

Democratic Boundary Problems

Philosophical Inquiries into Peoples, Elections and Territories

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Introduction

Democratic theorists have long assumed an alignment between democratic and territorial boundaries. This assumption has dictated the demarcation of the boundaries of the *demos*, which define who has a right to participate in democratic decision-making. For example, the right to vote has traditionally been reserved for the resident citizens of the nation-state. The assumption has also led to an uncritical acceptance of the boundaries of *electoral constituencies* (or *electoral districts*), which determine the subsets of the enfranchised population that are eligible to elect a certain number of representatives for the legislature. These boundaries have historically been drawn along geographic lines, structuring electoral participation around geographic districts within the nation-state.

However, the traditional nexus between democratic and territorial boundaries has recently come under scrutiny, due to globalisation, increased immigration and digitalisation.¹ First, global challenges, such as climate change and growing economic inequalities, have highlighted the limitations of confining democratic politics to the territory of the nation-state. This has sparked a surge of interest in global and transnational forms of democracy. In particular, it has prompted a debate on whether decisions regarding climate change and

¹Miller (2009) also mentions the issue of secession. This is, however, not a reason to question the nexus between democratic and territorial boundaries but rather to question whether a larger nation-state should be broken up into smaller geographical units. Furthermore, the problems of persistent minorities and majority tyranny also arise in discussions on democratic boundaries. The geographic boundaries of electoral constituencies are criticised for diluting the votes of minorities (e.g., Guinier 1994: 119-156) and the boundaries of the *demos* are assessed by their effects on minority rights (cf. Cabrera 2014; Christiano 2006).

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global wealth inequalities should continue to be mediated through national governments or whether there should rather be more direct involvement of virtually everyone around the world in the decision-making process.² Second, an increase in immigration has disrupted the traditional link between residency and voting rights within the nation-state. This has raised the question whether expatriates should maintain the right to vote in their home country and whether resident non-citizens should obtain a right to vote in their host country. It has also led to a debate on the democratic legitimacy of immigration and border laws, in which it has been argued that all prospective immigrants should be included in the decision-making on those laws.³ Third, technological advancements have created the possibility of a “digital democracy”, wherein active participation is no longer bound by geographic proximity. Technological advancements have also paved the way for democratic innovations that utilise sortition methods to select participants from different geographical areas, thereby making engagement in collective deliberation and participation independent of one’s area of residency. Examples include lottocratic assemblies and random electoral constituencies.⁴

This PhD dissertation contributes to the literature in political philosophy that addresses the question whether democratic politics should be conducted within the confines of a specific geographical area. It consists of two parts, each consisting of two chapters. The first part explores the relationship between the boundaries of the demos and the territorial boundaries of the nation-state, and the second part examines whether electoral constituency boundaries should be geographically-defined.

²See, for example, Goodin (2022) on the waning significance of geographic proximity due to globalisation.

³See, for example, López-Guerra (2005; 2014: 83-109) on whether expatriates should have a right to vote and Abizadeh (2008) for an argument why democratic legitimacy requires a global demos on immigration laws.

⁴Rehfeld (2005) was the first to advocate for the idea of random electoral constituencies.

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1.1 THE BOUNDARIES OF THE DEMOS

The first *democratic boundary problem* addressed in this dissertation concerns the constitution of the demos or “people” who are entitled to govern themselves democratically.⁵ This problem has practical implications for the direction that democratic decisions take. For example, if prospective immigrants were included in decision-making on immigration laws, democratic states would likely not control their borders by building walls and fences. And if a democratic decision on the secession of Northern Ireland from the United Kingdom solely involved Northern Irish citizens, it would be much more likely to pass than if it also included citizens from other regions of the United Kingdom.

The problem of constituting the demos also presents a dilemma regarding the legitimacy of democratic governance. The dilemma follows from a purely procedural understanding of democratic legitimacy. According to this understanding, the demos can only be legitimately constituted through a democratic decision *and* this decision must be taken by a demos that is itself not disputed (Maltais et al. 2019: 445). The dilemma then unfolds as follows: Since the demos cannot constitute itself, the democratic decision on its constitution must be handed over to another democratic body but that subsequent body can only be legitimately constituted through a democratic decision which is again made by another democratic body and so forth, setting in motion an unending sequence of decisions on the constitution of various demoi. As Kevin Olson (2007: 331) observes, the dilemma is *regressive* in nature: ‘There is an infinite regression of procedures presupposing procedures, each necessary to form the procedure following it.’ As a consequence, it is impossible to democratically decide who legitimately make up the demos.

Without a solution to this dilemma, democratic theorists have to ‘leave it to every *populus* to define [it]self’, as Joseph Schumpeter (1943: 219-220) has conspicuously suggested. But that is far from desirable. It would effectively

⁵ Goodin (2007: 40) first coined it a problem of ‘constituting the demos’. It is also referred to as ‘the problem of inclusion’ (Dahl 1989: 119) or, generally, as ‘democracy’s boundary problem’ (Miller 2009: 201; Whelan 1983: 13).

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justify historical injustices, such as the disenfranchisement of women in the 18th century, as being consistent with democracy because the dominant group decided so. Under this logic, any future decision by a majority to disenfranchise women cannot be discharged as undemocratic. Similarly, the political exclusion of Black voters in the American South cannot be called undemocratic. As Robert Dahl (1989: 122) has pointed out, this line of thinking implies that the ‘demos can be a tiny group that exercises brutal despotism over a vast subject population.’ It blurs the lines between democracy and autocracy, rendering the distinction conceptually, morally, and empirically meaningless.

Below, I explore various approaches to the dilemma. The approach that I take in this dissertation makes use of *principles of democratic inclusion* to solve the dilemma and to draw the boundaries of the demos. Additionally, I provide an overview of the ongoing debate concerning these principles. After outlining the current state of the political philosophy literature on the legitimate constitution of the demos, I conclude by discussing the contribution that the two chapters in the first part of this dissertation make to that literature.

1.1.1 *Circumventing or Asserting the Dilemma*

Some democratic theorists consider it impossible to solve the dilemma concerning the legitimate constitution of the demos on the basis of democratic standards (e.g., Dahl 1970: 45; Honig 2007: 1; Whelan 1983: 13). They claim that democratic theorists have to accept that territorial and, relatedly, democratic boundaries are determined by a history of morally arbitrary forces (Näsström 2003: 819). As Carmen Pavel (2018: 319) elegantly put it, they are ‘but arbitrary lines in the sand, whose contours have been changed by the shifting winds of historical accident, the arbitrary whim of powerful nations, and wars of conquest and colonialism.’⁶ If the dilemma cannot be solved, two approaches

⁶For example, in his critique of nationalism, Habermas (1998: 116) claims that ‘recourse to the “organic” nation can conceal the contingency of the historically more or less arbitrary boundaries of the political community and can lend them an aura of imitated substance and “inherited” legitimacy.’ It should be noted that the people of a nation are not equivalent to the demos, which describes the enfranchised people. Membership in the latter is usually dependent on specific requirements such as age, residency, mental capacity and criminal status (Maltais et al. 2019: 442).

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to the dilemma remain: circumventing or asserting it.⁷

The dilemma can be circumvented by arguing that the boundaries of the demos should not be submitted to the demands of legitimacy. Following this approach, we simply have to accept the boundaries that we have, as any changes to those boundaries would be equally arbitrary, and we should proceed with questions of legitimacy and justice within existing boundaries. This approach assumes a separation between the forces of history and the subjects of legitimacy, such that questions of legitimacy begin where history ends. It has been endorsed by several prominent theorists. For example, Michael Walzer (1983: 39) cautions against redrawing boundaries because ‘to tear down the walls of the state is not (...) to create a world without walls, but rather to create a thousand petty fortresses.’ Similarly, John Rawls (1999: 39, n. 48, 86, cf. 26) simply assumes societies to be ‘closed and self-contained’, because fixing on the arbitrary nature of their boundaries would be to ‘fix on the wrong thing’ given that, ‘in the absence of a world state, there *must* be boundaries of some kind.’⁸ And Jeremy Waldron (1999: 299-300, *emph. added*) argues that, in the case of a contested decision on (dis)enfranchisement, ‘we are left in a *legitimacy-free* zone in which the best that we can hope for is that a legitimate democratic system emerges somehow or other (...) [as] it is not open to us to use any communal criterion of legitimacy at all.’

However, by drawing a line between history and legitimacy, proponents of this approach fail to recognise that debates over the constitution of the demos are ongoing. Indeed, the delineation of democratic boundaries is among the most contested practical problems in contemporary democracies (Bauböck 2018: 5). Those theorists who want to circumvent the dilemma of constituting the demos seem to suggest that contemporary contestations over democratic boundaries are ultimately historical events that await a resolution, but such debates will continue to arise in many different circumstances, not just in the

⁷These two approaches are also distinguished by Ochoa Espejo (2014: 473-474) and Donahue and Ochoa Espejo (2016: 150-152).

⁸Rawls also confirms his position in other work: In *A Theory of Justice* (1971: 7,12) and *Political Liberalism* (2005: 12,136), he assumes society to be a ‘closed system’, which ‘we do not, and indeed cannot, enter or leave (...) voluntarily’ and therefore brackets the question of the legitimacy of a society’s boundaries.

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context of globalisation, increased immigration or digitalisation. The assumption that there is an end to the contestation over the constitution of the people thus risks throwing us into ‘a perpetual state of exception’ (Näsström 2007: 645).

The second approach to the purportedly unsolvable dilemma regarding the legitimate constitution of the demos does not circumvent but, rather, asserts the dilemma. It involves acknowledging that the legitimacy of democratic boundaries will always be contested. Following this approach, the idea that there is a separation between history and legitimacy is itself part of the contestation over the boundaries of the people: It is not a neutral observation but comes about only *because* those theorists stay committed to a procedural understanding of legitimacy (Näsström 2007: 646).

Asserting the dilemma is, however, also not a wholly satisfactory approach. Sofia Näsström (2007: 626) suggests that asserting the dilemma has progressive potential: It functions as a ‘generative device that helps to foster ever new claims for legitimacy.’ But there is no reason to think that a perpetual state of contestation leads to progression rather than regression. In fact, ongoing contestation over democratic boundaries is likely to erode democracy itself, as a relatively stable membership and some sense of solidarity among members of the demos may well be indispensable for making coherent and reasonably acceptable democratic decisions over time (Miller 2020b: 2, 7).

1.1.2 *Solving the Dilemma*

The criticisms on the two approaches as well as ‘the absurdities’ that may result from the absence of a solution to the dilemma, such as the democratic justification of women’s disenfranchisement, suggest that there is a democratic imperative to solving the dilemma regarding the legitimate constitution of the demos (cf. Dahl 1989: 121). Let me outline the two types of solutions to the dilemma that have been proposed in the literature, which I will call the *straight* and the *sceptical* solution, following Saul Kripke (1982: 66-67). Let me

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also explain why I follow the sceptical solution in this dissertation.⁹

The straight solution accepts the assumptions underlying the dilemma but shows that, on closer examination, the paradoxical result does not follow. Such a solution would accept the purely procedural understanding of democratic legitimacy, according to which the demos can only be legitimately constituted by a democratic decision, but could suggest that the initial decision on the demos is irrelevant as consecutive decisions will eventually lead to the right or correct composition of the demos. In this vein, Jürgen Habermas (2001: 774) argues that we ‘can break out of the circle of a polity’s groundless discursive self-constitution only if this process – which is not immune to contingent interruptions and historical regressions – can be understood in the long run as a self-correcting learning process.’

This straight solution ultimately relies on an empirical and a normative claim about the internal dynamics of democratic decision-making procedures: It relies on an empirical claim about how consecutive democratic decisions will naturally (re)constitute the demos, and a normative claim that this is precisely the right way to (re)constitute the demos. For example, proponents of the straight solution could suggest that democratic decisions on the boundaries of the demos have a natural tendency to expand those boundaries. However, to assert that this process results in a legitimate constitution of the demos, proponents must also offer some independent reasons for why a maximally extensive franchise is ultimately the right way to (re)constitute the demos. The straight solution thus cannot save us from any substantive considerations as to how the boundaries of the demos *should* be drawn (Goodin 2007: 44-46). Many democratic theorists have therefore turned to the sceptical solution, and this is also what I will do in this dissertation.

In contrast to the straight solution, the sceptical solution concedes that the dilemma is not straightforwardly solvable as the paradoxical result actually follows from the assumptions. Instead, the sceptic questions the very assumptions on which the dilemma is based.¹⁰ One of these assumptions is

⁹ Donahue and Ochoa Espejo (2016: 150-152) refer to the sceptical solution not as ‘solving’ but as ‘dissolving’ the dilemma, see also Ochoa Espejo (2014: 474-476).

¹⁰ In the context of another dilemma, Kripke (1982: 66-67) observes that ‘the value of the sceptical argument consists in (...) [showing] that an ordinary practice, if it is to be defended

that the demos can only be legitimately constituted in a purely procedural way. The sceptical response to the dilemma is to reject this assumption and to argue for replacing this purely procedural account of democratic legitimacy by a (partly) substantive account of legitimacy. This argument is based on the observation that there are certain procedure-independent criteria of democratic legitimacy. These criteria can also be referred to as *democratic values*.¹¹ One could think, for example, of political equality and autonomy. Such values play a crucial role in the justification of democratic procedures. In particular, as Charles Beitz (1989: 17-19) points out, democratic values constrain the reasons for favouring ‘one rather than another conception of fair terms of democratic participation’, which, in turn, forms the ‘basis for the design or reform of democratic institutions.’¹² The democratic legitimacy of a decision depends on whether the procedure is considered permissible in terms of the democratic values that justify the procedure in the first place (Maltais et al. 2019: 449-450). The legitimacy of a democratic decision would therefore be undermined if the boundaries of the decision-making demos come in conflict with the democratic values that provide us reason to use the procedure. The sceptic therefore concludes that democratic values determine whether certain exclusions from or inclusions in the demos are permissible. The sceptical solution to the dilemma then consists in showing that the legitimate constitution of the demos does not depend on whether a democratic *decision* is made on its composition but rather on whether its composition is *compatible* with

at all, cannot be defended in a certain way.’ Similarly, the sceptical response to the democratic dilemma shows that the constitution of the demos cannot and need not require a purely procedural justification.

¹¹ I use the term *democratic values* for those values that are used to justify democratic procedures. But, as Goodin (2007: 50) points out, it ‘is ultimately probably a purely terminological question of little consequence’ whether to label the relevant normative considerations “democratic”.

¹² It should be noted that the values can figure in an *instrumental* or an *intrinsic* justification of democracy. In the former case, democratic government is justified because it is the best means to further these values. In the latter case, democracy is justified because it is constituted by these values. This distinction is, however, complex and contested, see, e.g., Wall (2007) for a critique on intrinsic justifications of democracy. In this dissertation, I will evaluate how democratic boundaries should be drawn both for instrumental and intrinsic reasons, but I will not further delve into the instrumental/intrinsic distinction.

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democratic values.¹³

The sceptical solution describes democracy as a normative ideal. It is important to highlight that I consider democracy to be a *partial* rather than a *comprehensive* normative ideal. This means that democracy does not incorporate all possible values. The democratic values provide *pro tanto* but not *all-thing-considered* reasons to draw democratic boundaries in a certain way. These reasons must be balanced against and can be overridden by the reasons provided by other values. In other words, the democratic values tell us what composition of the demos would be democratically legitimate, but democratic legitimacy is only one dimension of political legitimacy. For example, we may think that the democratic exclusion of resident non-citizens (also referred to as *denizens*) is in tension with certain democratic values and thus compromises democratic legitimacy. But there may be other important non-democratic values, such as political stability, that support the exclusion of denizens. There is then a trade-off between democratic and non-democratic values. Whether political legitimacy requires the democratic inclusion of denizens depends on how one balances the reasons following from these different values (cf. Erman 2022: 245; Owen 2012: 148; Saunders 2011: 64-65).

The question arises whether, on the sceptical account, the making of a democratic decision can still contribute to the legitimacy of the constitution of the demos (Beckman 2019: 413). Suppose that a democratic decision is made to disenfranchise women by an initial demos, which is itself uncontested. Can the subsequent demos, which excludes women, make legitimate democratic decisions? The sceptic would argue that it cannot, because the composition of the subsequent demos does not satisfy the necessary substantive criteria. These criteria would remain necessary despite the fact that the demos was constituted by a democratic procedure. In fact, the democratic decision on the demos can be considered to have lacked legitimacy, even though it satisfied procedural standards, because its outcome violated necessary substantive standards. I cannot work out the complex relationship between the substantive

¹³The constitution of the demos must be *compatible* with substantive normative standards, it must not necessarily *satisfy* those standards, because those substantive normative standards may only give us inconclusive criteria for drawing democratic boundaries, see also Beckman (2019: 442).

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and procedural sources of legitimacy here, but I want to highlight that the sceptical solution leaves open the possibility that a democratic procedure *ought* to constitute the demos when its boundaries fall within a range of permissible inclusions and exclusions (Maltais et al. 2019: 449-450).

In this dissertation, I follow the sceptical solution to the dilemma of constituting the *political demos*, not necessarily the *pre-political demos*. Whereas the former refers to the people of a constituted polity, the latter refers to the people who determine whether to constitute a polity with a common system of laws and institutions.¹⁴ David Owen (2012: 145-147) proposes a two-stage resolution to the democratic boundary problem, where different substantive democratic criteria determine the legitimate boundaries of the pre-political and the political demos. This two-stage process is not necessary to specify the legitimate composition of the political demos but to determine whether to constitute a polity with a political demos in the first place. However, other theorists claim that democratic theory remains agonistic about the legitimate constitution of the pre-political demos (e.g., Pavel 2018: 332). The territorial boundaries of the polity or state are then arbitrary, in the sense that they are contingent on a history of arbitrary forces.

In the two chapters in this part, I explicitly rely on the existence of territorial state borders, which describe the jurisdiction where certain laws are made. Despite the potentially arbitrary nature of those territorial borders, they can still ground normative conclusions about inclusion in the political demos. After all, democratic values specify who should be included in the political demos *given* a certain jurisdiction that this demos governs. The contingency of the state borders thus does not undermine my normative conclusions on democratic inclusion. It only implies that if state borders would change, the laws would likely apply to different people and therefore the legitimate composition of the political demos would likely change (cf. Beckman 2023: 118-119).

Moreover, in Chapter 2, I show that the demarcation of the boundaries of the demos ultimately relies on a theory of territorial rights. Even if their boundaries are historically contingent, pre-political peoples may have certain normative entitlements over the territory that they occupy. I argue that those

¹⁴The terms ‘pre-political demos’ and ‘political demos’ come from Owen (2012).

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prior normative entitlements affect who should be included in the decision-making over exit and entry to that territory. Sofia Näsström (2011a: 129) rightly points out that the reference to historical peoples as a pre-political source of legitimacy is not neutral, just as the appeal to humanity as a whole by cosmopolitans is open to disagreement. She distinguishes a *positive* interpretation of peoplehood, which refers to a historical peoples, from a *natural* interpretation of peoplehood, which refers to humanity as a whole. While the sceptical solution solves the procedural problem of constituting the demos, it cannot solve the disagreement between territorial rights theorists and cosmopolitans on whether to use a positive or natural interpretation of peoplehood as a source of legitimacy. The chapter shows that this disagreement ultimately affects how democratic boundaries are drawn.¹⁵

1.1.3 Principles of Democratic Inclusion

The sceptical solution uses democratic values to determine what *principles of democratic inclusion* to use as the basis for defining the boundaries of the political demos. In the contemporary debate, the two most prominent principles of democratic inclusion are the *all-affected* and *all-subjected* principles:¹⁶

All-Affected Principle: All and only those whose interests are relevantly affected by a decision should be included in the decision-making.

All-Subjected Principle: All and only those who are relevantly subjected to a state's decisions should be included in the making of those decisions.

¹⁵ I do not think that an appeal to positive peoplehood creates a paradox of 'people and territory' (or tight circular relationship between people and territory), as Ochoa Espejo (2014) suggests, because it is an appeal to a pre-political demos and not to a political demos and, therefore, does not make territorial jurisdictions a function of the political demos.

¹⁶ Bauböck (2015: 825; 2018: 37-47) offers the *all-stakeholder* principle as an alternative more restrictive principle of democratic inclusion. According to this principle, a person must have a stake in being a member of the political community in order to have a claim to democratic inclusion. The principle thus concerns the relationship that citizens have to a particular political community rather than to a state and its decisions. In a similar vein, Bengtson (2022) has proposed an alternative *all-related* principle, according to which all who are socially related in the relevant way should be democratically included.

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The two principles determine *who* should be democratically included but do not necessitate their *equal* democratic inclusion. Some interpretations of the principles permit, or even require, democratic inclusion to the degree to which a person is affected by or subjected to the decisions. For example, Harry Brighouse and Marc Fleurbaey (2010) argue that political power should be distributed in proportion to the stakes (or degree of affectedness) of individuals in the decision under consideration, and Robert Goodin and Gustaf Arrhenius (2024: 13-19) discuss interpretations of the all-subjected principle that distribute political power in proportion to gradations of subjectedness.¹⁷ This observation forms the starting point of the argument in Chapter 3, which shows that the partial inclusion of certain resident non-citizens in domestic law-making is compatible with requirements of democracy.

The all-subjected principle is generally more restrictive in scope than the all-affected principle because, on most interpretations of relevant affectedness, being subjected implies being affected but not *vice versa* (Goodin 2016: 366; Miller 2009: 214). In the case of the all-affected principle, whether interests are deemed ‘relevantly’ affected depends on *which* interests are affected and *how likely* it is that they are affected. For example, in order to be ‘relevantly’ affected, do interests have to be ‘interlinked’ (Goodin 2007: 61-62) or concern ‘autonomously chosen life-plans’ (Angell 2020) and do they have to be *actually, probably or possibly* affected (Goodin 2007: 61-62; Owen 2012: 131-133)? In the case of the all-subjected principle, whether a person is deemed ‘relevantly’ subjected depends on the *range* of decisions to which she is subjected and the *type* of subjection. Some theorists have argued that a person must only be subjected to a specific decision (Goodin 2016: 384), must be subjected to a significant proportion of a state’s decisions (Miller 2009: 222) or must systematically and over time be subjected to a state’s decisions (Erman 2014: 538-541; Pavel 2018: 330-331). Furthermore, two types of subjection can be distinguished: *de facto* and *de jure* subjection (Abizadeh 2021b: 604; Valentini 2014: 792).¹⁸ A person is *de facto* subjected to a state’s decisions when she

¹⁷ See also Angell and Huseby (2020) and Valente (2022) for proportional interpretations of the all-affected principle.

