Another is by restricting the power of the demos, so it is only allowed to make decisions that affect only those who do have a say.

The “decisional power” version might, on its face, seem to be the more modest proposal, since the first entails a radical expansion of the demos whereas the second requires merely restraint on the part of the demos. Such appearances are misleading, however. The second version is every bit as radical as the first, and for just the same reason. Indeed, it threatens to deprive the demos of virtually all power to make any decisions whatsoever, unless the demos already includes “all affected interests” defined in the expansive “possibilistic” way.

On the second “decisional power” version of the “all affected interests” principle, a demos would be empowered to make only decisions that affect its own members, and no one else. Notice, however, that on the expansive analysis of what interests might be “possibly affected,” any given decision is highly likely to affect a great many interests, at least some of which are likely not to be included in any relatively restricted demos. On this “decisional power” reading of the “all affected interests” principle, any restricted demos would be debarred from making those sorts of decisions, which, empirically, seems to be most decisions.

The upshot of the previous analysis was that virtually everyone, regardless of spatial or indeed temporal location, should be included in the demos. The upshot of the present analysis is that, if they are not, then the “decisional power” version of the “all affected interests” principle would debar the demos from making virtually any decisions at all.

IV. GETTING REAL

Dahl concludes his own initial discussion of these issues, saying,
By now you may be troubled by the thought that the [all affected interests] principle has unlocked Pandora’s box. Very likely it has. . . [I]t forces us to ask whether there is not after all some wisdom in the half-serious comment of a friend in Latin America who said that his people should be allowed to participate in our [U.S.] elections, for what happens in the politics of the United States is bound to have profound consequences for his country.49

Dahl cautions us not to dismiss the jest out of hand.50 Labeling the observation “half-serious,” however, leaves it hovering uneasily in that infamous argumentational no-man’s land between QED and reductio.

If (as I believe to be the case) the “all affected interests” principle is the best principled basis upon which to constitute the demos, and if (as I have argued) the best interpretation of that principle is the expansive “possibilist” form, then it does indeed provide good grounds for thinking that (at least in principle) we should give virtually everyone a vote on virtually everything virtually everywhere in the world.

If, as many would insist, that is wildly impractical then we need to begin thinking what arrangements might best approximate that ideal in some practice that is feasible. The territorially defined state is the form most commonly found in practice. For the sake of argument, let us assume that that is so for good practical reasons. Indeed, let us assume that the territorially defined state is the most practical form. Let us then proceed to ask, “What overlays do we need to superimpose on a system of territorially defined states to approximate as closely as possible to the ideal of genuinely including ‘all possibly affected interests’ via a universal franchise worldwide?”

Here I shall suggest two possible overlays on the existing state system for doing that. Both leave territorially defined states of the familiar sort in place. One would put a layer of “world government” over the top of them, giving people a right to appeal over the heads of territorial states if their interests were affected by actions of territorial states in which they have no say. The other, more modestly, would put a layer of “international law” over the top of territorial states, imposing an obligation on

50. “Do not dismiss his jest as an absurdity. In a world where we all have a joint interest in survival, the real absurdity is the absence of any system where that joint interest is effectively represented” (Dahl, After the Revolution?, p. 67).
territorial states to honor claims for compensation from people and peoples whose interests have been affected by actions of territorial states in which they have no vote.

A. Upward Appeal, Higher Authorities

Even the most dewy-eyed cosmopolitans rarely envisage a centralized, unitary government issuing worldwide diktats from some Capital of the World. The proposal is almost always for a “world government, federal in form.”

Here, in slightly stylized form, is how federal systems in general are supposed to work: Lower-level governments do what they can do well, without undue impact on people in other jurisdictions. Things that lower levels of government cannot do well, or that cut across jurisdictions, are kicked up to higher levels of federal authority, however.\(^{(51)}\)

Wherever decision problems are “decomposable,” we can without loss assign component parts of the problem to distinct subsystems that do not interact with one another, without any higher-level system interfering.\(^{(52)}\) Some political decisions are like that. For purposes of making those sorts of decisions, we truly can carve up the political universe into distinct self-governing units and let them rule themselves without reference to other such units and without interferences from any higher-level units. If all political decisions were like that (or back when they all were, assuming there ever was such a time), the familiar sort of territorial state would be all we would need, and there would be no need for a federal overlay on that system of territorial states.

Insofar as political decisions are not like that—insofar as the decisions made in one territorial unit affect the interests of people and peoples in other territorial units (as increasingly they do)—we need some system for “internalizing” those externalities, making those agents who cause the effects somehow responsible for the consequences of their actions. That would be the role of the upper tier of government in a federal system: to entertain and adjudicate complaints from people and peoples


in one jurisdiction whose interests are affected by activities in other jurisdictions in which they had no vote.