¹⁸ See also Beckman (2014: 255-258; 2023: 17-25) and Goodin (2016: 370-372) for the distinction between *de facto* and *de jure* subjection. Observe that the two types of subjection

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is subject to the coercive powers of the state that enforce the decisions. By contrast, a person is *de jure* subjected to a state's decisions when she is subject to the state's legal duties or legal powers. In this dissertation, I will focus on *de facto* subjection and will be concerned with a body of laws, such as domestic and border laws, that has a broad enough range to subject to coercion on any of the interpretations of subjection.

The two principles of democratic inclusion do not need to be competitors. They can provide complementary solutions to the problem of drawing democratic boundaries, because they can regulate different decision-making functions (Bauböck 2018: 6; Erman 2022: 241; Magaña 2024: 9-10). Like many democratic theorists, I think that being subjected gives rise to a claim to having a say in decision-making, whereas being affected does not. Rather, affected interests give rise to a claim to having one's voice heard or having one's interests represented in the deliberation processes preceding decision-making. As Claudio LópezGuerra (2005: 223) observes, '[j]ustice may require (...) [taking] into account the interests of those who are likely affected. But being entitled to just treatment by other groups whenever our interests are at stake is quite different from being entitled to participate in the decision-making processes of those groups.' As such, the all-affected principle regulates a right to justification of decisions and not a right to participation in decision-making.¹⁹ I therefore focus on the all-subjected principle in this dissertation.

The two principles of democratic inclusion regulate different decision-making functions because they accommodate different democratic values. The all-affected principle can be considered to express the value of procedural fairness, as it ensures the public protection and promotion of relevant interests (Erman 2022: 249, 252-253). As such, the principle does not reflect the demo-

can also be considered in disjunction or conjunction. In the disjunctive interpretation, being either *de facto* or *de jure* subjected is sufficient to ground a right to political inclusion. In the conjunctive interpretation, a person has to be both *de facto* and *de jure* subjected to ground a right to political inclusion (Abizadeh 2021b: 604; Goodin 2016: 372, n.19). Furthermore, see Goodin and Arrhenius (2024) for a critical reconstruction of the different interpretations of the all-subjected principle.

¹⁹For this interpretation of the all-affected principle, see also, among others, Abizadeh (2012: 878) Bauböck (2018: 24); Beckman (2009: 45-46); Owen (2012: 137-139); Miller (2020b: 4); Saunders (2012: 292-293).

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cratic ideal of self-government. By contrast, the all-subjected principle can be grounded in values that are a constitutive of democracy, such as freedom as personal autonomy (Abizadeh 2008) and freedom from domination (Beckman and Rosenberg 2018). The principle follows from one of these freedom requirements because subjection to a state's laws compromises a person's freedom (as personal autonomy or as non-domination) and democratic inclusion is either *instrumentally* necessary to protect the freedom of the subjected person or *intrinsically* necessary for a justification of legal subjection that is consistent with the subjected person's freedom (cf. Abizadeh 2008: 42).²⁰ In this dissertation, I will consider the all-subjected principle in relation to both freedom as autonomy and freedom from domination.²¹

The two principles of democratic inclusion can *only* be derived from democratic values, not from the conception or practice of democracy. They cannot follow from the *conception* of democracy, as definitions do not settle any normative questions. If the charge of an "undemocratic" composition of a demos is meant to provide a reason for reform then it must be based on normative standards which tell us how democratic societies ought to be organized, rather than on definitional stipulations.²² They also do not seem to follow from the *practice* of democracy, as they do not actually align with contemporary practices. For example, while most existing democracies disenfranchise felons convicted of at least some crimes, teenagers below some age threshold and foreigners, prominent principles of democratic inclusion require these groups of people to be democratically included (Saunders 2011: 68-71).²³

²⁰ Alternatively, Miller (2020b) and Song (2012) appeal to political equality as a constitutive condition of democracy and solidarity as an instrumental condition of democracy. They argue that these values count in favour of a stable and bounded demos. See also Abizadeh (2007: 324) on the distinction between constitutive and instrumental conditions.

²¹ Chapter 2 focusses on the all-subjected principle in relation to freedom as personal autonomy, whereas Chapter 3 focusses on the all-subjected principle in relation to freedom from domination. In Chapter 3, I will also consider how democratic boundaries should be drawn in light of relationships of mutual recognition and the social basis of self-respect, which are a pre-condition for freedom.

²² See Christiano and Bajaj (2024) and Lippert-Rasmussen and Bengtson (2021: 1025-1028) for arguments along these lines. These arguments are formulated in response to those who suggest that the all-affected principle is part of the definition of democracy (e.g., Arrhenius 2005: 20).

²³ See, however, Ahlhaus (2021) on how a method of rational reconstruction could be

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David Miller (2020b: 2) proposes a multi-dimensional approach to the principles of democratic inclusion. In this approach, the principles are understood as proposals to align the *constituency*, *scope* and *domain* of a decision-making procedure. These three dimensions of inclusion concern the following distinct questions:

Constituency: Inclusion of whom? Who is entitled to participate in the decision-making?

Scope: Inclusion in what? Which issues are on the decision agenda?

Domain: Inclusion for whom? Where and to whom do decisions apply?

This multi-dimensional conceptualisation is helpful to structure the debate. Let me close the discussion on these principles by addressing a key question with respect to each dimension and clarifying how the two chapters slot into the debates on these questions.²⁴

First, a prominent question in the debate is whether human agency and certain cognitive capacities are a requirement for inclusion in the decision-making *constituency*. Some theorists have argued that minors, the mentally impaired, non-human animals and future generations can also be affected or subjected in the relevant way and should therefore also have a right to vote or have their interests represented in the political process, even if they lack the necessary capacities to experience the benefits of democratic inclusion (e.g., Donaldson and Kymlicka 2011: 153-154; Ekeli 2009; Van Parijs 1998).²⁵ Others have responded that these arguments are based on a too broad interpretation of the all-affected and all-subjected principles. For example, Ben Saunders

used to derive new perspectives on how democratic boundaries should be drawn, even if the practice of boundary drawing is contested.

²⁴Note that Bauböck (2018: 22) uses the terms *scope* and *domain* to refer to what Miller (2020b) describe as, respectively, the *constituency* and *scope*. Bauböck does not discuss the decision-making domain, i.e., he does not discuss ‘inclusion for whom’.

²⁵See also Beckman (2007 2009: 146-166) and Green and Klein (1980), who consider the differences between the mentally impaired and others insufficient to justify disenfranchisement but do not deny that a requirement of human agency plays a role in a claim to democratic inclusion. Furthermore, Beckman (2009: 90- 119) accepts that the disenfranchisement of children can be legitimate but only if it can be defended by appeal to the interests of children themselves. These arguments can be seen as a response to Dahl (1989: 127), who has argued that children should be disenfranchised because ‘they are not yet fully qualified’ to vote.

(2012) claims that the all-affected principle only applies to bearers of interests with agency and Claudio López-Guerra (2012) formulates the condition of *franchise capacity*, which entails that only those should be included who have ‘the minimum necessary cognitive and moral powers to experience the benefits of having the franchise or the harms of disenfranchisement.’ Similarly, Ludvig Beckman and Jonas Hultin Rosenberg (2022) argue that an entity can only be *de jure* subjected to the laws of a state when it has the cognitive capacity to comply with laws or the ability to recognise legal authority. It must thus have agency, understood as a legal status. This is something that, for example, future generations and artificial intelligence lack.²⁶ In this dissertation, I leave this debate aside and focus on how the geographic location of human agents affects their claim to democratic inclusion.

Second, the two principles may apply to a different decision-making *scope*. A distinction can be made between decision-making on laws and on policies. Laws ‘mandate, proscribe or permit certain relationship between people and institutions’ that are typically coercively enforced, whereas policies set out ‘certain procedural or substantive goals of what should be achieved in the near or remote future’ that are not coercively enforced (Erman 2022: 247). The all-subjected principle applies specifically to law-making: It concerns the inclusion of those who are subject to the coercive enforcement of laws or to the legal authority or legal powers of a state. By contrast, the all-affected principle can apply both to law and policy-making (Erman 2022: 247-250; cf. Bauböck 2018: 27-28). In this dissertation, I focus on the application of the all-subjected principle to law-making.

Third, when the decision-making *scope* is settled, the principles of democratic inclusion require an alignment between the decision-making *constituency* (who should be included) and the decision-making *domain* (who is affected or subjected). To create such an alignment, most democratic theorists argue for altering the constituency, i.e., including more or fewer people in the decision-making. However, alignment may also be achieved by altering the domain, i.e., widening or narrowing the geographical range over which the decisions apply (Miller 2020b: 3). In particular, in the case of subjection

²⁶ See also Beckman (2013;2009: 167-187) for the argument on future generations.

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to a state's laws, one can ask whether it is justifiable that the state can subject a certain group of people to its laws. For example, states often exercise extra-territorial legal power in order to control cross-border criminal activity. Instead of concluding that a global demos is required on extra-territorial law-making, one can question the democratic justifiability of such a wide extension of the decision-making domain by states. David Miller (2016: 5) suggests that if the extra-territorial exercise of legal powers 'is not essential for reasons of self-defence (such as warding off an imminent terrorist attack) (...) [then] [s]tates should simply stop making laws with such a wide extension and rely instead on making reciprocal arrangements with other states to control cross-border criminal activity.'²⁷

In this dissertation, I focus specifically on domestic and border (or immigration) laws. The latter govern the movement of individuals into and out of a state's territory, but do not determine who can become a citizen. It is inherent in the nature of these laws that they have an extra-territorial extension. I will question how expansive the domain of border laws is and how expansive the constituency of border laws must accordingly be. By contrast, in the case of domestic laws, I do not specify which laws I consider but simply assume that there is a range of laws for which the decision-making domain is and should be restricted to the territory of the state.

1.1.4 *Outline of the Two Chapters*

In Chapter 2, I explore whether prospective immigrants should be included in the decision-making on a state's border laws. The democratic inclusion of prospective immigrants in a state's regime of border laws would radically expand democratic boundaries beyond the territorial boundaries of the nation-state. I use a *de facto* understanding of the all-subjected principle that is grounded in the value of freedom as personal autonomy. That is, I assume that prospective immigrants must be included in the decision-making on a state's regime of

²⁷This solution is also briefly considered by Goodin (2016: 383). By contrast, Beckman (2014) considers the constitution of the decision-making constituency *given* the extra-territorial extension of the decision-making domain by states.

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border laws when they are subjected to the coercive enforcement of those laws, in the sense that the coercive enforcement of those laws compromises their freedom as personal autonomy. To draw the boundaries of the demos on a state's regime of border laws, I therefore examine whether and, if so, when the state's coercive enforcement of its regime of border laws compromises the freedom as personal autonomy of prospective immigrants.

My analysis shows that the demarcation of the boundaries of the demos for any regime of border laws ultimately depends on a theory of territorial rights. I argue that the freedom as personal autonomy of prospective immigrants is compromised only if the state's coercive enforcement of its regime of border laws alters the moral relationship between the state and the prospective immigrants, thereby making prospective immigrants dependent on the will of the state. Whether the moral relationship is altered depends on the existence and enforceability of a prior moral duty of prospective immigrants to stay out of the state's territory. In particular, the moral relationship between the state and a prospective immigrant is altered if (a) the prospective immigrant does not have such a prior duty towards the state, (b) the state does not have the standing to enforce such a prior duty, or (c) the state threatens to enforce such a duty with disproportional consequences. A duty of prospective immigrants towards the state to stay out of its territory correlates to a claim right on the part of the state to close its borders. Hence, I conclude that an answer to the question of whether the state's coercive enforcement of its regime of border laws compromises the personal autonomy of prospective immigrants, and thus triggers a claim to democratic inclusion, fundamentally rests on the rights of the state over its territory and the correlative duties of prospective immigrants towards the state.

Building on three prominent theories of territorial rights – neo-Lockean, self-determination and nationalist theories – I subsequently show that refugees do *not* have a moral duty to stay out of a state's territory, whereas other prospective immigrants have such a duty.²⁸ This implies that contemporary border regimes have to be changed in order to make the border laws democratically

²⁸These theories of territorial rights are most prominently developed by Nine (2012), Miller (2012, 2016), Moore (2015) and Stilz (2019).

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legitimate: The coercive enforcement of border laws *always* compromises the freedom as personal autonomy of refugees and therefore refugees must be democratically included. By contrast, the coercive enforcement of border laws *only* compromises the freedom of personal autonomy of other prospective immigrants if it involves disproportional threats and therefore other prospective immigrants only have a claim to democratic inclusion if the border laws threaten with disproportional consequences.²⁹

In Chapter 3, Daniel Häuser and I explore whether the territorial presence of *denizens* (resident non-citizens) necessarily grounds a claim to *equal* democratic inclusion in a state's domestic laws. Our exploration starts from the observation that some interpretations of the all-subjected principle permit, or even require, democratic inclusion to the degree to which a person is subjected to the decisions. We examine whether requirements of equal freedom, underlying the all-subjected principle, permit partial democratic inclusion in domestic laws. In particular, we consider freedom from domination and the social basis of self-respect, which is a pre-condition for freedom.

Denizens are clearly subjected to a state's domestic laws, as they are territorially present. However, they enjoy a distinct social position, as they are often citizens somewhere else and therefore enjoy *external citizenship* rights and protections.³⁰ These are the rights and protections that their home state provides them as its citizens, such as the right to return home, the right to vote in the home state and diplomatic protections. Some denizens profit more from their external citizenship than others. This depends on whether their home country is a stable democracy that is economically and politically influential at the international stage.

We argue that the degree to which denizens enjoy external citizenship determines whether, and to what extent, they can legitimately be partially

²⁹ As mentioned on Subsection 1.1.2, other reasons may override these democratic requirements. For example, one may think that the territorial boundaries of the state should be abolished as they undermine global justice and that the territorial rights of the state or of the people within the state therefore cannot be used to justify claims to democratic inclusion. This view is, however, controversial as it is not necessarily true that the current framework of territorially delimited states must be abolished in order to address global injustices (Beckman 2023: 124-127).

³⁰ Bauböck (2009: 478,487) has coined the term *external citizenship*.

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democratically included. External citizenship can effectively protect denizens' freedom from domination and ensure their social basis of self-respect. This is particularly the case for denizens who enjoy favourable external citizenship conditions, as they come from powerful and stable democracies, but not for denizens who are forced to leave their country of origin as refugees, are deprived of their original citizenship, or cannot effectively exercise political power in their authoritarian home state. We thus show that the equal freedom of denizens under favourable external citizenship conditions can be protected and sustained without democratic inclusion to the same degree as citizens and other denizens in domestic law-making. This implies that territorial presence is not sufficient for a claim to full democratic inclusion in domestic law-making.

1.2 THE BOUNDARIES OF ELECTORAL CONSTITUENCIES

The second *democratic boundary problem* addressed in this dissertation concerns electoral constituency boundaries. Electoral constituencies (also referred to as *electoral districts*) are subgroups of the demos that are charged with electing some or all of the legislators. By determining which voters belong together for the purpose of electing a certain number of representatives, electoral constituencies define 'the initial terms of authorization and thus the nature of inclusion in representative relationships' (Urbinati and Warren 2008: 396). They provide a frame within which certain issues, interests and group identities are more likely to be represented and thus included in the political process than others.³¹ Questions of democratic inclusion are therefore not settled with the legitimate constitution of the demos. The delineation of electoral constituency boundaries is equally important for the legitimacy of democratic governance.³²

³¹ Besides a frame for the inclusion of interests and identities, the design of electoral constituencies may also lead to a reduced opportunity to vote for certain groups. For example, geographic constituencies make it significantly more difficult for nomadic citizens to vote, see Carlsen Häggrot (2018).

³² Indeed, electoral constituency design would not be important for democratic legitimacy in a direct democracy, but I assume that representation is an essential part of democracy given the scope of contemporary democratic decisions. As Plotke (1997: 19) observed, the opposite

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The boundaries of electoral constituencies are typically drawn along geographic lines, such that each constituency covers a geographically compact and geographically accessible area. The boundaries tend to adhere to the territorial boundaries of local administrative units and tend to respect ‘natural boundaries’, such as mountain ranges, rivers or islands (Handley 2008: 274-275). According to a comparative survey by Lisa Handley (2008), at least 84 countries around the world, of which 52 distinctly democratic countries, define their electoral constituencies in expressly geographical terms.³³ Many contemporary democracies thus make the eligibility to vote for a particular representative dependent on residency in a particular, contiguous geographic area on the state’s territory.³⁴

These geographic constituency boundaries play a pivotal role in democratic inclusions and exclusions. Geographic constituency boundaries disadvantage political parties of which the voters are concentrated in cities (Rodden 2019). They are also often manipulated to strengthen the legislative influence of the ruling political party – a practice known as *partisan gerrymandering*.³⁵ The voting power of the opposition is then diluted by concentrating opposition voters into a few constituencies (packing) or dispersing them across multiple constituencies (cracking). This practice is particularly prominent in elections in the United States, but it is also employed in other countries. For example, by redrawing the boundaries of the geographic electoral constituencies in Hungarian parliamentary elections, Victor Orbán solidified the power of his Fidesz party and advanced the transformation of Hungary into an “electoral autocracy” (Scheppelle 2022: 52-53). Moreover, geographic constituency bound-

of representation is then exclusion, not participation.

³³The survey shows that 60 of the 87 surveyed countries use geographic electoral constituency boundaries that are regularly redrawn and that another 24 of the surveyed countries employ geographic electoral constituency boundaries that are permanently fixed (Handley 2008: 266, Appendix B). See also Carlsen Häggrot (2023b: 721, n.2). Furthermore, 52 of the 84 countries with geographic constituencies are distinctly democratic in the sense that they have a Freedom House political rights score of 2 or less in 2008, see Carlsen Häggrot (2023a: 303, n.2) and Freedom House (2008: 885-886).

³⁴Note, however, that many electoral democracies also enfranchise their expatriate citizens, even though they reside abroad. See Carlsen Häggrot (2023b) for an insightful discussion on how geographic constituencies and expatriate voting can be combined.

³⁵See Beitz (2018) for an insightful paper on why partisan gerrymandering is unfair.

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aries dilute the voting power of geographically dispersed minorities. In the United States, legal battles are regularly fought over constituency maps that would disadvantage Black Americans and other racial or ethnic groups.³⁶ And in Belgium, geographic constituencies are criticised for deepening the linguistic and territorial divide between the French-speaking South and the Flemish-speaking North (Deschouwer and Van Parijs 2019). This comes at the cost of the political representation of other salient social divisions.

As a citizen from a small country – the Netherlands – my initial response to the challenges posed by geographic electoral constituencies was: Why do we not get rid of these constituency boundaries altogether?³⁷ Dutch voters are not divided over several electoral constituencies but instead form one large constituency. This has, however, not always been the case: Until 1917, the roughly million (male) voters were divided over no less than 100 electoral constituencies for Dutch Parliamentary elections.³⁸ With the growing number of political parties in the Dutch parliament and the – as we speak – painfully long coalition negotiations, some politicians have started questioning whether we should go back to a system with multiple electoral constituencies.³⁹ Such a system can reduce fractionalisation in the parliament and has certain other democratic benefits, such as that it can sustain practices of voter mobilisation and create a direct relationship of authorisation and accountability between

³⁶ These legal battles are based on Section 2 of the U.S. Voting Rights Act, which prohibits standards, practices or procedures that discriminate on the basis of race, colour or membership in one of the recognised language minority groups. In the court case *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court has formulated three criteria to determine whether a constituency map dilutes the voting power of racial and ethnic minorities.

³⁷ This led me to argue for a ‘nation-wide’ electoral constituency in my MA Philosophy dissertation, which encompasses the entire electorate. A more precise term is ‘electorate-wide’ constituency as the boundaries of the nation may not align to the boundaries of the demos. The MA dissertation ‘Constituencies in Electoral Design: A Response to and Extension of The Concept of Constituency by Andrew Rehfeld’ was written for Leiden University and is accessible at <https://suzannebloks.com/publications/>, last visited 30 June 2024.

³⁸ See the databases https://www.parlement.com/id/vkcakxvbdpqc/tweede_kamerverkiezingen_1917_laot and https://resources.huylgens.knaw.nl/verkiezingentweede_kamer/databank/chronologisch?beginjaar=1917&eindjaar=1917&type=algemeen, accessed 20 April 2024.

³⁹ See, for example, the tenth spearhead concerning the so-called ‘Strength of the Region’ of the new political party by Pieter Omtzigt called *Nieuw Sociaal Contract*, <https://partijnieuwsociaalcontract.nl/speerpunten/de-kracht-van-de-regio>, last visited 20 April 2024.

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voters and their representatives.

In this dissertation, I analyse systems with multiple electoral constituencies in which the size and magnitude of each constituency is relatively low. The *constituency size* refers to the number of voters in a constituency and the *constituency magnitude* refers to the number of legislative seats that are electable within a particular constituency. Keeping the number of voters per legislative seat fixed, an electoral constituency will have a smaller size with a lower constituency magnitude. The constituency magnitude can be considered to be low when it lies somewhere between one and six, as cognitive psychology shows that voters are considerably less able to make a clear preference ordering once the number of options rises above six (Carey and Hix 2011: 385).⁴⁰ As I will argue in Chapter 4, a system with multiple constituencies with a low constituency magnitude promotes several democratic practices that relate to the creation of a close connection between voters and their representatives.

However, if a country wants to maintain or re-introduce such a system with multiple constituencies, should these constituency boundaries then be defined geographically? There are many non-geographic ways to draw electoral constituency boundaries. For example, electoral constituencies can also be defined by age, ethnicity, race or socio-economic class.⁴¹ Digitalisation facilitates a close connection between voters and their representatives, even if they do not come from the same geographical area of residency.⁴² As a consequence, non-geographic criteria can nowadays serve as a viable alternative for delineating electoral constituency boundaries. Below, I first describe how electoral constituency design affects the nature of inclusion in representative relationships and, subsequently, I propose an alternative electoral constituency design that I defend in this dissertation.

⁴⁰I will furthermore assume the use of plurality rule when the constituency magnitude is one and the use of a proportional electoral formula when the constituency magnitude is more than one.

⁴¹The thirteenth to eighteenth century estate system in France, which divided the enfranchised citizenry according to class, provides one of the few examples of an electoral system in which the electoral constituencies are not geographically-defined.

⁴²In Section 4.2, I discuss the democratic benefits of a system with multiple electoral constituencies and argue why these benefits can be obtained without geographic proximity among constituents.

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1.2.1 *Electoral Representation*

Electoral constituencies are institutionalised legal groupings of voters. They are conceptually prior to voting: We can design an electoral constituency without selecting representatives, but we cannot elect representatives without having designed an electoral constituency. Electoral constituencies determine which groups of voters are *eligible* to vote for which representatives. That is, they determine which groups of voters can authorise and hold to account which representatives through their vote. I define authorisation as the granting of authority to a representative to take a seat in the legislature at the outset of their term and holding-to-account as the re-election or removal from office of an elected representative at the end of their term (Pitkin 1967: 56; cf. James 2011: 905).⁴³

This electoral machinery of authorisation and accountability ensures a systemic responsiveness of representatives to their constituents. It incentivises representatives to substantively act in the interests of their constituents, either as a *delegate*, who simply follows the expressed preferences of the constituents, or as a *trustee*, who follows their own best judgement of what is in the best interest of their constituents (Pitkin 1967: 145, 155). From the perspective of representatives, their electoral constituency is the audience to which they make promises and whom they try to please by anticipating their future preferences in order to be re-elected.⁴⁴ When an electoral constituency is geographically-defined, the constituents' common interests will involve local interests as well as certain other non-local political interests that are geographically concentrated, such as those related to religion, language or ethnicity. The geographic definition of electoral constituencies then directs representatives towards local

⁴³Note that electoral constituencies can also be referred to as *objective* constituencies and should be distinguished from *subjective* constituencies. The latter describe the group of voters who *actually* voted for a particular representative (or party). They are not defined prior to voting but are a result of the voting process. See also James (2015: 385-386) for this distinction between the two concepts of constituency.

⁴⁴Saward (2010: 35-56) has influentially described political representation as the making of 'representative claims' that are offered to an 'audience'. Furthermore, Mansbridge (2003) distinguishes four forms of political representation in the electoral context. I refer here to – what she calls – 'promissory' and 'anticipatory' representation.

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and geographically-concentrated interests.

These interests do not necessarily exist prior to the process of representation. The recent ‘constructivist’ turn in the theory of political representation highlights that political interests are endogenous rather than exogenous to the process of representation. Political representation is not simply about responding to constituents’ interests but also about anticipating and creating them (Disch 2021; Disch et al. 2020).⁴⁵ In particular, representatives mobilise voters by politicising certain social identities, such as class, ethnicity, race or religion, that shape political interests. In Chapter 4, I show that the geographic definition of electoral constituencies influences which identities are politicised. Given a set of potentially mobilisable social identities, representatives are incentivised to politicise those identities that are concentrated in a geographic area and thus have a large enough size *vis-à-vis* the geographic constituency boundaries to make them win a seat in the constituency.

By shaping the interaction between representatives and their constituency, the design of electoral constituencies can ensure the *dyadic representation* of certain substantive interests, but not necessarily the *collective representation* of those interests by the entire legislative body: When certain interests are represented by dedicated representatives, this does not necessarily imply that the decisions made by the entire legislative body also reflect those interests.⁴⁶ In fact, the concentration of a group in a particular constituency may undermine their substantive collective representation, as other representatives in the legislature do not have electoral incentives to act in the group’s interests and therefore may not vote in support of policies that benefit the group. This raises, for example, the question whether the concentration of Black Americans in certain geographic constituencies undermines or promotes their substantive representation in policy outcomes (cf. Cameron et al. 1996; Epstein and

⁴⁵There is disagreement in the literature about whether Pitkin’s condition of responsiveness was originally meant in constructivist terms and whether it can be understood as such, cf. Disch (2011, 2012) and Vieira (2017). Furthermore, note that I focus on political representation in the electoral context. The constructivist turn has also led to a surge of interest in political representation beyond the electoral context, see, e.g., Näsström (2011b, 2015).

⁴⁶See also James (2011: 905-906) on the distinction between dyadic and collective representation.

O'Halloran 1999; Lublin 1999).⁴⁷

Besides shaping *substantive* representation, electoral constituency design may also have an effect on the *descriptive* representation of groups in the legislature. Descriptive representation refers to the descriptive resemblance between representatives and voters (Pitkin 1967: 60). For example, a black legislator is descriptively representative of black voters. Descriptive representation has symbolic benefits: It can enhance the *de facto* legitimacy of the political system, increase levels of trust in the government, create greater engagement in politics and change the historically embedded understanding that members of certain groups are unfit to rule (Hayek 1960; Lawless 2004; Mansbridge 1999: 648-651). Descriptive representation is also sometimes considered to have substantive benefits: It can ensure the representation of a distinct social perspective that descriptively similar people may have due to their distinct social experiences (Mansbridge 1999: 641; Williams 1998: 6; Young 2002: 98, 136). Electoral constituency design can play a crucial role in enhancing the descriptive representation of a minority group in the legislature. While there are instances in which a majority black constituency elects white representatives, the concentration of black voters in a constituency is widely recognised as a strategic instrument to ultimately increase the presence of black people in the legislature (Thernstrom 2009: 13-14; Williams 1998: 205-206; cf. James 2011: 899).

Electoral constituency design can thus contribute to enhancing the substantive dyadic representation and the descriptive representation of minority groups. The question arises whether electoral constituencies *should* be designed in order to do so. The answer to this question depends on whether one holds a *suppressive* or *expressive* theory of political representation. In line with Rousseau's republicanism, suppressive theories aim to create political processes in which the common good prevails over partial goods. Their supporters portray intergroup differences as detrimental to the common good and, therefore, propose institutions that can prevent the influence of intergroup

⁴⁷ This distinction between dyadic and collective representation forms an important part of the critique by Guinier (1991) on the U.S. practice of race-conscious districting. She holds that there must not only be proportionality between groups in the number of legislative seats but also in legislative power.

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differences on political outcomes. By contrast, expressive theories of political representation value the presence of group-structured differences in the legislature. Their supporters aim to ensure the inclusion of all relevant interests in legislative deliberation, in the pursuit of enhancing a deliberative understanding of the common good and safeguarding minority rights (Williams 1998: 240-241).

These two theories of political representation have led to different design proposals. Proponents of a suppressive theory of political representation have argued for heterogeneous electoral constituencies, that are as diverse as the electorate as a whole. They expect such a system to lead to a unanimity of interests and perspectives among representatives, as all representatives speak for constituencies that have a similar composition (Ciepley 2013; Rehfeld 2005: 231-234; cf. Williams 2008). By contrast, proponents of an expressive theory of political representation have argued for more homogeneous group-conscious electoral constituencies, in which a particular under-represented minority forms at least a majority (James 2011). However, in the two chapters in this part, I show that an expressive theory of political representation actually calls for an electoral constituency design that combines heterogeneous and group-conscious constituencies. In contrast to what proponents of heterogeneous constituencies believe, I show in Chapter 4 that such a design can contribute to the representation of more rather than less group divisions in the legislature. And in Chapter 5, I argue that group-conscious constituencies should not be as widely used as their proponents suggest, because they only benefit a very specific set of minorities.

1.2.2 Heterogeneous Electoral Constituencies

Heterogeneous constituencies mirror the electorate as a whole. I use the term to refer to *completely* heterogeneous constituencies. In such constituencies, all socially salient identities and all positions are represented on every issue, and they are represented in the same proportion as in the entire electorate. The heterogeneity of a constituency is a matter of degree and is always relative to the electorate as a whole. Electoral constituencies are less heterogeneous

(or more homogeneous) when some social identities or issue-positions are not reflected in the same proportion as in the entire electorate. Their diversity then depends on the issue. As Benjamin Bishin (2009: 121, 136) exemplifies, Florida's 20th district is less diverse (or even homogeneous) on the issues of Cuban trade and assault weapons as it has only one group that feels strongly about those issues, whereas it is more diverse (and possibly even mirrors the electorate as a whole) on issues of abortion and extending hate-crimes protections as it has multiple groups holding competing views on those issues.

Geographic constituencies are not completely heterogeneous. This is because political interests tend to revolve partly around local interests and residency patterns are to a certain extent indicators of non-local political interests. The larger geographic constituencies are, the more heterogeneous they tend to be.⁴⁸ Assuming that electoral constituencies have to be geographically-defined, James Madison regarded increasing the constituency size as the best or only way to increase the diversity within constituencies. As he thought that more diversity within constituencies could help prevent factionalism, he proffered in *Federalist 10*:

Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other (Madison 1787: 52).

A single 'electorate-wide' constituency, which encompasses the entire electorate, is by definition completely heterogeneous. Whether it is geographically-defined depends on whether the boundaries of the demos are geographically-

⁴⁸That is, the diversity of geographic constituencies depends on their size, on how political interests are defined and on how segregated those political interests are across a geographical area (cf. Rehfeld 2005: 40, 207-208). Empirical evidence supports the idea that non-local interests are indeed to a certain extent spatially concentrated, see Feinberg et al. (2017) and Mantegazzi (2021). In the context of the US, there is debate about whether increased mobility causes increased geographic segregation around partisan identity: Whereas people express a preference to live in a co-partisan neighbourhood (Gimpel and Hui 2015; Motyl et al. 2014), stated preferences may diverge from actual moving behaviour (Klinkner 2004; Mummolo and Nall 2017).

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defined. This constituency design is used in the Netherlands but also, for example, in Israel. Some theorists have advocated for adding such a constituency to the existing smaller-sized geographic constituencies in elections for the European Parliament and the Belgian Federal Parliament (Crego 2021; Deschouwer and Van Parijs 2019).⁴⁹

However, when we do not assume a geographic definition, it is also possible to create multiple heterogeneous electoral constituencies. New technologies enable us to use random selection in an efficient and effective way. While randomisation is usually employed in empirical research to create a representative sample of a population, it can also provide an innovative way to select the participants in democratic institutions, such as in deliberative mini-publics. Andrew Rehfeld (2005) pioneered the concept of *random constituencies*, wherein voters are randomly assigned to a constituency. The boundaries of these constituencies are not geographically-defined, but are created purely for political purposes, and their composition is completely heterogeneous.⁵⁰

In Chapter 4, I advocate for a system with multiple completely heterogeneous electoral constituencies (short: *heterogeneous constituencies*) instead of geographic constituencies. I focus on heterogeneous *random* constituencies, as these are likely the only heterogeneous constituencies that do not cover the entire electorate. If there would be a finite number of factors that determine an individual's political interests, it would also be possible to create multiple heterogeneous constituencies by pooling completely homogeneous constituencies or by enumerating all possible combinations and stipulating that the total number of citizens for each combination is equally divided among the

⁴⁹The 'electorate-wide' constituency is referred to as a 'pan-European' constituency in the context of the European Union and as a 'country-wide' or 'federation-wide' constituency in the Belgian context.

⁵⁰A distinction can be made between *simple* random sampling and *stratified* random sampling. In simple random sampling, voters from the entire electorate are randomly assigned to a constituency. By contrast, in stratified random sampling, the electorate is first divided into distinct categories on the basis of common characteristics, such as geographical area, language, race, gender and so on, and a fixed number of voters from each category is then assigned to an electoral constituency. The *Central Limit Theorem* posits that a simple random sample will be representative of the entire population as long as it is large enough in size. I assume that the size of electoral constituencies is such that they will mirror the entire electorate when they are created by simple random selection, thus rendering stratification unnecessary.

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multiple constituencies (Bogaards 2003; Stone 2008). While the list of factors influencing political interests may be finite, it is presumably too contested and too long to serve as a basis for designing electoral constituencies – one can think of geographical area, religion, race, gender, sexual orientation, age, socio-economic status and so on.

Membership in electoral constituencies can also be analysed along two other dimensions than heterogeneity.⁵¹ A second dimension concerns the *stability* of membership in the constituency. A constituency is stable when it has no change in its membership between elections. Stability sustains the development of significant and effective ties between constituents and their representatives. It enables voters to form communicative networks with fellow constituents and to hold the same representatives to account as they selected in the previous elections. The continuity of constituency membership between elections is necessary to create electoral incentives for representatives to act in the interests of their constituents. After all, when constituency membership is prone to change, representatives may find themselves making promises to one set of voters at election time, only to pivot and cater to a different set of voters for re-election in the future. There will then be no incentive to actually keep to the promises made at election time. While the fact that one member changes constituency will not affect the representatives' responsiveness when constituencies have thousands of members, it is clear that the greater the stability in constituency membership the better. After all, it is impossible to pinpoint how much change is possible without affecting responsiveness and greater stability gives more voters the opportunity to steer governmental decisions in their preferred direction. Electoral constituency design can never ensure complete stability because people pass away, come of age, become citizens or lose their voting rights, but it can come as close as possible to creating stability by making membership permanent or life-long (Rehfeld 2005: 109, 186-192). Given the democratic advantages of stability, I assume that voters are randomly and *permanently* assigned to an electoral constituency

⁵¹These three distinct dimensions of analysing membership in electoral constituencies – heterogeneity, stability and voluntariness – have been first identified by Rehfeld (2005: 186).

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when they become eligible to vote.⁵²

A last dimension of constituency design concerns the *voluntariness* of membership in the constituency. Voluntariness describes the extent to which voters have a choice to enter or exit a particular constituency. In a completely voluntary system, voters can determine themselves how to define their constituency and thus with whom to form a group for the purposes of electing political representatives.⁵³ In a completely involuntary system, citizens are assigned to a constituency without an option of entry or exit (Rehfeld 2005: 41-42). Geographic constituencies are voluntary to the extent that voters can choose to live in a particular district and are not restricted in their choice by the social and material costs of moving. Voters in geographic constituencies can make use of so-called *foot voting*, which can provide a form of exit-based empowerment (Warren 2011).⁵⁴ Foot voting is also associated with other benefits, such as contributing to equality in voting weights. Even if seats are assigned to geographic constituencies in proportion to the number of voters in the constituency, there will always be some differences in each constituency's ratio of the number of voters per seat. For instance, while one U.S. Senator represents 38 million voters from California, another U.S. Senator represents only 580,000 voters from Wyoming. As a consequence, a voter in Wyoming has effectively 56 times more voting weight than a voter in California (Ciepley 2013: 155). Foot voting enables voters to move to another constituency in which they have more voting weight. Random (and permanent) electoral constituencies form a completely involuntary system and thus do not have the benefits of foot voting. However, in contrast to geographic constituencies, random constituencies can ensure that all votes have equal weight without foot voting. The size of random constituencies can easily be adjusted to ensure that

⁵² Rehfeld (2005: 206, 210) also assumes that the random assignment of voters to constituencies is permanent.

⁵³ Pogge (2002) advocates for such a system with his proposal for *self-constituting constituencies*.

⁵⁴ Relatedly, foot voting may create more political awareness. In line with the sustained defence of geographic constituencies by Schwartz (1988: 101-103), it could be argued that the ability to choose one's intermediate community (i.e., the constituency) creates awareness both of one's membership in that community and one's membership in the community as a whole, and that this awareness makes one a free or political individual.

the number of voters electing a representative to a legislative seat remains consistent across all seats.

1.2.3 *Group-Conscious Electoral Constituencies*

Group-conscious constituencies consist largely or solely of voters that belong to a particular minority group. The minority is sufficiently numerous in those constituencies to authorise and hold to account their own representatives. The term ‘group-conscious constituencies’ is often used to refer to *majority-minority constituencies*, in which a minority forms at least a majority of constituents. I also use the term to refer to *communal constituencies*, which consist solely of members from a particular minority.

Group-conscious constituencies can be combined with both a geographic and a random definition of electoral constituencies. For example, in the U.S., the geographic constituency boundaries are drawn such that certain racial or ethnic minorities form a majority in at least some constituencies. Furthermore, in New Zealand, the dedicated Māori constituencies supplement the general electoral constituencies. Both the Māori and the general constituencies are geographically-defined and cover the entire state territory (Handley 2022: 376-377, 383-384). In a similar vein, majority-minority random constituencies could be created with *stratified* random selection to ensure that a majority of the membership positions is attributed to a particular minority group and communal random constituencies could be created in addition to general constituencies by randomly assigning members of the minority to one of those dedicated constituencies.⁵⁵

Group-conscious constituencies are often introduced in systems with single-seat geographic constituencies in order to address the dilution of minority votes in those systems. Two forms of vote dilution can be distinguished. The first concerns *vote-seat disproportionality*. When a single representative is elected per geographic constituency, there will be a lot of wasted votes, which go to candidates that are not elected to the seat. As a consequence, the number of legislative seats won by a group or political party may not be proportional to

⁵⁵See also n. 50 on stratified and simple random sampling.

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their obtained share of the vote (cf. Guinier 1992; 1994: 119-156; Reeve and Ware 1992: 120-121). The second form of vote dilution concerns *vote-seat asymmetry*. Geographic constituencies make it easier for geographically-concentrated groups to obtain a seat in the legislature. As a consequence, the number of seats that geographically-concentrated groups can win given a certain share of the vote is higher than the number of seats that geographically-dispersed groups can win given the same share of the vote (cf. Beitz 2018: 332-333).

However, in Chapter 4, I argue that replacing single-seat geographic constituencies by multi-seat heterogeneous constituencies provides a solution to both of these forms of vote dilution. This solution tackles the problems by addressing their original cause. A higher constituency magnitude can reduce the number of wasted votes and, thereby, the vote-seat disproportionality. And a heterogeneous constituency design can prevent a bias against groups that straddle constituency boundaries as it ensures that all groups are equally dispersed across constituencies. Group-conscious constituencies are thus not required to address the problem of vote dilution in electoral systems.

The reason why group-conscious constituencies have to be introduced is not related to a form of vote dilution inherent in an electoral system. Rather, I argue in Chapter 5 that group-conscious constituencies are needed to ameliorate the political inequalities that result from the distinct social position of certain marginalised groups. Some groups experience deep cultural and socio-economic injustices which, in turn, create barriers to their political participation. These groups are, as a consequence, marginalised in the political process. In the chapter, I argue that only a particular type of marginalised groups – marginalised autonomous groups – should get group-conscious constituencies in order to ensure their political equality and that these groups benefit the most from communal electoral constituencies. Taking the two Chapters together, I thus advocate for an electoral constituency design which consists of a combination of general and communal constituencies to which voters are randomly and permanently assigned, where the communal constituencies are only created for marginalised autonomous groups if present in the society.

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1.2.4 *Outline of the Two Chapters*

In Chapter 4, I propose to replace single-seat geographic constituencies by multi-seat heterogeneous constituencies, which are formed by randomly and permanently assigning voters to a constituency. This proposal aims to address two key issues: It seeks to resolve the democratic shortcomings inherent in geographically-defined electoral systems and it seeks to offer an institutional solution to the problem of legislative gridlock, which poses a threat to democracies world-wide.

First, I argue that geographic constituencies undermine democratic equality. In a system with geographic constituencies, geographically-dispersed groups have less prospects for electoral success than geographically-concentrated groups of the same size. This bias towards geographically-concentrated groups creates an inequality in voting power: Members of those groups have comparatively more *a posteriori* voting power. I argue that this bias cannot be justified by the purported advantages of geographic constituencies, as heterogeneous constituencies have the same democratic benefits without creating a disparity in voting power. In a system with heterogeneous constituencies, all groups are equally distributed over the constituencies. This ensures that the prospects for electoral success of all groups, as well as the *a posteriori* voting power of their members, depend solely on the sizes of the groups, not on their geographic settlement patterns.

Second, I show that geographic constituencies exacerbate the democratic threat of legislative gridlock whereas heterogeneous constituencies contribute to preventing it. Legislative gridlock challenges the normative legitimacy of a system by obstructing the democratic capacity of the people to rule. The threat of legislative gridlock is particularly imminent when *reinforcing cleavages* are politicised that divide the political parties into two deeply opposed camps. By prioritising geographically-concentrated groups, geographic constituencies stimulate the representation of group identities that reinforce geographic social divisions. By contrast, when *cross-cutting cleavages* are politicised, there is partial overlap between political parties, which can moderate political conflict and foster an environment conducive of political compromises. I show that

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heterogeneous constituencies, especially in combination with multiple seats, enable representatives to politicise all salient (cross-cutting) social identities that exist in society. A system with heterogeneous constituencies thus does not only enhance democratic equality but, thereby, also offers an institutional response to the democratic problem of legislative gridlock.

In Chapter 5, I examine which groups, if any, have a claim to group-conscious electoral constituencies. The creation of group-conscious constituencies is often justified by the need to combat marginalisation in the political process. However, a broad range of groups can be considered marginalised. As Will Kymlicka (1995: 145) observes, the term seems to encompass ‘everyone but relatively well-off, relatively young, able-bodied, heterosexual, white males.’ If the basis for claiming group-conscious constituencies is marginalisation, there would be an unbounded proliferation of demands, rendering the design of a justifiable electoral constituency system practically unattainable.

However, I show that only a very small set of marginalised groups have a claim to group-conscious constituencies. I make a distinction between two types of marginalised groups: marginalised *autonomous* and marginalised *ascriptive* groups. The difference between these groups lies in their solidaric commitment. Marginalised ascriptive groups are united in their commitment to social empowerment, whereas marginalised autonomous groups are united in their commitment to cultural self-determination. I argue that the group-reinforcing logic of group-conscious constituencies is in tension with the former commitment, whereas it is compatible with the latter commitment, even if the group seeks cultural self-determination through self-government rights rather than political inclusion. Therefore, *if* marginalisation justifies a claim to group representation *then* group-conscious constituencies should be attributed to *all and only all* marginalised *autonomous* groups.

My argument has important implications for the U.S. practice of race-conscious districting. This practice is often used to combat the marginalisation of black voters. These voters must form sufficiently large and geographically compact groups with cohesive voting patterns in order to have a claim to race-conscious constituencies. However, these criteria do not ensure that the groups are marginalised autonomous groups. Black voters may cast a

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politically cohesive vote, even if they do not share a “Black culture” and are not united in a commitment to preserving, protecting and promoting that culture. As a consequence, race-conscious constituencies may be attributed to groups of marginalised blacks for which it is a counter-productive remedy.

1.3 METHODOLOGY

This dissertation provides a normative analysis of democratic boundary problems. The most common method of normative analysis in political philosophy is that of developing a *reflective equilibrium*. This is a systemic process of reasoning in which we form considered moral judgements that are aligned with our broader moral principles and convictions. The process starts by taking our initial moral judgements as provisional fixed points and exploring what broader moral principles can accommodate these judgements. In this process, we may discover tensions or inconsistencies between our initial judgements and our moral principles. Through a process of revision and refinement, we then make adjustments to both our judgements and principles until they coalesce into a coherent and mutually supporting framework. The resulting normative theory is referred to as a reflective equilibrium: ‘It is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation’ (Rawls 1997: 18). It need not be a stable equilibrium, as new conditions or counter-examples may lead us to re-examine and revise our considered judgements in the future. Albeit temporary, it is the coherence between our judgements and principles that lends justification to those judgements (Rawls 1971: 17-19).

For example, in Chapter 3, Daniel Häuser and I analyse whether the prominent moral judgement that denizens ought to be equally included in domestic law-making can be accommodated by the moral principle of equal freedom. As our analysis shows inconsistencies between the judgement and the principle, we refine the moral judgement such that it aligns with our moral principle of equal freedom and conclude that equal freedom is compatible with the partial democratic inclusion of some (but not all) denizens. This

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conclusion forms a reflective equilibrium. It may, however, only be a temporary equilibrium as other normative principles may lead us to re-examine and revise our considered judgement about the partial democratic inclusion of denizens in the future.