I confess that I cannot see at all clearly how exactly that would work to solve the problems here in view, unless the upper tier of government were itself somehow answerable to a demos comprised in the maximally expansive way that (for the sake of the present argument) I have been assuming to be impracticable. Still, maybe it is only impracticable to organize a demos in that maximally expansive way if the demos in question is going to be charged with making lots of decisions.

Maybe most of those impracticality worries would drop away, once we have agreed to most of the day-to-day decisions to the existing territorially based states, treating the upper tier of government as basically a court of appeal that will adjudicate only very occasional cases. Whether or not that is plausible depends upon exactly what impracticality worries there were with directly implementing the expansive “all possibly affected interests” ideal in the first place. Exploring that further would require a different sort of inquiry; here I merely flag that as something to explore, as part of any such inquiry.

B. Lateral Claims to Compensation

Interpreting the “all affected interests” principle as delimiting the “decisional power” of the demos—as saying that it has power to make only those decisions that affect no one except members of that demos—would in effect prohibit the demos from making any decision that has trans-boundary spillovers.53

Concern with such spillovers is common among political economists and policymakers alike. “Externalities,” public economists say, distort public decisions. They are keen that they ought be “internalized.” Note well, however: their ordinary injunction does not prohibit activities altogether that have external effects. Instead their injunction is merely to “internalize” externalities, making sure that those who produce external costs for others reimburse them, and that those who produce external benefits for others are reimbursed by them.

Likewise in international law, the rule is not “no spillovers” but, rather, “no uncompensated spillovers.” Insisting that no jurisdiction may

do anything that affects any other would be unrealistically restrictive. Almost anything we do has some effects on others beside ourselves alone. International law, like public economics, is perfectly content that we should do so, just so long as we compensate others who are affected by our actions and choices.

What is adequate compensation, and who gets to say what is adequate, are tricky questions. Difficulties in reaching a mutually agreeable resolution may constitute good pragmatic reasons for trying hard not to do anything that affects outsiders (even while knowing that it will never be possible to achieve that goal completely). The point remains that the basic rule in international law and public economics is something less than is proposed under the “decisional power” interpretation of the “all affected interests” principle. There is no prohibition on affecting interests that have no say. International law and public economics require, instead, simply that any interests that are affected ought be compensated. They insist, however, that precisely because they have no say—precisely because these are in that sense external effects—these effects must be compensated.54

What form of compensation (if any) is appropriate for righting any particular sort of wrong is a further and deeper question. Sometimes we can provide recompense “in-kind”: monetary damages for monetary losses. Typically in tort law, however, we have to provide compensation in a form that differs in kind from the form of the losses being compensated. In such cases, there is always a question whether any amount of compensation can “make the victim whole” again.55 That question arises with particular poignancy when the wrong involved is wrongful exclusion from the franchise.

For that reason, the compensation strategy is probably third best, after genuinely “enfranchising all possibly affected interests” worldwide, and after “world government, federal in form.” Still, third best is better than nothing.

54. Governments can, and regularly do, pass laws that help some people and harm others within their jurisdiction, without any requirement of compensation. It is only cross-jurisdictional effects that require compensation, under international law. For examples and further references, see Robert E. Goodin, “What Is So Special About Our Fellow Countrymen?” Ethics 98 (1988): 663–86.
V. CONCLUSION

The democratic ideal ought ideally be to enfranchise “all affected interests.” Understood in a suitably expansive “possibilistic” way, that would mean giving virtually everyone everywhere a vote on virtually everything decided anywhere.\(^5^6\)

Maybe that is not practical, for one reason or another. Maybe we will have to fall back on one of the more modest approximations just discussed. Yet even the more modest of those fallbacks still have important consequences.

Even if we only insist upon compensation being paid to people whose interests are affected by activities in other jurisdictions in which they do not have a vote, that would give rise to claims across borders far beyond anything we see at present. Purely as a matter of democratic third best, the price of not enfranchising everyone we ideally should is that we would have to pay them off for any harms we inflict upon them and accede to their demands for fair recompense for any benefits we derive from the wrongfully disenfranchised.

Were we all making joint decisions together within a single demos, we would be democratically entitled to impose costs and confer benefits upon one another as part of our ongoing life together. If people whose interests we affect are kept outside our demos, we are obliged—by principles of democracy, as well as ones of justice and humanity—to settle up.

\(^5^6\). And it might mean that we ought take such votes on lots more than we presently do, including the activities of firms and so on.