In addition to employing the method of reflective equilibrium-formation, my research can be characterised by an *institutionalist* and *problem-driven* approach to doing political philosophy. My approach is institutionalist in the sense that I examine the legitimacy of actual institutions in contemporary democracies. I consider these institutions as foundational elements for my analysis, rather than subjecting their *existence* to normative scrutiny. For instance, I presume that the world is divided into states with distinct territorial jurisdictions and examine what is required to make the law-making by those states democratically legitimate. The acceptance of certain aspects of the world as pre-theoretically given does not entail an endorsement of the *status quo*. Rather, by taking the institutional context into account, institutional normative theories can provide guidance for efforts to make today's world more just (Blake 2001: 261-264). I employ – what Amartya Sen (2009: 5-8) calls – *realisation-focussed* institutionalism. This form of institutionalism confines the analysis to feasible institutional changes, while eschewing a transcendental search for institutions that can satisfy the ideals of perfection. Realisation-focussed institutionalism is particularly well-equipped to address contemporary challenges, making it a perfect match for a problem-driven approach to doing political philosophy.

A problem-driven approach focusses on identifying and addressing specific real-world problems. It can be distinguished from tradition-driven and methods-driven approaches. Whereas a tradition-driven approach views political philosophy as a conversation within an established intellectual tradition or school of thought, a methods-driven approach focusses on refining and applying particular methods, such as rational choice theory or discourse analysis, to the analysis of political phenomena. By contrast, a problem-driven approach is inherently pragmatic and solution-oriented. When analysing the democratic legitimacy of political institutions, it explores 'what kinds of problems a political system must address, such that it *functions* democratically, and

(...) how a variety of practices – voting, deliberating, representing etc. – might be organised to address these functions’ (Warren 2017: 41-42). The formulation of these questions is particularly evident in Chapter 4, in which I examine how electoral constituencies must be designed in order to address the democratic problem of legislative gridlock, which threatens the democratic capacity of the people to rule themselves.

Evaluating solutions to problems often involves making comparisons. For example, in Chapter 4, I make a comparison between geographic and heterogeneous constituencies, and in Chapter 5, I compare and contrast group-conscious constituencies and quota requirements, which form alternative institutions for group representation. Besides comparing a real institution with a hypothetical alternative institution – heterogeneous constituencies – my comparisons also involve hypothetical scenarios. For example, in Chapter 2, I examine whether border threats subject to coercion by describing hypothetical scenarios for which nearly everyone shares a clear intuition on whether they constitute an instance of subjection to coercion and then drawing a parallel between the hypothetical scenarios and the controversial case at hand.⁵⁶ Hypothetical scenarios can be constructed in such a way that they are equal on all other respects except for the morally relevant factor. This can help us clarify what influences our moral intuitions. By contrast, real-world cases are unable to isolate the morally relevant factors as they tend to have too many details (Elster 2011: 442; cf. Kamm 2007: 427-428).

Are the comparisons that I make fair? Sean Ingham and David Wiens (2024) distinguish three types of comparative fallacies that a theorist could commit. The first fallacy involves making an *obscure comparison* in which one or more of the alternatives under consideration is underspecified. I avoid this fallacy by clearly defining the hypothetical institutions and scenarios that I consider. The second fallacy concerns making an *irrelevant comparison* in which contextual factors are assumed that differ in important respects from those to which the theorist applies her normative conclusions. This fallacy occurs, for example,

⁵⁶This methodology is common in the literature on coercion and is also well-established in applied ethics, see, e.g., Huemer (2010: 430) as well as the debate on coercion between Abizadeh (2008, 2010) and Miller (2010).

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when two institutional arrangements are compared in ideal circumstances in order to provide practical guidance in non-ideal circumstances. I avoid this fallacy by focussing on non-ideal circumstances. The third fallacy involves making a *mismatched comparison* in which the relevant contextual factors are not held fixed. The risk of committing this fallacy played a role in Chapter 4, in which I compare the effects of geographic and heterogeneous constituency designs without keeping the constituency magnitude fixed. To avoid this fallacy, I clearly delineate in my analysis the effects that I anticipate stemming from the geographic-definition or heterogeneous design of constituencies, and those arising from varying constituency magnitudes. This allows me to advocate for replacing single-seat geographic constituencies with multi-seat heterogeneous constituencies without falling into the trap of the mismatched comparative fallacy.

It should be highlighted that my comparisons serve a normative purpose. The dissertation explores how democratic boundaries *ought to be* drawn, rather than how democratic boundaries *are* drawn. Empirical facts play a role in the analysis insofar as they provide the premises for the normative argument: They specify the real-world circumstances and effects of normative choices. But those empirical facts cannot tell us whether democratic boundaries ought to be drawn differently and thus they cannot provide us reason for reform.⁵⁷

My normative analysis provides weighty reasons for democratic reform. It offers grounds for extending the demos on any regime of border laws to refugees (Chapter 2), considering the partial democratic inclusion of denizens (Chapter 3), replacing geographic constituencies by random constituencies (Chapter 4), and creating group-conscious constituencies to combat the cultural assimilation of certain marginalised groups (Chapter 5). Although this may sound as a blueprint for democratic reform, I do not claim to have resolved the disputes over one of the most contested topics in contemporary political discourse. The contribution of my normative analysis lies in elucidating the values, principles and arguments involved in any decision concerning democratic boundary placement.

⁵⁷See also Bauböck (2008) and Knight and Johnson (2011: 13-14) on the interaction between normative theorising and empirical research.

I

The Boundaries of the Demos

Border Coercion and Territorial Rights

Summary Democracy and territorial rights appear to be in tension. Whereas theories of territorial rights typically justify a state's unilateral right to control its borders, the democratic legitimacy of border laws is often considered to require the democratic inclusion of foreigners. However, the aim of this chapter is to show that democracy includes and presupposes territorial rights. Focussing on the *coercion-based all-subjected principle* – a widely endorsed principle of democratic inclusion – I identify the conditions under which subjection to a state's border laws can be deemed coercive, in the sense that it compromises the subjected person's *freedom as personal autonomy*, and thus triggers a claim to democratic inclusion. This leads to a distinction between coercive threats and *warning threats*, and a *moral* notion of coercion. Given this notion of coercion, a prospective immigrant's claim to democratic inclusion depends on the *rights* of a state to close its borders, the correlative *duties* of prospective immigrants not to enter the territory and the *proportionality* of the measures with which a state protects its rights. The demarcation of the boundaries of the demos thus ultimately relies on a theory of territorial rights. Building on prominent theories of territorial rights, I argue that refugees have a claim to democratic inclusion, whereas other prospective immigrants only have a claim to democratic inclusion when the border laws threaten with disproportional consequences. The practical upshot is that changes are required to make contemporary regimes of border control democratically legitimate, but not the changes that cosmopolitans propose.

CHAPTER 2

2.1 INTRODUCTION

Most democratic states claim a right to unilaterally control and close their borders to foreigners. But this unilateral right over territory is often considered to be in fundamental tension with requirements of democratic inclusion. According to some theorists, democracy requires the establishment of cosmopolitan institutions that give articulation to a “global demos” on any regime of border control, thereby enabling virtually everyone around the world to participate in the making of border laws (Abizadeh 2008). The aim of this chapter is to revise the view that democracy and territorial rights are in tension. I will argue that requirements of democratic inclusion ultimately presuppose a theory of territorial rights. This means that we should attend to a theory of territorial rights in order to determine to whom a regime of border control must be democratically justified.

My claim that democracy and territorial rights do not come into conflict follows, in particular, when democratic boundaries are drawn on the basis of the *all-subjected principle* – a widely endorsed principle of democratic inclusion.¹ According to the *coercion-based* interpretation of this principle, all who are subject to coercion by a state’s laws should be included in the making of those laws.² This interpretation of the all-subjected principle is often justified by reference to *freedom as personal autonomy*: Political participation in the making of a state’s laws is necessary to combat or prevent the infringement of autonomy that results from subjection to coercion by those laws (Abizadeh 2008: 42; Lovett and Zuehl 2022; Stilz 2019: 107-109; Wilson 2021). Whether

¹Whereas Dietrich (2023) and Rieber (2004) also advocate for considering territorial rights in defining democratic boundaries, they do not demonstrate the significance of territorial rights in conjunction with the prominent *all-subjected principle* of democratic inclusion. Instead, they seem to be relying on something akin to the *all-stakeholder principle*, as proposed by Bauböck (2015: 825; 2018: 37-47). As this principle makes a claim to democratic inclusion dependent on having a stake in a political community that governs a particular territory, it necessarily presupposes the significance of territorial rights for drawing democratic boundaries.

²The coercion-based interpretation provides the *de facto* interpretation and can be contrasted with the *de jure* interpretation of the all-subjected principle, according to which a person is subject to a state’s laws when she is subject to the state’s legal authority or legal powers, rather than the laws’ coercive effects (Goodin 2016: 372; Abizadeh 2021b: 604).

a person should be included in the making of a state's laws then ultimately depends on whether the laws compromise personal autonomy.

The coercion-based all-subjected principle yields different outcomes under alternative accounts of coercion. Building on Joseph Raz (1986) and Alan Wertheimer (1997), I develop a *moral* account of coercion. On this account, a state's laws subject to coercion and thus infringe a person's autonomy only if they alter the moral relationship between the state and the person, thereby making the person dependent on the will of the state. I show that the moral relationship between the state and a person is not altered if the state merely enforces a prior right. This is the case if (a) the person has a prior duty, (b) the state has a standing to enforce that duty, and (c) the state threatens to enforce that duty with proportional consequences. The coerciveness of subjection to a state's laws is, consequently, a function of pre-existent rights and duties. The use of a moral account of coercion in the coercion-based all-subjected principle thus leads to an understanding of democracy that is inclusive of territorial rights.³

Applying the moral coercion-based principle to border laws shows that a prospective immigrant's claim to democratic inclusion in a state's border laws depends on the enforceable *rights* of the state to close its borders, the correlative *duties* of the prospective immigrant towards the state not to enter the territory, and the *proportionality* of the measures with which the state protects its rights. Building on several prominent theories of territorial rights, I argue that refugees have a claim to democratic inclusion, whereas other prospective immigrants only have a claim to democratic inclusion when the border laws threaten with disproportional consequences.⁴ The practical upshot

³ Saunders (2011) distinguishes an *inclusive* understanding of democracy from a *pluralistic* understanding of democracy, according to which democracy is only one value among others that can be overridden by other values, such as those grounding territorial rights. The idea that democracy is inclusive of territorial rights is closely related to the notion that democracy encompasses individual rights. For example, with his 'value theory of democracy', Brettschneider (2009) argues that some individual rights protect core values of democracy. As Saunders (2011: 66-67) points out, it is plausible to think that the right to freedom of association is one such individual right. And if, as Wellman (2008) suggests, the right to freedom of association entails a right to exclude, then failing to respect the right to exclude would be undemocratic.

⁴ I focus on prominent neo-Lockean, self-determination and nationalist theories of territorial rights by Nine (2012), Miller (2012, 2016), Moore (2015) and Stilz (2019). I leave aside

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is that changes are required to make contemporary regimes of border control democratically legitimate, but not the changes that cosmopolitans propose.

The chapter is structured as follows: In Section 2.2, I define subjection to coercion, following Raz (1986), as a form of subjection that *necessarily* infringes freedom as personal autonomy, because it *always* makes the subjected person dependent on the will of another. Subsequently, I justify the use of the *coercion-based all-subjected principle* by explaining the role of political participation in combatting or preventing the infringement of autonomy that results from subjection to coercion. In Section 2.3, I examine the conditions under which border laws can be deemed coercive. In Subsection 2.3.1, I identify a problem in current definitions of border coercion, namely that they do not forge the link between subjection to coercion and dependence on the will of another. Inspired by Wertheimer (1997), I argue in Subsection 2.3.2 that this problem can be solved by making a distinction between coercive threats and *warning threats*. The consequent notion of coercion relies on prior rights and correlative directed duties, making it an inherently *moral* notion of coercion. Given the necessary connection to personal autonomy, the notion of coercion refers to a wrongful act and is therefore also inherently *moralised*. In Subsection 2.3.3, I respond to two main objections against such an inherently moral and moralised notion of coercion. In Section 2.4, I combine the notion of coercion with theories of *territorial rights* in order to identify the scope of subjection to border coercion. The chapter concludes, in Section 2.5, by discussing the legitimate democratic boundaries for contemporary border control decisions.

2.2 SUBJECTION AND AUTONOMY

Border control laws are implemented and imposed via the state's coercive powers. According to the prominent *coercion-based* interpretation of the *all-subjected principle*, all who are subject to coercion by a state's laws should be given a right to participate in the making of those laws. This principle of democratic inclusion can be justified by reference to the underlying value

ethnographic and functionalist theories of territorial rights (e.g., Kolers 2009; Rawls 1999), although I believe that they lead to the same conclusions.

of democracy, which is, in turn, often couched in terms of the protection of *freedom as personal autonomy* (Lippert-Rasmussen and Bengtson 2021: 1028-1030).

Personal autonomy describes a person's capacity to 'live a life freely chosen', meaning that a person can control, to some degree, their own destiny, fashioning it through successive decisions throughout their lives (Raz 1986: 370, 372). To have this capacity means to be able to actively pursue the intentions and plans that one has formulated and reflectively endorsed through one's own *independent reasoning process*. So understood, an autonomous life is possible only if a person

- (1) has the *appropriate mental capacities* to formulate one's own, reflectively endorsed, practical judgements,
- (2) enjoys an *adequate range of options* to act on those practical judgements, and
- (3) can formulate those practical judgements *independent from the will of another*.⁵

Following Raz (1986: 378), I define subjection to coercion as a form of subjection that *necessarily* makes the will of one person dependent on that of another.⁶ This means that subjection to coercion, by definition, always compromises independence – the third condition of personal autonomy. Subjection to coercion may, furthermore, *sometimes* diminish a person's options to such a degree that there is an inadequate range of alternative options left for the person to choose from. It may also *sometimes* hinder the development of appropriate mental capacities to formulate practical judgments. But it *always* undermines the proper relations between the coercer and coercee by making the coercee dependent on the will of the coercer.

Political participation in the making of coercive laws can mitigate or remedy the compromising effects of subjection to coercion on personal autonomy.

⁵See Raz (1986: 373-374) but also Stilz (2019: 104-106) and Abizadeh (2008: 39-40) for this definition of personal autonomy.

⁶I restrict myself to a notion of coercion that is characterised by the infringement of autonomy. When expanding the notion of coercion, additional arguments are needed to elucidate why those exercises of power that do not violate autonomy, but still qualify as coercion, must also be democratically justified.

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On the one hand, political participation can *prevent* the ills of subjection to coercion. While the laws cannot fully reflect an individual's own judgements, they can implicate the shared will or joint intentions of all participants, thereby preventing that the laws are solely decided by an alien will (Lovett and Zuehl 2022; Stilz 2019: 107-109). On the other hand, political participation can *cure* the ills of subjection to coercion by providing a justification of state coercion that is consistent with personal autonomy. As our lives will always be shaped by our social life in some ways, the shared authority over our lives through political participation in democratic decision-making may be the best we can get when respecting all citizens' claims to personal autonomy (Wilson 2021). In either of these two ways, the right to participate in the making of those laws can contribute to protecting the autonomy of individuals subjected to coercively enforced laws (cf. Abizadeh 2008: 42).

Recognising the value of political participation for the protection of personal autonomy against coercive encroachment leads to the *coercion-based all-subjected principle* of democratic inclusion. The principle tends to be more restrictive in scope than its prominent alternative – the *all-affected principle* – according to which all who are *affected* by the laws of a state should be given a right to participate in the making of those laws. After all, being subjected implies being affected but not *vice versa* (Goodin 2016: 366; Miller 2009: 214).⁷ The question is whether the coercion-based all-subjected principle is also more restrictive in scope, in the sense of not having a global scope, when it comes to border laws.⁸

⁷This may be different when one considers a specific form of being affected, such as actually or proportionally affected interests.

⁸Observe that subjection to border laws may trigger democratic inclusion because a person is subject to a *specific* border law (Goodin 2016: 384), because a person is subject to a *significant proportion* of the state's laws (Miller 2009: 222), or because a person is *systematically and over time* subject to the state's laws (Erman 2014: 538-539). After all, border laws constitute a significant proportion of the state's laws and expose their subjects systemically and over time to an exercise of power.

2.3 SUBJECTION TO BORDER COERCION

The state can subject those trying to cross its territorial borders to *coercive acts*. That is, it can subject potential migrants to a *non-communicative* form of power by directly using physical force against them or restricting the physical space in which they can move (e.g., through imprisonment). The state can also subject potential migrants to *coercive threats*. It can communicate the intention to use physical force if a person were to attempt to cross its borders. As coercive threats are *communicative* forms of power exercise, they may reach beyond the civic and territorial boundaries of the state.⁹ But how far do they reach? To determine the scope of subjection to border coercion, we need to establish the necessary conditions under which the threats posed by border laws can be deemed coercive, in the sense that they make the threatened dependent on the will of the state.

2.3.1 *Coercive Threats versus Hypothetical Threats*

Subjection to coercion has a broader scope than *successful* coercion, as a person who is being successfully coerced is also subject to coercion but not *vice versa* (Abizadeh 2008: Appendix). For example, a migrant is subject to coercion if she defies the state and crosses the state's borders illegally, while she is only successfully coerced if the coercion by the state helped prevent her from crossing the border. Arash Abizadeh (2008: Appendix) proposes that a threat subjects to coercion only if it is

- (1) a conditional communicated intention by the threatener¹⁰
- (2) to use physical force against the threatened,
- (3) that credibly

⁹See also Abizadeh (2008: Appendix) on the distinction between communicative and non-communicative exercises of power.

¹⁰The communication need not be verbal. A robber's purely physical expression of pointing a gun at the victims head also communicates that the robber intends to shoot if the victim does not hand over the money. Furthermore, the intentionality distinguishes coercive threats from other interventions that limit the range of adequate options but not by an intentionally acting agent, such as an unpreventable natural disaster. See Abizadeh (2008: 40) but also Hayek (1960: 137).

(4) renders a specific course of action less eligible to the threatened.¹¹

Using this definition, border laws subject *virtually everyone around the world* to coercion, as border laws communicate to virtually everyone around the world a credible intention to use physical force when they illegally enter the territory, rendering the action of illegally entering the territory less eligible. Border laws differ from most other laws in communicating a threat to virtually everyone around the world (Abizadeh 2021b: 609). Consider the border law that threatens anyone who enters the territory with deportation. This border law can be described as stating:

It holds *for everyone* that *if* one enters the territory *then* one is deported.

This law claims universal jurisdiction as its scope is not conditional on territorial presence. A migrant can be a subject of the border law when she is currently at the border, but also when she is residing at the other side of the globe. This means that border threats are never hypothetical to anyone.¹²

By contrast, a threat is *hypothetical* to a person when she only becomes a subject to the threat by a choice that she makes but can avoid making (cf. Miller 2010: 115). Consider the domestic law by a dictatorial state that threatens to imprison anyone who demonstrates on its territory. This threat can be more precisely formulated as stating:

¹¹The conditions are based on Nozick (1969) and Raz (1986: 149). They can be put in formal form (cf. Abizadeh 2008: 58): P subjects Q to a coercive threat if and only if

- (1) P communicates to Q the intention to cause outcome X if Q undertakes action A ,
- (2) X involves the use of physical force against Q ,
- (3) Q believes that P has the capacity to cause X and intends to do so if Q does A , and
- (4) Q believes that $X \wedge A$ is worse for her than $(\neg X) \wedge (\neg A)$, such that X provides Q a reason not to do A , and P 's reason for threatening X is her belief that X provides Q a reason not to do A .

¹²Besides having a universal scope and thus being non-hypothetical to everyone, a border threat is also credible to everyone around the world because *if* one enters the territory *then* the state has the capacity to enforce the threatened consequences. Observe that the hypothetical nature and the credibility of a threat can come apart. Consider a King of a two-province entity who is only able to enforce his threat in province A but not in province B. Suppose that the King threatens to *everyone on his territory* that *if* one demonstrates on the territory *then* one is executed. The King's threat is non-hypothetical to everyone on his territory but it is only credible to those in province A. I am indebted to David Miller for this example.

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It holds *for those on the state's territory* that *if* one demonstrates *then* one is imprisoned.¹³

Given the restriction to territory in the scope of the threat, this threat is hypothetical to those outside the dictatorial state's territory. The threat may deter those outside the territory from performing the action that *would* make them become a legal subject (i.e., entering the territory), but this is not a deterrence from the targeted action by the law (i.e., not demonstrating). As a hypothetical threat does not deter the threatened from taking the targeted action, it does not make the threatened dependent on the will of the threatener.

However, while border threats are non-hypothetical to all foreigners – their scope is global – this does not entail that they also subject everyone around the world to coercion. The conditions for subjection to coercion proposed by Abizadeh are too inclusive to capture the normative significance of coercion. They only ensure that a coercive threat rules out a specific course of action for the threatened. But when a threat rules out a specific course of action, the threatened is not necessarily made dependent on the will of the threatener and, thus, the third condition of personal autonomy is not necessarily compromised (Miller 2010: 113). Whether a threat compromises a person's independence also depends on the *type* of options that the threat rules out.

David Miller (2010) suggests that a person is made dependent on the will of the threatener only if the threat leaves her with an *inadequate* range of options. A threat would leave the threatened with an inadequate range of options if the threatened is forced to take a relatively specific course of action. Coercive threats then involve 'forcing a person *to do* some relatively specific thing' and should be distinguished from *preventative threats* that involve 'forcing

¹³ This is a *logically narrow-scope* interpretation of the domestic legal threat. By contrast, in the *logically wide-scope* interpretation, the threat is restricted to the state's territory in its condition, not in its scope. The threat would then state: It holds *for everyone* that *if* one demonstrates *on the state's territory*, *then* one is imprisoned. However, in the wide-scope interpretation, all foreigners would positively fulfil the legal requirement not to demonstrate on the state's territory, even if they demonstrate elsewhere. This yields an implausible analysis of who may positively fulfil the legal requirement, for if there were 'a credible reward' attached to fulfilling the domestic legal requirement, then the state would be 'on the hook to reward foreigners' (Abizadeh 2021b: 606-608). See also Inoue (2023) on the delineation of the scope of legal threats.

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a person *not to do* some relatively specific thing while leaving other options open' (Miller 2010: 114). Border threats are generally preventative threats: they try to force migrants *not to enter* the state's territory.

However, Miller's distinction between coercive and preventative threats is based on the questionable assumption that the coerciveness of a threat depends on whether the threatened is left with such an adequate range of options that she can avoid the targeted action. This assumption conflates avoiding *communicative coercion* (a coercive threat) with avoiding *non-communicative coercion* (a coercive act). Suppose that a would-be immigrant has sufficiently good alternative options available that she can refrain from entering the state's territory. By not entering the state's territory (targeted action), the would-be immigrant avoids being imprisoned (coercive act). While she avoids subjection to a coercive act, there is no reason to think that she also avoids subjection to a coercive threat by the border law. In fact, as the discussion on hypothetical threats has shown, the would-be immigrant simply has no action by which she can prevent becoming subject to a (coercive) border threat. Moreover, if she refrains from entering the state's territory because of the threat, then this change in behaviour suggests that she is subject to a *successful* coercive threat. As Abizadeh (2008: 124) clarifies, 'the whole point of a coercive threat is that it subjects a person to communicative coercion even if, having succumbed to it, she avoids the threatened deployment of force.'¹⁴ A border threat can thus potentially make the threatened dependent on the will of the threatener, even if it is preventative and leaves open an adequate range of option. As the coerciveness of border threats does not depend on whether the migrant is left with an inadequate range of alternative options, the question remains: What type of options does a threat need to rule out to subject to coercion by making a person dependent on the will of the threatener?

¹⁴See also Hamowy (1971: 356-358) and even Miller (1989: 14) acknowledges that avoiding communicative coercion should not be conflated with avoiding *non-communicative* coercion.

2.3.2 *Coercive Threats versus Warning Threats*

To forge the link between subjection to coercion and an infringement of personal autonomy, coercive threats should not only be distinguished from hypothetical threats but also from *warning threats*. Just like a coercive threat, a warning threat is a conditional, communicated intention that credibly and non-hypothetically renders an action less eligible. But, in contrast to a coercive threat, a warning threat does not change the *moral relationship* between the threatener and the threatened. This moral relationship can be characterised by the prior rights and duties that the threatener and threatened have towards each other. A warning threat merely warns the threatened about the threatener's prior rights in order to ensure compliance by the threatened with her prior duties. As a warning threat merely reaffirms the existing moral relationship between the threatener and the threatened, it does not make the threatened dependent on the will of the threatener.¹⁵

An exemplary instance of a warning threat is one in which the threatened is informed about the intention of the threatener to protect her prior *claim rights*. Following Hohfeld (1917), claim rights are always correlated to duties that are directed towards the claim rights-holder.¹⁶ A threat aimed at protecting prior claim rights thus serves to ensure compliance by the threatened with the

¹⁵ One could also argue that warning threats should not be deemed wrongful, in the sense of subjecting another to coercion, because otherwise rights-holders have to act without giving warnings, which deprives the other party of a choice that the threat would have given her (Epstein 1983: 558). Whereas Wertheimer (1997: 97, 217-220) defines *warning threats* broadly as threats that do not alter any rights and duties, I use a narrower definition of warning threats by focussing on the specific rights and duties that are relevant to the moral relationship between the threatener and the threatened.

¹⁶ Following Hohfeld (1917), *claim rights* should be distinguished from *liberty rights* that do not have a correlative duty. That is, a *claim right* is a moral right of *P against Q* to do φ with a correlative duty of *Q towards P* to do φ . A *liberty right* is a moral right of *P against Q* to do φ where *Q* does *not* have a correlative duty towards *P* to do φ . The duty correlated to a claim right is always *directed*: It is always a duty *owed to* the claim-rights holder (Sreenivasan 2010: 466). I depart here from Raz (1986: Ch. 7) in using a relational understanding of rights. However, what I do is also compatible with a non-relation theory of rights, according to which duties are not correlated to rights but are grounded in rights (Raz 1986: 170-171). Using that framework, one would have to explain why the duties of the threatened are grounded in the rights of the threatener and why those duties are directed to the threatener. The main contenders for explaining the directedness of duties are the interest theory, the will theory, Sreenivasan's (2010) hybrid theory and Wenar's (2013) role-desire theory.

duties owed to the threatener. As such a threat only forces the threatened to do what she already has a duty towards the threatener to do, it does not make the threatened an instrument of the will of the threatener.

Suppose I tell my obnoxious neighbour that I will call the police to forcefully remove her from my premises if she does not stop persisting in trying to enter my house.¹⁷ While I communicate a conditional, credible, and non-hypothetical intention to my neighbour that renders the action of trying to enter my house less eligible to her, this threat should *not* be identified as subjecting my neighbour to a coercive threat. The threat fails to make my neighbour an instrument of my will as it does not alter our moral relationship. My right to call the police to protect my private property is already part of our moral relationship, even if my obnoxious neighbour happens to be unaware of it. That is, my neighbour already has a duty towards me to respect my property rights and my threat only warns her of my enforceable right to protect my private property if she does not fulfil her duty: It is a *warning threat*.

A warning threat can also aim at ensuring compliance by the threatened with a duty that is not directed towards the threatener but towards a third person. The threatener may have the *standing to enforce* or the *standing to demand enforcement* of the duties that the threatened owes to the third person. If a threat reflects this standing, it does not change the moral relationship between the threatener and the threatened, and is therefore also a warning threat.¹⁸

Suppose that I observe a violent husband abusing his partner and threaten him to call the police unless he stops right away. My threat merely warns the husband that I have the standing to demand enforcement of his duties towards his partner by calling the police and that the police has the standing to enforce his duties by taking him to the police station. While the violent husband may not be aware of it, my standing to demand enforcement by the police is already part of our moral relationship. Similarly, suppose that my obnoxious neighbour has either an *undirected* duty or a duty towards the moral community of citizens not to pollute the uninhabited forest behind our

¹⁷This example comes from Miller (2010: 114).

¹⁸I thank David Miller for urging me to clarify this point.

house. This duty is enforceable by the police and my threat to call the police unless my neighbour stops polluting the uninhabited forest is warning her of my standing to demand enforcement by the police of her duties. As my threat does not change the moral relationship between me and my neighbour, it is a warning threat.

However, not every threat communicating an intention to enforce or to demand enforcement of duties is a warning threat. The threatener must also threaten with *proportional* consequences. For example, I am licensed to request the police to forcefully remove my obnoxious neighbour from my premises, but I am not licensed to kill my obnoxious neighbour when she persists in trying to enter my house. Similarly, the landowner of a remote island subjects virtually everyone around the world to a warning threat when she threatens to repatriate anyone who enters the island or threatens to build a fence around her island to prevent anyone from entering. But she subjects virtually everyone around the world to a coercive threat when she threatens to shoot anyone who enters the island. The effect of such a threat is that a potential decision by the threatened on whether to enter the island is no longer informed by the rights of the landowner and the ensuing duties of the threatened but, rather, by the disproportional consequence that the landowner threatens to bring about. A threat communicating the intention to use a disproportional amount of force thus makes the threatened an instrument of the will of the threatener.¹⁹

The distinction between coercive threats and warning threats takes the moral relationships (how the subjects *ought* to behave towards each other)

¹⁹The example of the landowner comes from Miller (2010: 115-116). It is unclear whether Miller refers to justified interests, actual interests or remote interests when he argues that the threats by the landowner do not subject to coercion because 'for everyone apart from the half-dozen or so people who actually have an interest in visiting the island, life goes on exactly as before: so in what sense is their independence invaded?' However, the coerciveness of threats cannot depend on whether the threatened has an actual interest in entering the island, for then our independence could be increased by simply adapting our preferences and the happy slave, who has no current interest in escape, would not be subject to a coercive threat by her master. Similarly, the coerciveness of threats cannot depend on the remoteness of the possibility that the threatened ever develops an interest in entering the island, for then the law threatening to imprison me if I ever commit a murder would not subject me to coercion (Abizadeh 2010: 127).

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between the threatener and the threatened as the baseline state of affairs against which the coerciveness of a threat should be evaluated. If, by contrast, the *normal* relationship (how the subjects *are actually* behaving towards each other) would be taken as the baseline state of affairs, certain threats may be misidentified as non-coercive. Consider Robert Nozick's (1969) example of a slave owner who regularly beats his slave. Suppose that the slave owner one day tells his slave that he will continue the regular beatings if the slave does not perform a specific action.²⁰ Most people agree that the threat by the slave owner makes the slave an instrument of the owner's will and, therefore, subjects the slave to a coercive threat. This conclusion is reached when identifying the moral relationship between the slave owner and the slave as the baseline state of affairs. After all, the slave does not have a duty towards the slave owner to perform the specific course of action and the slave owner threatens with disproportional consequences. However, this conclusion is not reached if the *normal* relationship between the slave owner and the slave is taken as the baseline state of affairs. After all, the slave is regularly beaten in the normal course of events and, thus, the slave would be subject to a threat that does not change their normal relationship.

To conclude, the distinction between coercive threats and warning threats is based on the idea that a threat only makes the threatened dependent on the will of the threatener if it changes their moral relationship. Whether a threat changes their moral relationships depends on the enforceability of prior duties and the *proportionality* of the threatened enforcement. This leads to a new necessary condition for coerciveness: It means that a threat subjects to coercion only if

- (5) (a) the threatened does not have a *duty* to undertake the targeted action,
or
(b) the threatener neither has a *standing to enforce* the duty nor a *standing to demand enforcement* of the duty, or

²⁰ Whereas Nozick (1969: 450-451) introduces this example to distinguish coercive threats from offers, the example is equally applicable to a distinction between coercive threats and warning threats as the offer to stop the regular beating if the slave performs the specific action is translatable into the threat to continue the regular beating if the slave does not perform a specific action, cf. Wertheimer (1997: 220).

(c) the threatened consequences are *disproportional* to enforce the duty.²¹

This necessary condition ensures that a coercive threat always compromises a person's independence – the third condition of personal autonomy. It ensures that an option is ruled out for the threatened as a consequence of the will of the threatener.

2.3.3 *A Moral and Moralised Notion of Coercion*

The notion of coercion that I propose is both moral and moralised. It is a *moral* notion, because it relies on a normative theory concerning prior rights and duties. It is a *moralised* notion, because it is based on the assumption that coercion always compromises personal autonomy and is thus an inherently wrongful act.²²

A common objection to a *moralised* notion of coercion is that it would deny the possibility of *justified* coercion, despite frequent and sensible discussions on the justification of coercion (Cohen 1997: 13; Wertheimer 1997: 244).²³ However, this objection loses force when we understand that the moralised notion of coercion concerns *pro tanto* wrongs and not *all-things-considered* wrongs. The *pro tanto* wrongness of coercion clarifies not only that coercion *can* be *all-things-considered* justified but also that coercion *must* be justified in order to be permissible (Kushner 2019: 460-467). It is important to note here that the moral considerations figuring in the *justification* of coercion are distinct from the moral considerations used to determine whether someone *is* coerced. That is, the moral reasons of the threatener to subject the threatened to coercion do not need to align to the duties of the threatened that help to determine whether she is subject to coercion (Wertheimer 1997: 256).²⁴

²¹ Formally, *P*'s threat to cause outcome *X* if *Q* undertakes action *A* subjects *Q* to coercion only if (a) *Q* does not have a duty to undertake action *A*, (b) *P* does not have the standing to enforce nor the standing to demand enforcement of *Q*'s duty, or (c) the threatened outcome *X* is disproportional to enforce *Q*'s duty.

²² A moral notion of coercion is not necessarily always moralised. Even if we need to know moral facts in order to determine whether there is a case of coercion, the coercion itself does not need to be considered a wrongful act (Miller 1983: 72, n.10).

²³ See, for example, Blake's (2001) discussion on justified coercion.

²⁴ I am grateful to Daniel Häuser for discussions on these points.

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Consider the possibility of – what Miller (2016: 163) calls – ‘a tragic conflict of values’ between refugees and a state, in which refugees have a liberty right to enter a state but the state justifiably does not admit them because it has carried out its fair share of responsibility and cannot accommodate further immigrants without serious costs to social justice and cohesion. The state may have a liberty right to close its borders, which does not lead to a correlative duty on the part of refugees. In this case, the state’s border restrictions are *pro tanto* wrong and, thus, coercive towards refugees. But weighing the interests of refugees in entering this particular state against the interests of its citizens in retaining a system of social justice and cohesion could potentially lead to the conclusion that the border restrictions are *all-things-considered* justified and, thus, present a case of *justified border coercion*.

The related worry might be raised that the *moral* notion of coercion has anti-democratic implications. If all legal threats can be based on rights and correlative duties that are justified independent of a democratic procedure and, therefore, do not subject to coercion, is there then still a need for democracy? Suppose a small aristocratic group establishes a system of criminal law that accurately protects independently morally justified rights and duties. The moral notion of coercion seems to imply that any enforcement of those laws is merely warning citizens about the protection of justified entitlements. And since warning threats do not compromise citizens’ autonomy, there seems to be no need to give them participation rights.

To respond to this worry, different types of justifications should be distinguished. Some moral rights and correlative duties can be *pre-institutionally* justified.²⁵ They involve claims ‘that could logically exist prior to a legal system or social practice, and whose binding force is moral, not legal or conventional’ (Stilz 2019: 39). For example, according to neo-Lockean theories, territorial rights are often pre-institutionally justified and limited forms of property can also be pre-institutionally justified (cf. Moore 2015: 15-33; Nine 2012: 72-93; Stilz 2019: 36-39). Similarly, the law prohibiting murder could be pre-institutionally

²⁵ Abizadeh (2010: 127-128) denies the possibility of a pre-institutional justification. He holds that all rights must ultimately be democratically justified. This is, however, a controversial assumption.

justified, as grounded in a duty to respect the integrity and autonomy of others. Given a pre-institutionally justified duty, those laws do not infringe autonomy and I am thus willing to accept that a democratic justification is not required for such laws.

But the majority of laws creates duties that cannot be pre-institutionally justified. These duties either remain underspecified or underdetermined in the absence of social institutions or are themselves the product of social institutions (Stilz 2019: 39). These laws have to be democratically justified in order to prevent or mitigate the threat that they are imposed by an alien will. Indeed, if these laws are democratically justified, there may be a duty towards one's fellow citizens to comply with those laws. The existence of such a directed duty implies that democratically justified laws do not subject to coercion and, consequently, that democratic inclusion can *prevent* the ills of subjection to coercion. In the case of underdetermined rights and duties, the *moral* notion of coercion may thus even provide a reason for democracy.

However, some uses of physical force may form an exception to this idea that laws, based on pre-institutionally or democratically justified duties, are not coercive. Consider the physical force used to punish a convicted criminal (e.g., through imprisonment). Criminal punishment often serves one or more of the following purposes: It provides retribution, deterrence, expressive denunciation or supports rehabilitation.²⁶ If a criminal punishment solely supports rehabilitation, an offender may have a duty to accept this punishment, grounded in a duty to reduce one's own likelihood of recidivism (Howard 2017). But criminal punishment rarely aims solely at rehabilitation. The punishment of imprisonment, for example, rather seems to increase the likelihood of recidivism. Since criminal punishment serves purposes beyond rehabilitation, it could be argued that even a murderer does not have a moral duty to accept imprisonment – as is reflected in penal codes that do not consider escaping a criminal offence.²⁷ Hence, we can say that the democratically justified crim-

²⁶ Alternatively, see Brettschneider (2020) on a democratic theory for the justification of criminal punishment.

²⁷ An example is the German penal code. Observe that suggesting the lack of a duty to accept imprisonment for a murderer encounters more controversy than suggesting the same for a thief, for instance. An offender may have forfeited certain rights by violating the rights

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inal law subjects to a coercive act, in line with my view that there is space for a democratic justification of coercion within a moral framework.

2.4 TERRITORIAL RIGHTS AND BORDER COERCION

Given the moral notion of coercion that I defended, a theory of rights and duties is required to determine whether an exercise of power subjects a person to coercion and, thus, restricts their autonomy. In Section 2.3.2, I defended this moral notion of coercion on the basis of the *logical possibility* that there are property rights and that there is a moral duty to respect those rights. Now, if I were to draw the conclusion that the protection of private property does not restrict freedom as autonomy, a *moral endorsement* of property rights and correlative directed duties would be required (Cohen 1997: 12). Similarly, to determine whether border control policies restrict the freedom as autonomy of virtually everyone around the world and, thus, to determine the scope of subjection to border coercion, we need to attend to a theory of territorial rights and duties.

Over the past decade, a new body of literature has emerged that aims to explain and justify rights over territory. Territorial rights can be separated into three main elements: the right of jurisdiction, the right to the territory's resources and meta-jurisdictional rights (Miller 2012: 252-253). These meta-jurisdictional rights are often considered to encompass a *right to exclude*, which is the right to make and enforce morally binding decisions on territorial admission. When a state has such a right, prospective immigrants have a corresponding duty to obey its decisions on territorial admission, even if these decisions are not morally justified. That is, the right to exclude reflects the *legitimacy* to impose immigration restrictions, whether or not those restrictions are *justified* (Miller 2012: 265; Stilz 2019: 89,188; Yong 2017: 463-464).²⁸

of others, but the punishment of imprisonment for crimes by property is far more severe than the harms done. It would thus be especially odd to think that the thief has a duty to accept a criminal punishment, such as imprisonment, that violates their own rights. See also Goldman (1979: 44-45, 59).

²⁸Most theories of territorial rights focus on the right to exclude immigrants from the territory (Moore 2015: 191). In that case, the state's right to exclude applies to would-be immigrants (except refugees) but not to other travellers, like short-term visitors and tourists.

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States typically claim the right to exclude from their territory. The question is whether states actually have such a right to make and enforce morally binding decisions on territorial admission. In other words, the question is whether prospective immigrants have a corresponding enforceable duty to comply with the state's border laws. Those who answer this question in the affirmative often appeal to one of two rationales. According to the first, the duty of most prospective immigrants to respect the state's border laws is grounded in a pre-institutional *ownership* of land by the individuals or collective that the state represents. The second appeals to a *natural duty of justice* to justify the *political authority* of border laws over most prospective immigrants.²⁹ Each of these rationales typically excludes refugees from the group of prospective immigrants that have duties to respect a state's border laws. As these rationales are subject to debate, my aim is not to advocate for them, but rather to show their implications for the coerciveness of border laws.³⁰ Let me therefore give a brief account of each rationale.

First, the duty to respect the state's border laws could be grounded in the duty to respect the use-right or *ownership* of the individuals or collective occupying the land (Moore 2015; Nine 2012; Stilz 2019) or the nation formed by the people occupying the land (Miller 2012). These entities can establish a normatively valuable relationship to the land, by changing the land via labour (Nine 2012: 73-93), by exercising self-determination on the land for a significant amount of time (Moore 2015: 34-70; Stilz 2019: 33-85), or by embedding cultural value in the land with the passage of time (Miller 2012: 265). This normatively valuable relationship gives them strong interests not to be interfered with their use of the land in ways that could undermine their shared social, cultural and political practices. Just as with the use of other material goods such as property, these weighty interests in the use of the land ground a duty on others not to interfere with those interests. After all, the normatively valuable

I thank Christine Straehle for pointing this out.

²⁹ A third prominent rationale is based on freedom of association (Wellman 2008), which I do not discuss because I agree with Fine (2010: 353-355) that this rationale fails to establish a connection between groups and territory, and thus only succeeds if one also presupposes some form of territorial ownership.

³⁰ For an objection to the existence of a duty to comply with border laws, see, for example, Hidalgo (2019).

relationship to the land can only be enjoyed as long as there is a liberty to reside permanently on the land and a claim right against others not to interfere with their use of the land in ways that can undermine their special relationship to that land (Stilz 2019: 58).

This ownership over a particular piece of land justifies the right to exclude. The primary possessor of the right to exclude may be the collective of people occupying the land (Nine 2012; Moore 2015), the nation formed by the people occupying the land (Miller 2012), or the state as the legitimate representative of the people occupying the land (Stilz 2019).³¹ Even if the state is not the primary possessor of the right to exclude, it is still assumed to have the *standing to enforce* the right to exclude as the representative of the people or nation holding this right. Accordingly, borne out of respect for the ‘self-preservation and autonomy’ of the people or nation using the land, most prospective immigrants have a duty to obey the state’s border laws.

However, this right to exclude is conditional. The people occupying the land can only legitimately use the land within the bounds of the *Lockean proviso*, which states that the acquisition or holding of property is only legitimate if ‘enough and as good’ is left for others.³² It should ensure that the acquisition or holding of property does not undermine the value of a system of property rights. In a similar vein, the proviso can be applied to the ownership of the

³¹In order to possess the right to exclude, the collective is typically expected to serve the core values of *basic justice* and *collective self-determination*. That is, the collective is expected to (i) meet minimum conditions of justice and (ii) reflect the shared will of its members or share a conception of themselves as a group with a common political project (Nine 2012: 45, Moore 2015: 49-54, Miller 2016: 59-60, Stilz 2019: 89-90). The question arises whether the collective needs to have agency. This question is of particular concern to those committing either to a status-based *justification* of rights, which grounds rights in moral status, or to a will theory of the *nature* of rights, which describes being a rights-holder as having certain normative powers with respect to those rights and the corresponding duties. By contrast, interest-based theories of the justification or the nature of rights generally deny that a collective needs to have agency to hold a claim right, cf. Kramer (1998: 57). See Moore (2015: 46-49) on why accepting collective agency does not entail a ‘metaphysically suspicious appeal to a collective mind’.

³²Locke’s ‘enough and as good’ clause can be found in the Second Treatise (§27, Chapter 5). Note that, according to Stilz (2019: 187-215), the right to exclude is not only conditional on the circumstances of prospective immigrants but also on the circumstances of the occupants: The right to exclude would only be justified if immigrants’ settlement significantly harms current occupants.

people occupying the land. The use of land should then not undermine the ability of another person or collective to establish a valuable relationship to a particular piece of land. As refugees have nowhere else to go, the Lockean proviso implies that there is no claim right to the use of the land against refugees.³³ Accordingly, in contrast to most prospective immigrants, refugees are not under a duty to comply with border laws (Stilz 2019: 48-49, 63; Nine 2012).

Second, the duty to respect the state's border laws could be grounded in a *natural duty of justice*. This is a general duty of individuals to support and obey the laws of their state provided that they are sufficiently just (Rawls 1971: 99). According to Miller (2023: 842-846), the natural duty of justice can generally be extended to prospective immigrants, so that they have a *pro tanto* duty to obey border laws, which can be overridden on grounds of necessity.³⁴ This idea of necessity is best introduced through an example on property rights. Consider Joel Feinberg's (1978: 102) example of a backpacker who breaks into a privately owned mountain cabin in order to escape a dangerous snowstorm. This backpacker has a *pro tanto* duty to respect the owner's property rights but a breach of this duty is justified in these particular circumstances (Miller 2023: 846). It has been argued that refugees can legitimately appeal to necessity, because entering the territory unauthorised is the only way for them to ensure their physical security or vital subsistence needs (Mancilla 2020; Miller 2023:

³³ If a system is in place that ensures the protection of certain refugees in a particular state, then those refugees may have a duty to obey the border laws of other states. I use the definition of refugees proposed by Gibney (2004: 7): Refugees are 'people in need of a new state of residence, either temporarily or permanently, because if forced to return home or remain where they are they would – as a result of either the brutality or inadequacy of their state – be persecuted or seriously jeopardise their physical security or vital subsistence needs.' See also Miller and Straehle (2021) on the different definitions of refugees.

³⁴ Other authors suggest a more limited extension of the natural duty of justice. Lee (2016: 186-187) argues that it can only be extended to prospective immigrants if they themselves come from a reasonably just state. If this were true, the duty of justice to obey border laws would not apply to most prospective immigrants and the rationale would have little normative bite. Grey (2015: 126-144) argues that the natural duty of justice can only be extended to prospective immigrants if they are politically included in the making of the laws, thereby making the 'sufficiently just' nature of laws dependent on democratic inclusion. If this were true, then I would be unable to use rationale in my arguments without encountering circular reasoning, as I make a claim to democratic inclusion dependent on the possession of such a duty. I therefore follow Miller's extension of the natural duty of justice.

844-46). As a consequence, refugees do not have an *all-things-considered* duty towards the state to stay away from the territory, whereas other prospective immigrants may have such a duty.

Combining the moral notion of coercion with the existence of a duty to obey border laws leads to the conclusion that a state (itself or as an agent of the people or the nation) can enforce its immigration restrictions without infringing the autonomy of virtually everyone around the world. While a state's border threats towards refugees are generally autonomy infringing and thus coercive, a state's border threats towards most other prospective immigrants are arguably not autonomy infringing and thus not coercive. The latter is only the case when the state threatens to enforce its right to exclude those immigrants with *proportional* consequences. It is beyond the scope of this chapter to work out a theory of proportionality. In line with the discussion on the proportionality of threats in Subsection 2.3.2, I take proportional consequences generally to be forced repatriation, but not execution or imprisonment on a remote island.³⁵ Since many prospective immigrants, except refugees, can plausibly be considered to have a directed duty to stay away from the territory if the state wishes so, the state's proportional threats merely warn them that failing to fulfil their duty has consequences.

2.5 THE DEMOCRATIC BOUNDARIES FOR BORDER CONTROL

The aim of this chapter has been to show that the boundaries of the democratic people cannot be determined without a theory of territorial rights. I have argued that, in order to protect freedom as personal autonomy, all who are subject to coercive border laws should be given a right to participate in the making of those laws. To determine *who* is subject to coercive border laws, I identified under which conditions the link is forged between subjection to coercion and an infringement of personal autonomy. This led to a moral notion of coercion, a distinction between coercive threats and warning threats, and a new necessary condition for subjection to coercion. According to this condition, a person is subject to border coercion only if the person does not have a

³⁵See also Gerver et al. (2023) and Ip (2022) on proportionality in immigration law.

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duty to stay away from the territory, the state does not have standing to enforce the duty or the state's border threats are disproportional to enforce the duty. Combining this condition with prominent theories of territorial rights showed that refugees are subject to border coercion, whereas other immigrants are only subject to border coercion when the laws threaten with disproportional consequences. What does this mean for the democratic legitimacy of current regimes of border control?³⁶

Many regimes of border control around the world threaten with disproportional consequences. States do not just expel immigrants from their territory but also aim to deter other would-be immigrants. The Australian immigration detention islands are a prime example of this type of border policy, but it is also reflected in the lack of means invested in providing immigrants in their basic needs and offering them a speedy immigration process as soon as they arrive. In the Netherlands, for example, the result is that immigrants sleep in tents on the streets and hear only after five to six years that they are not allowed to stay. Although all states may have an incentive to stick to their strategy of deterrence, this race to the bottom has to stop in order to have just and democratically legitimate regimes of border control.

If border control regimes indeed satisfy a criterion of proportionality, there is only one group of would-be immigrants that has a right to participate in the making of border laws, namely refugees. This group should either jointly control border decisions with citizens in cosmopolitan institutions or, more realistically, should get fair representation in border decisions at the national level. Democracy thus does not require a global demos on border laws but allows for the differentiation of political influence in accordance with citizens' and foreigners' rights over the territory.

³⁶ Indeed, my inclusive principle of democratic inclusion can only provide *pro tanto* reasons, as there may be other considerations, besides territorial rights, that may override democratic requirements. Inclusiveness is a spectrum and I do not take on the more demanding inclusive view here that democracy incorporates all possible values and that democracy, therefore, would be 'not simply one value amongst others, but rather has priority in our normative understanding' (Saunders 2011: 65). I thank Ryan Pevnick for pointing this out.

Denizenship and Democratic Equality

Co-authored by Daniel Häuser

Summary Democracy is assumed to require the equal political inclusion of denizens, as sustained political inequalities between members of society seemingly undermine the democratic ideal of equal freedom. This assumption is prominently expressed by Walzer's *Principle of Political Justice*, according to which democratic institutions must attribute equal political rights to denizens in order to sustain their equal protection from domination and the recognition required for free agency. This chapter rejects this influential assumption. We argue that denizenship constitutes a social position, in which equal freedom can be enjoyed without political inclusion on equal terms to citizens. Many denizens are citizens somewhere else, and enjoy status, rights, and protections in virtue of their external citizenship, which can protect them from domination and provide them with the recognitional basis of self-respect. The cross-border relationships between denizens and their home country, as well as between the host country and the home country, must therefore be considered when evaluating claims to political inclusion. Accepting the democratic legitimacy of the partial political inclusion of denizens allows us to focus on the most pressing political claims, such as those of refugees and stateless persons. Partial inclusion schemes can also make less restrictive immigration policies more rational and desirable for citizens.

CHAPTER 3

3.1 INTRODUCTION

According to the latest United Nations Migration Report, approximately 281 million people live outside their country of origin, often for extended periods.¹ Host countries pursue different strategies for politically including these foreign residents, or *denizens*.² Countries such as Denmark and Switzerland favour a *partial inclusion* model. They quickly include denizens to some extent in democratic decision-making, for instance through local voting rights, but make full political membership virtually inaccessible. Other countries, such as Canada, favour an *all-or-nothing* model of inclusion: They do not grant partial political rights but encourage denizens to go on a path to citizenship. Many political philosophers share a deep and abiding commitment to ‘citizen-making’ and believe that only the all-or-nothing model is democratically legitimate (Kymlicka 2022: 247,238, n.11; Song 2018: 158; Torresi 2009: 24).³ By contrast, we argue that the partial political inclusion of denizens can also be compatible with democratic commitments, and thereby reject the widely shared assumption that territorial admission must escalate to full political inclusion.

The all-or-nothing model strikingly prohibits states from offering prospective migrants territorial admission without a path to citizenship, even if some migrants would gladly accept such offers, and even if such offers genuinely provide them with additional options.⁴ This prohibition creates a tension

¹ Available at:

<https://publications.iom.int/books/world-migration-report-2022> (accessed July 16th, 2023).

² Hammar (1990: 12) introduced the terminology of ‘denizenship’ to refer to settled non-citizens whose residence-status is *legally secured*. In line with the current debate, we use the term to refer to settled foreign residents irrespective of their legal status (Benton 2014). Proponents of the all-or-nothing model must posit some threshold for the period of residence after which denizens have a claim to full democratic inclusion, a fairly typical proposal sets it at five years (Carens 2013). We exclude tourists, visiting students or academics, and temporary workers on (non-renewable) short-term contracts from our discussion.

³ Some argue that denizens must be given the *option* to naturalise (Owen 2011), whereas others argue for *mandatory* naturalisation (De Schutter and Ypi 2015).

⁴ We assume that such offers can be genuine, *viz.*, provide potential migrants with additional options to which they are not entitled. The precise content of these offers depends on whether states have a *right to exclude*. For purposes of exposition, we assume that states have a *territorial* right to exclude, but our argument can also be formulated under the assumption

between democratic requirements and aspirations of global justice, as it limits how democratic states may pursue valuable policy goals. This tension comes out clearly in the ‘numbers-versus-rights trade-off’: Increased labour migration is routinely advertised for promoting global justice. At the same time, there is evidence that citizen support for increased labour migration decreases if immigrants are entitled to full political inclusion (Bauböck and Ruhs 2022: 535; Blatter et al. 2022: 1215; Van Parijs 2022: 609). Our arguments dissolve this apparent tension between democracy and global justice, as we show that it is often up to receiving states to decide whether to include denizens fully in the democratic process. Our position decouples territorial admission from full political inclusion and access to citizenship, and thereby expands the space of democratically legitimate policy options.

Many republican theorists share this commitment to citizen-making and consider the naturalisation of denizens to be the only way to ensure the equal political status of all members of society. Most influentially, Michael Walzer voiced the concern that the (partial) political exclusion of denizens renders them vulnerable to *domination* and denies them the *recognition* that constitutes their social basis of self-respect.⁵ Denizens are thereby relegated to a form of second-class citizenship, an inferior social position reminiscent of the *metics* of ancient Athens (1983, 60). Recently, several contributions have questioned this commitment to citizen-making in the case of migrants who pursue *temporary* migration projects (Ottonelli and Torresi 2022; Bauböck and Ruhs 2022). We argue that some denizens pursuing *open-ended* migration projects need not be fully politically included either, as their *external citizenship* protects them from domination and provides them with a secure social basis

that states only have the right to exclude from full political membership.

⁵ Walzer (1983: xii-xiii) emphasises the commitment of democratic societies to ensuring that their members can live ‘free from domination’ and can engage in mutual ‘recognition of one another as human beings’. The recognitional dimension of republicanism has recently been emphasised again, cf. Schuppert (2014) and Garrau and Laborde (2015). While some republicans have extended their conception of domination by a recognitional component, we believe that it is analytically clearer to discuss domination and failures of recognition as distinct threats to the equal freedom of members of society. This recognitional dimension has also been emphasised by liberals and communitarians, cf. Rawls (1971), Honneth (1996) and Wilson (2019). The commonalities between liberal, communitarian and republican concerns with recognition and self-respect are highlighted by Rostbøll (2023: 98-102).

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of self-respect. External citizenship denotes the extra-territorial status, rights and protections provided by the home state (Bauböck 2009). Unlike, Athenian *metics*, denizens who enjoy external citizenship in a democratic polity and occupy a secure and recognised guest status in their host state are not confined to an inferior status. Indeed, Walzer (1983: 60) already hinted at the idea that ‘the original citizenship of guests’ could function as a substitute for their full political inclusion, but we develop this idea systematically.

Some denizens profit more from their external citizenship than others. Such differences must be taken into account when determining the degree of political inclusion that denizens need in order to enjoy an equal political status.⁶ Expats from stable and powerful democracies enjoy significant extra-territorial rights and protections, as well as recognition of their status as moral and political agents. Many temporary labour have secure rights to re-enter their country of origin, but come from less politically or economically influential countries and have fewer opportunities for exercising their political agency at home. By contrast, stateless persons and many refugees lack external citizenship altogether. Accordingly, we argue that denizens have differentiated claims to political inclusion. While a path to citizenship should be secured for the most vulnerable – refugees and stateless persons – local voting rights or other partial inclusion schemes may be appropriate for citizens from powerful and stable democracies. Thus, republican democratic commitments permit political rights-differentiation between denizens and citizens, and also among denizens.

We proceed by situating our argument in the debate on democratic equality in Section 3.2. Subsequently, in Sections 3.3 and 3.4, we discuss Walzer’s concerns with non-domination and recognition in their most prominent contemporary explications for the case of denizens who effectively profit from their external citizenship.⁷ We conclude, in Section 3.5, by considering the political potential of our position in light of its implications for denizens who

⁶ Walzer (1983: 60) suggested that his argument for fully including denizens may not apply to ‘privileged guests’, like visiting academics or other high-skilled labor migrants in virtue of their external citizenship.

⁷ We do not rely on Walzer’s explications of domination and recognition, as they are tied to his underlying theory of justice (Walzer 1983: Ch. 1 & 11).

profit less from their external citizenship.

3.2 EQUAL FREEDOM, CITIZENSHIP, AND A DEMOCRATIC SAY

The widespread view that territorial admission must escalate to full political inclusion derives from two premises: the *democratic inclusion* thesis, according to which denizens must be included in the democratic process, and the *democratic equality* thesis, according to which all who are included in the democratic process must receive an equal democratic say. We argue that (some) denizens may be partially politically included, and thereby deny the *democratic equality* thesis. In this section, we situate our argument in the debate on citizenship and democratic equality.

The *democratic inclusion* thesis draws support from standard principles of political inclusion, like the *all-affected interests* and *all-subjected* principles. As denizens are clearly affected by and subjected to the rule of their host state, these principles imply that denizens should be democratically included (Beckman 2006; Song 2009; Lenard 2015). Traditionally, republicans emphasise the connection between democratic participation rights and citizenship, and accordingly hold that those who are democratically included must be ‘set on the road to citizenship’ (Walzer 1983: 60; Benton 2014: 50). They worry that the extension of a democratic say to non-citizens would undermine the *value of citizenship*. We consider this worry overstated. The value of citizenship does not solely derive from rights to democratic participation. Citizenship denotes a legal status that comes with a bundle of rights (as well as duties), which include, *inter alia*, rights to a democratic say as well as rights to reside on and re-enter a states’ territory, welfare benefits at home, or diplomatic protection abroad (Benton 2014: 65). While citizenship may be a sufficient ground for political inclusion, sustained territorial presence also provides strong reasons for inclusion (Song 2018; Carens 2013; Lenard 2015).⁸ Territorial models of enfranchisement ensure that all who are subjected to the state’s rule have a right to a democratic say, even if they are not citizens. In line with these

⁸Some also argue that citizens should be enfranchised *only* if they are territorially present, e.g., López-Guerra (2005; 2014: 83-109).

territorial models, we believe that denizens have a claim to political inclusion *as denizens*.⁹

While standard principles of political inclusion tell us *who* should be included in the democratic process, they do not obviously require *equal* inclusion. Both principles allow for a range of different interpretations, some of which permit, or even require, differentiated political rights. They could, for instance, be interpreted as requiring political inclusion to the degree to which individuals are affected by or subject to political decisions (Brighthouse and Fleurbaey 2010; Goodin and Arrhenius 2024). The *democratic equality* thesis, therefore, requires further justification.

A natural strategy for evaluating the *democratic equality* thesis is to ask whether it reflects the underlying *value of democracy* (Lippert-Rasmussen and Bengtson 2021: 1028-1030). In the republican tradition, the value of democracy is typically considered to lie in upholding the (maximum) *equal freedom* of all who are subject to the state's rule.¹⁰ In line with recent republican thought, we assume that non-domination as well as social relationships of mutual recognition are necessary conditions for individual freedom (Schuppert 2014). The ideal of equal freedom, in turn, motivates prominent principles of democratic inclusion, including Walzer's *Principle of Political Justice*, according to which 'the processes of self-determination through which a democratic state shapes its internal life, must be *open, and equally open*, to all those men and women who live within its territory, work in the local economy, and are subject to local law' (Walzer 1983: 60; see also Brighthouse and Fleurbaey 2010; Beckman and Rosenberg 2018). However, substantive egalitarian commitments, like the commitment to equal freedom, may find expression in a wide range of institutional arrangements (Beitz 1989: 17; Pevnick 2011: 182).

Like many democratic theorists, we accept that there are good reasons to uphold the *democratic equality* thesis for citizens, at least as a default as-

⁹While we endorse a version of the all-subjected principle – like most republicans – our argument could also be based on a version of the all-affected principle.

¹⁰Many traditions of democratic thought share the commitment to equal freedom as the foundational democratic ideal (while endorsing different conceptions of freedom), see the essays collected in Darwall (1995). The main competitor to equal freedom views are equal status views (Wilson 2019). We share the concern with equal status, but believe that it derives from a concern with equal freedom. On this point, see Wilson (2021).

sumption. The equal freedom of citizens may require that they have an equal say in the imposition of the far-reaching legal, social, and (arguably) moral duties and expectations associated with citizenship (Wilson 2019: 18-26).¹¹ However, this line of reasoning does not support the equal inclusion of denizens. Denizens do not have the same duties as citizens towards their host state. Accordingly, our discussion complements rather than contradicts the literature on democratic equality for citizens.¹²

What does it mean to say that citizens should have an ‘equal democratic say’? Traditionally, an equal democratic say means ‘one person one vote’ or, more broadly, equality in formal democratic decision-making *procedures*. As this procedural understanding of democratic equality does not account for inequalities suffered by structurally disadvantaged groups, many democratic theorists use the notion of an ‘equal democratic say’ to refer to equality in the broader democratic *process* (Ganghof 2021: 54). On this processual understanding, equality in formal procedures is not sufficient and may not even be necessary (cf. Beitz 1989; Christiano 2008; Wilson 2019). Appropriate deviations from procedural equality could involve reserved seats in parliament, weighted voting power or voting rights in local but not in national elections. As we cannot attempt to adjudicate this debate here, we use the notion of an ‘equal democratic say’ ecumenically to refer to whatever the sense is in which citizens should normally be democratically equal.

We argue that the equal freedom of some denizens can be secured without an equal democratic say in the host state. Our argument resembles a familiar justification for deviations from democratic equality among citizens. Most democracies concentrate political power in the hands of legislators, judges, and other officials, who seemingly have a greater say in collective decision-making than ordinary citizens. A prominent justification for such procedural and processual inequalities is that they promote *substantive* equality. Arguably, we need certain privileged social positions to realise equal freedom. Systems

¹¹Traditionally, military duties motivate republican calls for equality among citizens, although this argument has become less influential since many democracies set up professional armies (Blatter 2011: 778).

¹²Our argument suggests that dual citizens may have weaker claims to an equal democratic say than mono citizens – a possibility that has not been discussed much, cf. Blatter (2011).

of judicial review, for instance, are inherently unequal but protect minorities from tyrannical majorities (Rawls 1971: sec. 37).¹³

Denizenship can be understood as a distinct social position, similar to office-holding in representative democracies. Generally, denizens are citizens somewhere else and maintain relationships with their home country. Recognizing them as members, their home country provides them with status, rights, and protections, including diplomatic protection and the right to return. Beyond those core rights and protections, the majority of democracies also provide expatriate voting rights (Bauböck 2009: 478, 487). The position of denizenship is therefore (normally) characterised by *external citizenship*. Denizens also normally have fewer duties towards the host country than citizenship. For example, denizens are generally not liable to jury duty or compulsory military service. The position of denizenship, thus, comes with a distinct set of legal entitlements. In virtue of their social position as citizens of another polity, denizens do not necessarily require an equal democratic say in their country of residence to enjoy equal freedom. They may require extensive social and economic rights, eventually even a right to stay, but not necessarily full political inclusion or a path to citizenship.¹⁴

Walzer notably alluded to a similar idea when introducing his *Principle of Political Justice*. He pointed out that ‘host countries might undertake to negotiate formal treaties with the home countries, setting out in authoritative form a list of “guest rights”, [so that] the *original citizenship of guests* would work for them (as it never worked for Athenian metics)’ (Walzer 1983: 60, *emph. added*).¹⁵ We take this suggestion up in the following sections and evaluate denizens’ claim to political inclusion ‘in a normative framework that involves both countries of residence and origin’ (Bauböck 2009: 477).

Our goal is to show that the territorial admission of migrants need not *always* escalate to their full political inclusion or naturalization. Accordingly, we

¹³ In principle, what we call ‘substantive equality’ might be analysable in terms of process equality in a broader transnational political process, see also Wilson (2019: 277).

¹⁴ Insofar as the international human rights regime also provides a source of recognition and protection from domination, it raises the baseline of equal freedom for everyone. We focus on the implications of denizens’ external citizenship, as we are concerned with salient differences between denizens and citizens.

¹⁵ Most commentators overlook this passage, Torresi (2009: 35) is a notable exception.

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first discuss the case of denizens who experience particularly favourable conditions, that is, citizens of well-ordered democracies with responsive institutions and significant international influence, who currently reside in well-ordered societies with healthy political ties to their home state, and are not forced to move by economic deprivation. We argue that their external citizenship can effectively protect these denizens from domination and ensure their social basis of self-respect. In the final section, we consider the implications of our arguments for denizens who experience less favourable conditions.¹⁶

3.3 FREEDOM FROM DOMINATION

Denizens are vulnerable to domination by their host state, and republicans generally consider this vulnerability detrimental to their equal freedom. Domination is often understood as continuous subjection to another's arbitrary power of interference. The subjection is continuous if it arises within social relationships of *dependency* and the power is *arbitrary* if it depends solely on the will of another. A standard assumption in republican democratic theory is that citizens need an equal democratic say to ensure their equal freedom from domination. A democratic say reduces the arbitrariness of the power by the state, thereby reducing the domination of citizens by their state.¹⁷ Moreover, it incentivises the state to put reliable safeguards in place against domination by fellow residents, such as protections against economic exploitation (Pettit 2012: 24-25). While the state poses a threat of domination, it can also protect individuals from being trapped in dominating relationships by protecting individual rights, maintaining public order, or maintaining social security nets. But this argument for the democratic equality of citizens does not ap-

¹⁶ We take the notion of well-orderedness from Rawls (1999). In contrast to Bauböck and Ruhs (2022: 18), our favourable conditions entail that host and home states are democratic *and* that the discrepancies in economic and political power between them are not large enough to induce threats of domination and misrecognition. We do not engage in ideal theorising though, but simply focus on a subset of relevant cases first.

¹⁷ We speak of domination by the state as a corporate agent. This is a convenient shorthand, but one may ultimately want to analyse relationships of vertical domination as relationships of horizontal domination between those in power and those over whom power is exercised, c.f. Lovett (2010: 118-119).

ply equally to denizens, as some denizens are protected from domination by their external citizenship. Their external citizenship not only renders some denizens less *dependent* than citizens on the relationship with their host state, but also reduces the *arbitrariness* of the power exercised by the host state. Accordingly, the partial political inclusion of denizens can be sufficient to ensure their equal freedom from domination in their host society.¹⁸

3.3.1 *Dependency*

According to Philip Pettit's famous eyeball test, a relationship is dominating if one party cannot look the other in the eye without reason for fear or deference (2012: 84). When the dominated party cannot leave such a social relationship out of their own accord, they are *dependent* on the social relationship. As Frank Lovett (2010) has forcefully argued, dependency amplifies domination wherever it exists. Dependency is a matter of degree and the level of dependency 'should be thought of as a sliding scale, varying according to the net expected costs (i.e., expected costs less any expected gains) of exiting, or attempting to exit, a social relationship' (Lovett 2010: 39).¹⁹ When a person has high exit costs and is, accordingly, highly dependent, they are more vulnerable to domination. For this reason, 'citizens of a country they are prevented from emigrating are more vulnerable to abuses of state power or *imperium* than citizens of a society with no restrictions on exit' (Benton 2014: 53).

Denizens' external citizenship renders them less *dependent* than citizens on the relationship with their host state by providing a right to re-enter the home state. This right to re-enter the home state in combination with the (human) right to exit the host state gives most denizens a guaranteed exit option. Citizens, by contrast, have no such guaranteed exit options (provided they do not also hold citizenship elsewhere).

¹⁸ We assume that domination comes in degrees, c.f. Lovett (2010: 4) and Pettit (2012: 26).

¹⁹ According to Lovett (2010: 39-40), these exit costs include material as well as psychological costs. They quantify a person's beliefs about the dangers of an exit attempt and about their prospects in their home state. We assume that such beliefs must be well-founded. As a consequence, the exit costs are not raised if denizens unreasonably believe that they could not live a successful life in their home state.

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The extent to which denizens can make use of this exit option, and thus the degree to which this option reduces their dependency on the relationship with the host country, depends on multiple factors, including the political circumstances in the home country.²⁰ Whereas returning to the country of citizenship would be an unreasonable option for denizens who fear persecution or civil unrest, it is a secure fall-back option for denizens from stable democracies. Moreover, the net exist costs will likely be higher for long-term than for short-term denizens due to the social networks, employment opportunities and special connections that they have built in their host country and have potentially lost in their home country.²¹ The time of residence and the home country's political climate must, therefore, be taken into account when assessing the dependency of a denizen on the host country. However, even after a considerable time of stay, denizens with an adequate exit option (they can safely return to their home country and build a new life there) remain less dependent on the host country than citizens.

3.3.2 *Arbitrariness*

The host state poses a threat of domination insofar as it can wield its power *arbitrarily*. The precise path by which a democratic say reduces domination depends on how the notion of 'arbitrariness' is spelled out. Three explications of arbitrariness are distinguished in the literature: power can be considered arbitrary insofar it is *unconstrained*, *uncontrolled*, or not forced to *track the interests of those subject* to it (Arnold and Harris 2017).

On the first view, power is arbitrary 'to the extent that its potential exercise is not externally constrained by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned' (Lovett 2010: 96).

²⁰See Benton (2014: 56-58) for these and other factors that affect dependency. Wealth is another factor, as denizens with few financial resources may not be able to afford the return trip. However, host countries could provide funds for the voluntary repatriation of denizens (Ottonelli and Torresi 2022: 62).

²¹Sager (2014) and Owen (2014: 101) also discuss time of residency as a factor that determines the degree to which denizens are dominated. We agree that denizens become more vulnerable to domination over time, but disagree that denizens become equally vulnerable as citizens.

These procedures include democratic elections, but also other effective constraints on power, such as the rule of law and systems of checks and balances.²² On this view, any effective constraint reduces arbitrariness, regardless of *who* controls the constraint or the *substantive direction* in which the constraint forces the power to flow (Arnold and Harris 2017: 58).

By contrast, on a control view of arbitrariness (Pettit 2012), it matters *who* exercises the constraint. The arbitrariness of political power is only reduced if it is effectively *controlled* by those subjected to it. Political rights then reduce domination because they provide individuals with an unconditioned and efficacious control over political power.

On an interest view of arbitrariness, the way in which power is exercised must *track the interests* of those over whom that power is exercised (Pettit 1997). Political rights, then, do not automatically reduce domination by making power more controlled. Rather, political rights reduce domination by forcing the power to flow in a specific substantive direction, as they enable political rights-holders to articulate their interests and to push for policies that align with those interests.

On all three accounts of arbitrariness, the rights and protections connected with external citizenship can reduce the arbitrariness of political power exercised by the host state over denizens. External citizenship puts *constraints* on arbitrary political power, primarily through (informal) diplomatic protection. States can intervene on behalf of their citizens living abroad, for instance, to protect them from discriminatory taxation, expropriation, or criminal punishments. They can do so by repatriating their citizens or by threatening retaliation. For example, EU nationals were repatriated when the Taliban returned to power.²³ And in the famous case of Michael Fay, the U.S. intervened to protect a citizen from corporal punishment in Singapore and succeeded in reducing this sentence.²⁴ In practice, the threat of retaliation may often be

²² See also Pettit (2012: 218) on ‘editorial’ political rights. Here, we disagree with Lovett (2010: 112), who seems to think that democratic elections do not place procedural constraints on arbitrary power.

²³ See the November 2021 briefing of the European parliament on the ‘Evacuation of Afghan nationals to EU member states’, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698776/EPRS_BRI\(2021\)698776_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698776/EPRS_BRI(2021)698776_EN.pdf) (accessed July 22th 2023).

²⁴ See https://www.huffpost.com/entry/spare-the-rod-spoil-the-c_b_8012770 (ac-

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enough to protect denizens against discriminatory or inhumane treatment.²⁵

Besides profiting from diplomatic protection, denizens can also profit from their home country's lobbying power. Many countries invest in the promotion of trade and culture abroad, through the funding of lobby agencies, entrepreneurs, and cultural institutions. These investments can reduce the arbitrariness of the host state's political power by ensuring that denizens' *interests are tracked*. Powerful or rich countries in particular can pull many levers to provide economic and political support to their citizens abroad. And home states will be incentivised to pull these as long as expats maintain political clout, especially if they retain voting rights at home.²⁶

Finally, external citizenship can also lend denizens *control* over the laws by which they are governed. While their external citizenship does not provide voice-based empowerment in the host country, it does give them exit-based empowerment (Warren 2011). Denizens can exercise 'control by their feet' over the laws by which they are governed. If the host state desires their presence, as is the case with many high-skilled workers, they can also leverage their exit-option into informal political power. In virtue of their external citizenship, denizens are therefore not just less dependent on their host state than citizens but are also less vulnerable to arbitrary exercises of power by the host state than citizens. Accordingly, they do not need an equal democratic say to ensure their equal freedom from domination.

cessed February 13th 2023).

²⁵ A threat of retaliation will be more effective if the country has a strong international presence, and only works as long as bilateral relations are good and the host country has a desire to keep good bilateral relations. When war breaks out, the home country can do little to provide diplomatic protection to their citizens in the host country. The risk of international relations deteriorating must be priced in, and the political inclusion of denizens may have to be reconsidered when relations cool down. At the same time, this risk can also be mitigated if countries cooperate in international institutions, such as NATO.

²⁶ Generally, home states will not be able to lobby for the specific interests of individual denizens, but can still exert influence to push host states to track the interests broadly shared by their expatriates. For example, the Turkish government has actively lobbied for the (perceived) interests of Turkish citizens in Germany, who play a significant role in Turkish national elections, see Aydın (2014).

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3.4 RECOGNITION AND THE SOCIAL BASIS OF SELF-RESPECT

Rawls famously considered self-respect to be a precondition of equal freedom, and therefore described self-respect as the most important primary good.²⁷ He argued that democratic institutions provide the ‘foundation of self-respect in a well-ordered society’ (Rawls 1971: 388), and many democratic theorists believe that *citizens* are provided with a secure social basis of self-respect through their equal democratic say. Any deviations from democratic equality are seen to express disrespect for disenfranchised groups and to undermine the positive public recognition of citizens’ equal moral status. We argue that *denizens* can enjoy a secure social basis of self-respect without an equal democratic say in the host country if they receive appropriate recognition in virtue of their external citizenship.²⁸ We first argue that the (partial) political exclusion of denizens need not express disrespect for their moral status, and then argue that denizens can also be positively recognised as moral equals without receiving an equal democratic say.

3.4.1 *Rights-Differentiation without Disrespect*

Following Rawls, host states undermine denizens’ social basis of self-respect by expressing disrespect for one of their two moral powers: their *capacity to form a conception of the good* and their *sense of justice*. Once we take the distinct social position of denizens into account, we can see that the (partial) political exclusion of denizens need not express either form of disrespect.

Host states disrespect denizens’ first moral power if they deny the rationality of their conception of the good (Krishnamurthy 2013: 185). Do host states

²⁷ A Kantian version of this claim holds that only self-respecting individuals will be motivated to uphold institutions that secure equal freedom (Rawls 1971: sec. 40), while a Hegelian version of this claim holds that self-respect, sustained through mutual recognition, is constitutive of freedom (Schuppert 2014: 9-17).

²⁸ Denizens presumably require extensive social and economic rights to experience valuable non-political forms of recognition, and these rights have to become more extensive in virtue of the length of stay in the host country. Long-term denizens plausibly require rights against arbitrary deportation, for instance, to maintain stable loving relationships, which host states should therefore recognise.

deny the rationality of denizens' conception of the good by offering them territorial admission without full political inclusion? We are here considering cases in which host states make genuine (albeit conditional) admission offers, and thereby strictly provide prospective denizens with additional options.²⁹ Genuine offers are generally not disrespectful, as they empower their recipients to accept or reject them in accordance with their own conception of the good and do not convey any evaluation of that conception.

We are here considering admission-offers that enable denizens to live 'a life effectively split between two polities' with 'a dislocation of social and political spaces, and consequently of the social bases of self-respect' (Ottonelli and Torresi 2022: 43). However, such offers potentially enable denizens to pursue conceptions of the good that may not be stable or coherent (Straehle 2022). The idea that a good life is incompatible with a 'divided self' resonates with the *classic republican* emphasis on civic virtue and the underlying perfectionist Aristotelian conception of human beings as having a political nature. Accordingly, some republicans may worry that states make disrespectful offers by giving denizens the option of pursuing an objectively irrational conception of the good.³⁰ However, like many contemporary republicans, we believe that the state should remain neutral with respect to comprehensive doctrines of the good. By making genuine offers of territorial admission without full political inclusion, the state leaves the decision of whether accepting such offers is rational to migrants themselves, and thereby remains neutral.³¹

Even if genuine offers are generally not disrespectful, one could object that the conditional nature of the specific offers under consideration disrespects some migrants' first moral power, as states fail to *accommodate* the *life plans* that follow from certain conceptions of the good. This objection utilises the *principle of accommodation* – recently defended by Valeria Ottonelli and Tiziana Torresi (2022: 94-105) – according to which states only remain neutral between different conceptions of the good if they effectively allow for the

²⁹The precise content of the conditional admission offers we are concerned with here depends on background assumptions concerning the right to exclude, see note 4.

³⁰We thank two anonymous reviewers of for pressing this point.

³¹See in particular Pettit (1997). For an extended discussion of republicanism, perfectionism and neutrality, see Lovett and Whitfield (2016).

realisation of these conceptions.

Clearly, host states fail to accommodate the life plans of potential migrants wishing to lead an ‘undivided life’ *on the host states’s territory* if they offer admission only on the condition of partial political inclusion. Such offers do not violate the principle of accommodation though, as that principle is inward-facing; it only applies to individuals who have already become subject to the host states’ rule by accepting its admission offer (Ottonelli and Torresi 2022: 97). States are only required to remain neutral towards conceptions of the good pursued by their subjects, and can permissibly admit migrants *on the condition* that they declare their life plans to be compatible with dislocated social spaces.³² Over time, some denizens may certainly come to regret settling in a place where they cannot lead an ‘undivided life’. Whether states are required to accommodate the revised life plans of these denizens depends on how we prioritise two central aspects of moral agency: the capacity to revise one’s conception of the good and the capacity to make decisions for our future selves. We believe that the latter should take precedence, as states would treat denizens paternalistically when denying them the capacity to make decisions for their future selves just because they may later come to regret those decisions. By holding them to earlier agreements, states take denizens seriously as moral agents with command over their own lives and, thereby, respect their moral powers.³³

Host states disrespect denizens’ second moral power – their sense of justice – if they force them to endure injustice or deny them opportunities to cooperate on fair terms with other members of society (Rawls 1971: sec. 72). One argument holds that the social positions of citizenship and denizenship are *distributed* unjustly. As Joseph Carens put it, restrictions on access to citizenship create unjust inherited status differences resembling ‘feudal class

³² Following Miller (2016: 105), we do not think that relying on migrants’ self-proclaimed life-plans as an admission criterion involves objectionable discrimination, as such life-plans can be relevant for the pursuit of legitimate policy goals. We thank a reviewer for asking us to clarify this.

³³ We believe that a cosmopolitan principle of accommodation, which requires states to accommodate the life plans of insiders and outsiders, would be unreasonably demanding as it would entitle prospective migrants to unilaterally impose significant burdens on receiving societies.

privilege' (Carens 2013: 226). The most prominent version of this argument builds on a cosmopolitan reading of the Rawlsian principle of fair equality of opportunity (Rawls 1971: sec. 14). This argument is controversial in several respects: First, it is debatable whether Rawls' reasons for endorsing equality of opportunity *among citizens* apply to the acquisition of citizenship itself (Miller 2007: 53). It is also questionable whether these reasons outweigh competing considerations based, for instance, on collective self-determination (Miller 2007: 68), or the incentive structure of the global political system (Rawls 1999: 38-39). Finally, it is unclear whether a globalised fair equality of opportunity principle requires abandoning restrictions on citizenship-acquisition. As Darrel Moellendorf has pointed out, what matters is whether people have access to social positions that are *equal* with respect to normatively salient features like status or power, not whether people can access the *same* positions (Moellendorf 2006: 307). It is therefore questionable whether restrictions on citizenship-acquisition violate equality of opportunity in the case of denizens who already hold citizenship in sufficiently just and democratic states.

A second argument holds that the social position of denizenship is unjust because the current state system with its distinct citizenship regimes is fundamentally unjust to begin with. Clearly, this is a controversial idea that will neither appeal to proponents of internationalist or democratic visions of global justice – including Rawls (1999) – nor to those cosmopolitans who think that states still have a role to play in securing global justice.

A third argument holds that denizens are denied opportunities to cooperate fairly with the citizens of the host state. One version of this argument holds that partial inclusion schemes are unfair *towards denizens*, as denizens contribute to their host society and should receive equal rights in return (Lenard 2015: 127). A contrasting version holds that partial inclusion schemes are unfair *towards citizens*, as denizens 'free ride' on the cooperative life established by citizens by remaining in a privileged guest position without sharing the full burdens of citizenship (De Schutter and Ypi 2015). Both arguments highlight differences in the rights and duties of citizens and denizens, but neither argument establishes that a denizens' less extensive rights are *unfair*

in relation to their more restricted duties.³⁴ Moreover, both arguments focus exclusively on host states as sites of social co-operation and do not consider other co-operative schemes, like those set up through international agreements on temporary labour migration, from which denizens may profit and to which they contribute by accepting the rights and duties associated with their guest status. Finally, neither argument shows that denizens would be *forced* to endure an unjust social position, as long as they are free to exit and give up their denizenship.

3.4.2 *Expressions of Recognition*

According to a second prominent line of reasoning, democracy positively contributes to the social basis of self-respect through the public recognition of individuals' equal moral status. Specifically, democratic institutions provide individuals with *equal* avenues for exercising *political agency* that are *legally* recognised, thereby enabling them to experience political decisions as a form of self-rule (Schuppert 2014: 121-126). We argue that some denizens can experience this positive recognition without an equal democratic say in the host state.

In contrast to Athenian *metics*, denizens today can routinely exercise political agency in three domains: As *citizens*, they can participate in the democratic process of their home state, to the extent that they retain a democratic say while abroad. As *denizens*, they can participate in the democratic process of their host state, to the extent that they receive a democratic say there, for instance through local voting rights. And as *external citizens*, they can exercise agency by taking up denizenship or returning to their country of citizenship.³⁵ These opportunities for agency are not the same as those enjoyed by citizens, but they can be equally suitable for sustaining the social basis of self-respect. While

³⁴ De Schutter and Ypi (2015: 248) grant that their argument may only apply to denizens who are already on the path to citizenship.

³⁵ Lenard and Straehle (2012: 214-215) argue that the choice to accept denizenship often does not constitute a valuable expression of agency, as it involves trading away a moral right to political inclusion for economic benefits. We question whether denizens have such a right in the first place.

denizens have less extensive opportunities for exercising political agency in the host state, they have compensatory opportunities to exercise agency in virtue of their external citizenship.

Having agency is not sufficient to secure the social basis of self-respect. After all, even Athenian *metics* could exercise agency through political resistance. Individuals must also experience the legal recognition of their rights to exercise political agency, which confirms their status as moral equals who can *demand*, rather than only *request*, to be taken seriously as sources of moral reasons (Honneth 1996: 120; Rostbøll 2023: 98-110). Denizens enjoy such legal recognition in all three domains of their political agency. Naturally, home states legally recognise any political rights that denizens retain while abroad. Host states also legally recognise any rights they grant denizens to participate in their own democratic process. Moreover, all democracies recognise denizens' rights to exit their country of residence and enter their country of citizenship. Home and host states can therefore jointly provide denizens with effective legally recognised avenues for exercising their political agency, just as they can jointly effectively protect them from domination.

One may question whether recognition can be distributed between different sources in the same way as protections against domination. Recognition manifests in specific relationships, and the relationship that matters most in denizens' daily life is that between denizens and the host state (and indirectly its citizens). So, one may worry that a lack of recognition experienced in this relationship cannot be compensated by recognition experienced elsewhere. This worry seems to underlie Ottonelli and Torresi's (2022: 56-58) assertion that only denizens who pursue *temporary* migration projects may be excluded from full political participation.³⁶ However, it overlooks that host states can recognise denizens *as* citizens of another self-governing polity. Democracies generally recognise the rights of citizens of other democracies to jointly govern themselves, as is codified in international law, for instance in the principle of self-determination, and confirmed in numerous international agreements.

³⁶ While Ottonelli and Torresi (2022) assume that denizens choose to trade-off their equal status for opportunities to pursue their life plans, we argue that denizens are not necessarily assigned an inferior status.

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Through the medium of international law, host states thereby recognise denizens' political agency *in their home state*. Denizens, in turn, can recognise the same rights on behalf of the host state and its citizens, by recognising the authority of the democratic process in the host state. In this way, denizens can engage in valuable relationships of mutual recognition with their host state and, by extension, its citizens.

Recognition mediated by international law differs from the recognition of rights to exercise political agency in domestic law, as it generally does not take the form of *subjective rights* but of the foreign citizenry's *collective rights* to self-government.³⁷ The recognition of collective rights can still express recognition for individuals' moral agency though, if it hinges on the existence of subjective rights to political participation in the home state – as is the case with recognition mediated by international organisations that sanction democratic backsliding in their member states, like the European Union or the Commonwealth. Host states and home states can further strengthen the recognition of denizens' moral agency through explicit agreements that govern the status of denizens and codify their rights and duties. Through such agreements, host states can directly recognise denizens' subjective rights to political participation in their home state and underwrite their commitment to the moral equality of denizens. This commitment is expressed through a legally recognised and secured guest status, rather than through full inclusion in the domestic democratic process.

In a similar vein, Rainer Bauböck and Martin Ruhs (2022: 15) suggest that binding international agreements can secure the equal status of denizens. However, they insist that such agreements must be reached through transnational democratic decision-making procedures, in which denizens can make their voices heard directly, rather than through intergovernmental negotiations.³⁸ But why would the direct representation of denizens in transnational

³⁷ We thank a reviewer for urging us to clarify this point.

³⁸ Bauböck and Ruhs (2022) argue that fairness requires giving denizens dedicated representation, because they are disproportionately affected by international agreements governing their status. However, many international agreements, like trade agreements, affect some groups more than others. Yet, the intergovernmental negotiation of trade agreements does not seem to constitute a democratic deficit.

decision-making procedures constitute a general democratic requirement?³⁹ Consider the situation of German and Icelandic denizens in the Netherlands. Both groups occupy a legally recognised guest status, which comes, *inter alia*, with local voting rights in the host state, democratic participation rights in the home state that are enshrined in binding agreements, exit-rights and re-entry-rights, and protections against deportation. These rights are secured for German denizens (in part) through supranational agreements at the European level, where German citizens have direct representation in the European parliament. By contrast, these rights are secured for Icelandic citizens through intergovernmental agreements, including the *Schengen Agreement*, the *European Convention on Human Rights*, and the *Convention on the Participation of Foreigners in Public Life at the Local Level*. If German denizens are recognised as political equals in the Netherlands, then Icelandic denizens seem to enjoy the same status. International agreements can thus provide a source of genuine recognition of individual denizens, even if they are reached through intergovernmental negotiations.

In sum, the (partial) political inclusion of denizens in the host state's democratic process can be compatible with their recognition as moral equals, and thus with their social basis of self-respect. In the next Section, we consider the variations within the group of denizens as to the kind of political inclusion that is required for enjoying equal freedom.

3.5 THE POLITICAL POTENTIAL OF PARTIAL POLITICAL INCLUSION

We have questioned the deep commitment in political philosophy to 'citizen-making' and to conjoining territorial admission and full political inclusion. We have argued that upholding the equal freedom of denizens does not necessarily require their political inclusion on equal terms with citizens. States are permitted to implement partial inclusion schemes for denizens under

³⁹ Bauböck and Ruhs (2022) focus on temporary labour migration between countries of the Global North and Global South. In this specific case, transnational democratic fora may be required to counter-balance economic inequalities.

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favourable external citizenship conditions. Denizens enjoy such favourable conditions when their home state is democratic and has responsive institutions, they have social and political ties to their home state, their home state has a strong international presence, and their home and host states have good bilateral relations. Under those conditions, denizens' external citizenship can systemically contribute to their protection from domination and their social basis of self-respect, and thereby address two of the major threats to their equal freedom.

Of course, the situation of many denizens deviates markedly from this ideal. Many denizens are forced to leave their country of origin as refugees, are deprived of their original citizenship, or cannot effectively exercise political rights in authoritarian systems. Those denizens are dependent on their host country and need political voice to avoid domination. Moreover, they cannot be recognised as moral equals in their role as citizens of another self-governing democratic polity. Denying such denizens equal political rights relegates them to a second-class status.

The theoretically challenging cases lie between these two extremes. They concern denizens from countries with questionable democratic credentials or little influence on the world stage. In today's world, many temporary labour migrants fall in this category. On the one hand, they often come from semi-democratic states with international economic dependencies. On the other hand, host and home states generally profit from temporary labour migration and are therefore incentivised to uphold agreements that codify their rights and therefore contribute to their equal status.⁴⁰ The denizens in these semi-favourable conditions can be placed on a spectrum according to the degree to which their external citizenship protects them from domination and contributes to their recognitional basis of self-respect. They require different degrees of political inclusion to secure their equal freedom depending on where they fall on this spectrum. This conclusion does not justify complacency, as existing partial political inclusion schemes rarely provide adequate inclusion for these

⁴⁰ On international protections provided to temporary labour migrants, see Ottonelli and Torresi (2022: 128-131) and Lenard and Straehle (2012). Temporary labour migration might also be attractive under favourable conditions if one believes that a just global political structure can allow for large economic discrepancies, cf. Rawls (1999).

denizens.

In practice, states are often unable to inquire into the situation of individual denizens, and would therefore have to rely on broad categories in the implementation of partial inclusion schemes. To define those categories, states could employ a range of criteria, including the home state's democracy index, the quality of its relationship to the host state, the kind of migration projects denizens are pursuing, or the (intended) duration of their stay in the host state. For each of these categories, host states have to determine the appropriate forms of political inclusion. For example, they could choose to give a particular category of denizens weighted voting power in national elections, voting rights in local elections only, or political weight through non-governmental organizations, trade unions and migrant worker organizations (cf. Ottonelli and Torresi 2022: Ch. 7).

The imposition of categories on a more complex underlying normative reality poses the risk that some denizens may not be adequately included.⁴¹ We think that proposals for partial political inclusion are worth considering despite this risk, because they potentially enable states to open their borders. As the 'numbers-versus-rights' trade-off highlights, citizens may be willing to accept more migrants when they have to give them fewer rights. It is reasonable for citizens to let the number of migrants depend on the rights that migrants will get, especially when it comes to political rights, as citizens give up a share of political control over their countries' future – including its future immigration policies – by including newcomers in the democratic process. Therefore, the partial political inclusion model potentially renders increased immigration more acceptable for citizens, and thereby also more politically

⁴¹ The all-or-nothing model of political inclusion also poses normative risks, as citizens could face threats of domination and misrecognition if denizens who already benefit from their external citizenship are fully included in the host state's democratic process. These risks seem particularly salient when denizens hold citizenship in countries that dominate their host state on the international stage or actively undermine their democratic process. They also arise when a relatively large population of denizens retains strong social and political ties to their home state as, for instance, in Monaco, where only 20 percent of the population are Monegasque. Partial inclusion schemes might therefore actually be a democratic requirement. Alternatively, states may have to co-ordinate to implement dormant citizenship policies, so that denizens will not be fully included in the democratic process in two states. See also López-Guerra (2005; 2014: 83-109) and Sager (2014: 204) on expatriate voting rights.

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feasible. Increased immigration, in turn, enables migrants from economically worse-off states to seek employment abroad, acquire skills, and send back remittances.

When states and their citizens want to pursue global justice goals even further without sacrificing their claim to collective self-determination, the partial political inclusion model encourages them to seek international co-operation. As Walzer already suggested, increased international co-operation can provide a democratically legitimate substitute for the political inclusion of denizens. States can work together by entering international agreements concerning the status and rights of denizens, by setting up multilateral institutions that empower less influential home states, or by transferring competencies to transnational democratic fora that provide denizens with additional voice. To some extent, such co-operation can provide denizens with protections from domination and sources of recognition. International co-operation thereby enables states to open their borders without compromising their democratic legitimacy or their citizens' claim to collective self-determination.

II

The Boundaries of Electoral Constituencies

Heterogeneous Constituencies and Legislative Gridlock

Summary Geographically-defined electoral constituencies are used in many democracies to elect a set number of representatives to the national legislature. In the absence of a viable alternative, democratic theorists have largely refrained from questioning the geographic definition of electoral constituencies. Yet, new technologies offer the opportunity to create *heterogeneous electoral constituencies*, which are not restricted to territory and are as diverse around social identities as the entire electorate. In this chapter, I advocate for replacing single-seat geographic constituencies by multi-seat heterogeneous constituencies. The aim of my comparative defence of heterogeneous constituencies is two-fold. First, my defence is intended to shed light on the democratic limitations of our contemporary geographically-based electoral systems. In contrast to heterogeneous constituencies, geographic constituencies violate *democratic equality*. They dilute the voting power of geographically-dispersed groups. Second, my defence is a call for electoral reform in response to the democratic problem of legislative gridlock, which threatens the collective decision-making capacity in democracies around the world. I show that geographic constituencies crystallise cleavages that *reinforce* geographic divisions, whereas heterogeneous constituencies enable the politicisation of multiple *cross-cutting* cleavages. Reinforcing cleavages heighten political conflict whereas cross-cutting divisions moderate political conflict and, thereby, facilitate processes of bargaining and coalition-building. Heterogeneous electoral constituencies should therefore be considered as part of an institutional response to the democratic problem of legislative gridlock.

CHAPTER 4

4.1 INTRODUCTION

Legislative gridlock poses a significant threat to contemporary democracies. In the U.S., the political parties' reluctance to make compromises has frequently hindered the passing of crucial legislation. Similarly, in Belgium, the deep division between the Flemish and French-speaking communities has led to extended periods without an elected government. Such legislative standstills undermine the normative legitimacy of democratic systems, as they impede the democratic capacity of the people to rule themselves.¹ Procedurally, they encourage the transfer of political power to other branches of government that are not directly authorised and held to account by the people. Substantively, they may generate undemocratic political outcomes, as legislative inaction may lead to the perpetuation of a *status quo* that is neither favoured by a majority nor supported by the protection of minority rights. As a consequence, detrimental “drifts”, such as increasing climate change risks and growing wealth inequalities, may be allowed to continue (Gutmann and Thompson 2012: 30-35; Warren and Mansbridge 2013: 87, 89).

In this chapter, I explore the effects of *electoral constituency design* on the threat of legislative gridlock.² In many democracies around the world, electoral constituencies are defined in expressly geographic terms, meaning that the electoral rolls consist exclusively of voters who reside in the same geographical area. In the absence of a viable alternative, the geographic nature of electoral constituencies has remained largely unquestioned (Urbinati and Warren 2008: 396-397). However, technological advancements enable us now to replace geographic electoral constituencies with *heterogeneous electoral constituencies*, which are as diverse as the entire electorate. In these heterogeneous constituencies, all salient social identities are present *in the same*

¹See, for example, Mansbridge (2012) and Warren (2017: 44-45) on why ‘getting things done’ is one of the main functions that a democratic system should accomplish.

²An electoral constituency (or electoral district) is a list of voters who are eligible to vote for a defined number of representatives for the legislature (Carlsen Häggrot 2023a: 302; James 2015: 385-386). According to a comparative survey by Handley (2008) at least 84 states around the world, of which 52 distinctly democratic states, have geographic electoral constituencies. See also Carlsen Häggrot (2023a: 303, n.2).

proportion as in the entire electorate.³ These constituencies can be formed by randomly assigning voters to a constituency when they become eligible to vote. Designed as such, the underlying groupings of voters are geographically-dispersed and created purely for political purposes (Rehfeld 2005; Ciepley 2013).⁴ The question arises: Can heterogeneous constituencies provide an institutional remedy to the growing threat of legislative gridlock? I show that multi-seat heterogeneous constituencies can provide an institutional remedy and therefore propose replacing single-seat geographic constituencies by multi-seat heterogeneous constituencies.

My comparative defence of multi-seat heterogeneous constituencies proceeds in two steps. In the first step, I argue that geographic constituencies, in contrast to heterogeneous constituencies, violate *democratic equality*. In particular, I argue that geographic constituencies dilute the voting power of members of geographically-dispersed groups, whereas heterogeneous constituencies do not perpetuate this unfair bias against voters on the basis of the geographic settlement patterns of the groups with which they identify. This dilution of voting power translates into *vote-seat asymmetry*: Geographically-concentrated groups can obtain a larger number of seats with a given share of the vote than geographically-dispersed groups. I distinguish vote-seat asymmetry from *vote-seat disproportionality*, where groups do not obtain the number of seats that corresponds to their obtained share of the vote, and propose combining heterogeneous constituencies with multiple seats in order to also prevent unjustifiable vote-seat disproportionality.

The bias created by geographic constituencies against voters from

³I focus on diversity around social identities. Alternatively, heterogeneous electoral constituencies can also be described as maximally diverse around issue positions, meaning that all positions are present on *every* issue *in the same proportion* as in the entire electorate (Bishin 2009: 121,136).

⁴I focus on heterogeneous ‘random’ constituencies but heterogeneous constituencies can also be geographically-based. If there would be a finite, known and permanent list of salient group identities, heterogeneous constituencies could be created by pooling homogeneous constituencies (Bogaards 2003; Stone 2008: 249-251). Alternatively, geographic constituencies can be made more diverse by increasing their size (cf. Madison 1787: 52). The heterogeneous *electorate-wide* constituency, which encompasses the entire electorate, is currently used in countries such as the Netherlands and Israel, and their implementation has been suggested for elections to the Belgian Federal Parliament and the European Parliament (Deschouwer and Van Parijs 2019; Crego 2021).

geographically-dispersed groups is not only *inherently* problematic. It is also *instrumentally* problematic because of its effects on legislative gridlock. The second step of my comparative defence is to show that electoral constituency design can exacerbate or reduce the threat of legislative gridlock by affecting what type of cleavages – reinforcing or cross-cutting – are politicised.⁵

On the one hand, I show that geographic constituencies incentivise political actors to politicise identities that *reinforce* geographic divisions by prioritising geographically-concentrated groups. When *reinforcing cleavages* are politicised, political parties become deeply divided into two camps with little to no overlap. This is known to increase the chances that any potential compromise is perceived as ‘selling out one’s principles’ and thus to diminish the willingness to make compromises (see e.g., Davis 2019: 407; Mason 2015; McCoy and Somer 2019: 257-267). The incentives to focus solely on politicising reinforcing cleavages are amplified when geographic constituencies are combined with a single seat. Single-seat geographic constituencies can therefore be considered a contributing factor to the democratic problem of legislative gridlock.

On the other hand, I show that, as an unbiased electoral constituency design, heterogeneous constituencies facilitate the politicisation of all salient cleavages that exist in society, including *cross-cutting* ones. When *cross-cutting cleavages* are politicised, political identities exhibit some degree of overlap. This moderates political conflict and, thereby, foster an environment conducive to political compromises (see e.g., Dahl 1966; Goodin 1975; Rae and Taylor 1970). The politicisation of cross-cutting cleavages can be further stimulated by combining heterogeneous constituencies with multiple seats. Multi-seat heterogeneous constituencies therefore offer a potential institutional remedy to legislative gridlock.

The chapter is structured as follows: In Section 4.2, I identify the demo-

⁵Suppose that there is a geographic cleavage between the North and the South and a linguistic cleavage between Dutch and French-speakers. These cleavages are *reinforcing* when geographical area and language are correlated, meaning that, e.g., almost all Dutch-speakers are northerners and French-speakers are southerners. The cleavages are *cross-cutting* when geographical area and language are uncorrelated, meaning that there is a substantial amount of French-speaking southerners and French-speaking northerners (and the same for Dutch-speakers), see also Clark et al. (2017: 636).

cratic virtues of a system with multiple electoral constituencies. This is intended to justify a presumption in favour of a multi-constituency system (whether composed of geographic or heterogeneous constituencies). In Section 4.3, I show that replacing single-seat geographic with multi-seat heterogeneous constituencies can enhance democratic equality and argue that this is desirable. In Section 4.4, I show that, as a consequence of their distinct capacity to achieve democratic equality, geographic constituencies increase the threat of legislative gridlock, whereas heterogeneous constituencies decrease this threat. I conclude with a summary of the argument.

4.2 THE DEMOCRATIC VIRTUES OF ELECTORAL CONSTITUENCIES

Electoral constituencies with a relatively low constituency magnitude yield several democratic benefits.⁶ While these benefits are traditionally attributed to geographic constituencies, I show in this Section that heterogeneous constituencies also have them. This underscores the desirability of a multi-constituency electoral system – whether consisting of geographic or heterogeneous constituencies – over a single *electorate-wide* constituency that encompasses the entire electorate. Since voters already enjoy these benefits, turning geographic into heterogeneous constituencies may also be more feasible than abandoning a multi-constituency system.⁷

First, electoral constituencies create a direct relationship of authorisation and accountability between voters and their representatives, as a designated

⁶The constituency magnitude refers to the number of legislative seats electable in an electoral constituency. Holding the number of seats in a legislature fixed, the constituency magnitude will be lower when there are more constituencies. I consider a low constituency magnitude to lie between one and six, as the cognitive capacity of voters to make a clear preference ordering over the options sharply drops off once the number of options is seven or higher (Carey and Hix 2011: 385). With a constituency magnitude above one, I will assume the use of a proportional electoral formula, but I will not draw fine-grained distinctions between proportional representation (PR) systems in this chapter.

⁷The feasibility of electoral reform often depends on whether the changes benefit the party or coalition of parties in power. However, instead of therefore rejecting certain electoral reforms as unfeasible, we should question the legitimacy of letting elected representatives decide on the procedure for their re-election. For example, Abizadeh (2017) argues that electoral rules should instead be decided by a randomly selected citizen assembly.

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number of representatives is elected within each constituency. Sustaining this connection requires stability in constituency membership, so that representatives are held accountable during re-election by largely the same group of individuals who initially elected them. Heterogeneous constituencies can provide unparalleled stability, as membership can be made permanent such that changes only occur upon the passing away of constituents or the addition of new members to the electorate. Geographic constituencies do not ensure the same degree of stability, as voters may change constituency membership due to relocation or redrawn constituency boundaries throughout their lives (Ciepley 2013: 144; Rehfeld 2005: 40-41).

Second, electoral constituencies enable practices of constituency service. Legislators have the ability to aid their constituents in navigating specific administrative procedures and act as intermediaries between constituents and government agencies. This facilitates opportunities for citizens to challenge administrative processes and decisions, thereby enhancing citizen engagement and oversight within governmental operations. Legislators will only be motivated to spend time and energy providing such services to individuals that belong to their constituency and can thus electorally reward them. To sustain the provision of constituency service, legislators must therefore be able to clearly identify which individuals belong to their constituency (Carlsen Häggrot 2023a: 309; Wilson 2019: 199). In geographic constituencies, constituents are identifiable by their area of residence. In heterogeneous constituencies, constituents can be made clearly identifiable to legislators by their constituency number. To facilitate constituency service, there must thus be a publicly accessible constituency number book, similar to the address book.

Third, electoral constituencies sustain deliberation among constituents. Geographic constituencies create ample opportunities for constituents to deliberate, as they ensure that voters who live close to each other generally belong to the same constituency. But to facilitate communication and thus deliberation among *all* constituents, geographic constituencies have to be of a rather small size. Modern-day geographic constituencies can only enable deliberation ‘within the many subgroups that will be nested within each geographic constituency’ (Carlsen Häggrot 2023a: 310). Since the deliberative benefits of

geographic constituencies only derive from these small “neighbourhoods”, the same benefits arise in heterogeneous constituencies that are formed through the pooling of such neighbourhoods (Rehfeld 2005: 172). But even in fully random constituencies, communication between subgroups of constituents can be facilitated through the establishment of online deliberative platforms and constituency meet-ups. The advantage of such randomly-constituted subgroups is that they are inherently diverse, which is widely endorsed as a necessary condition for good deliberations (Rehfeld 2005: 26).

Fourth, electoral constituencies may sustain practices of voter mobilisation. Geographic constituencies enable legislative candidates to mobilise voters with relatively easy and inexpensive methods, such as door-to-door campaigns, local political gatherings and the dissemination of political advertisements through local media (Carlsen Häggrot 2023a: 308, 314). In heterogeneous constituencies, political parties are expected to play a more prominent role in campaigning, as they will continue to utilise national media advertisements, the internet and social media platforms. Political parties can also organise cross-country meet-ups where constituents can engage with the party’s candidates (from their own and other constituencies). This closer alignment between candidates and their political parties in political campaigns arguably serves as an advantage, as it makes political parties the primary locus of accountability and mitigates the tendency of candidates to shift blame onto their party if their campaign promises go unfulfilled (Ciepley 2013: 145). Moreover, the greater prominence of political parties is likely to centre political campaigns around national party platforms. This is arguably also a democratic virtue of heterogeneous constituencies, as it appropriately transfers the power to address local issues to provincial and local governments, ensures that local concerns only inform national decisions when they are directly affected by such decisions, and prevents that national interests are hindered by the lobbying efforts of individual representatives who advocate solely for their own constituents (Ciepley 2013: 143-144).

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4.3 ENHANCING DEMOCRATIC EQUALITY

Democratic equality is often equated with the slogan “one person, one vote”. One interpretation of this slogan is that voters must have an equal capacity to influence legislative outcomes (Abizadeh 2021a: 744-745,748; Beitz 1989: 75-77; Pogge 2002: 27). In this Section, I will argue that geographic electoral constituencies, in contrast to heterogeneous constituencies, unjustifiably dilute some citizens’ votes. I will show that this form of vote dilution manifests as vote-seat *asymmetry*, rather than vote-seat *disproportionality*, between geographically-dispersed and geographically-concentrated groups. Replacing geographic constituencies by heterogeneous constituencies can prevent this form of vote dilution and can thus enhance democratic equality.

4.3.1 *Vote-Seat Disproportionality*

Geographic constituencies are often criticised for producing *vote-seat disproportionality*. They potentially cause groups or political parties to receive a number of legislative seats that is disproportional to their obtained share of the vote. This has been considered a ‘major objection’ to the use of geographic constituencies as it constitutes a form of vote dilution (Guinier 1994: 119-156; Reeve and Ware 1992: 120; cf. Carlsen Häggrot 2023a: 316).

However, as I will show below, vote-seat disproportionality is only incidentally but not essentially tied to the geographic definition of electoral constituencies. A problem is *incidentally* tied to geographic constituencies when the geographic-definition facilitates the occurrence of the problem, whereas it is *essentially* tied to geographic constituencies when the problem would not occur without the geographic-definition (cf. Stone 2008: 249). Since vote-seat disproportionality is incidentally tied to the geographic-definition of constituencies, it may also occur with heterogeneous constituencies and thus does not immediately provide a reason to replace geographic by heterogeneous constituencies.

A first cause of vote-seat disproportionality is *malapportionment*. This occurs when the number of voters per seat in one electoral constituency is

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higher than in another. For instance, one U.S. Senator represents 38 million voters from California, whereas another U.S. Senator represents only 580,000 voters from Wyoming. As there are 56 times more votes cast in California than in Wyoming, a political party would need a larger share of the vote to win a seat in California than to win a seat in Wyoming and voters in California are less likely to influence legislative outcomes (Ciepley 2013: 144). This cause of vote-seat disproportionality is, however, not essentially tied to the geographic nature of electoral constituencies. It is only more likely to occur in geographic than in heterogeneous constituencies. After all, since random constituencies are drawn without regard to geographic or administrative boundaries, their boundaries can be easily adjusted to ensure that the number of voters per seat remains constant across all seats.

A second cause of vote-seat disproportionality is a high number of *wasted votes*. When each geographic constituency elects only one representative, many votes will be wasted on candidates who do not win the seat. As a consequence, the number of legislative seats a party secures may end up being disproportional to the share of the vote it received. This cause of vote-seat disproportionality is not essentially tied to the geographic-definition of constituencies either. Rather, it arises because of the minimal constituency magnitude (cf. Carlsen Häggrot 2023a: 317-320). When the number of seats per constituency is more than one, smaller groups will have a chance to elect a representative in the legislature and thus less votes will be wasted. The rule of thumb is that, given a proportional electoral formula, the higher the constituency magnitude, the smaller the number of votes that a representative or political party must secure to get a seat in the legislature and thus the smaller the groups that have a chance of winning a seat in the legislature. A high constituency magnitude allows for the representation of smaller minorities.

The above discussion indicates that if heterogeneous constituencies were to replace geographic constituencies, then their sizes must be proportional to their number of seats and their number of seats must be more than one. Since heterogeneous constituencies are not bound by geographic boundaries, their sizes can be adjusted to accommodate different constituency magnitudes. The arguments in this chapter are based on the assumption that multiple

heterogeneous constituencies are combined with a low (but not minimal) constituency magnitude.⁸ Such a system with multiple electoral constituencies has certain benefits, as discussed in the previous section. It also does not have the drawbacks associated with high constituency magnitudes, which facilitate the fractionalisation of the political landscape, making it more difficult to form governing coalitions and reach compromises. There is thus a trade-off between minority representation and governability (Rae 1995). Ultimately, the democratic benefits of systems with multiple low-magnitude constituencies – enhancing governability and fostering a more direct interaction between representatives and voters – should be weighed against their limitations in terms of minority representation. Heterogeneous electoral constituencies could be paired with *any* constituency magnitude that serves as the golden middle for facilitating both minority representation and governability. In this chapter, I start from the assumption that this golden middle is achieved with a low but not minimal constituency magnitude.

4.3.2 *Vote-Seat Asymmetry*

There is another form of vote dilution that is *essentially* tied to the geographic-definition of electoral constituencies. This form of vote dilution stems from *vote-seat asymmetry*. A system creates vote-seat asymmetry when the number of legislative seats that a group or political party would win with a given share of the vote is unequal to the number of legislative seats that another group or political party would win with the same share of the vote (Beitz 1989: 332-333). The requirement of vote-seat symmetry is weaker than vote-seat proportionality. For example, vote-seat proportionality is violated when all parties with 20% of the votes win none of the seats, but vote-seat symmetry is not.

Vote-seat asymmetry can be formally described in terms of *electoral thresholds*. An electoral system rewards (or punishes) a particular group when it creates a lower (or higher) *national electoral threshold* for that group than for another. This threshold stipulates the minimum share of all votes with which

⁸ A low constituency magnitude lies between one and six, see also n. 6.

a group can win at least one seat in the national legislature. It is a function of the *constituency electoral threshold*, which stipulates the minimum share of the vote *within a given constituency* with which a group can win at least one seat in that constituency.⁹

An electoral system creates vote-seat asymmetry when it assigns members of a particular group to only a few constituencies. To see this, suppose that we can make a simple binary distinction between groups on the basis of their distribution over constituencies: *Dispersed* groups are equally distributed over all constituencies and *concentrated* groups are only present in one particular constituency. A simple example shows that concentrated groups always have a lower national electoral threshold than dispersed groups. Consider a hypothetical society with 300 voters that are equally divided over 3 electoral constituencies such that each constituency consists of 100 voters. Suppose that the constituency electoral threshold is 24% and thus a representative or party needs to win 24 of the 100 votes within a constituency to get at least one seat. When a concentrated group has exactly 24% of the votes in the constituency in which it is concentrated, it will have $\frac{24}{300} = 8\%$ of the votes in the entire electorate and win a seat in the national legislature. The national electoral threshold of concentrated groups in this hypothetical society is thus 8%. By contrast, a dispersed group has an (approximately) equal potential to win a seat in all three constituencies. Its national electoral threshold will therefore be equivalent to its constituency electoral threshold. That is, if a dispersed group has 24% of all votes, it will also have 24% of the votes in each constituency and thus win a seat in every constituency, but if it has only 23% of all votes, it will also have only 23% of the votes in each constituency and thus it will not win any seat.

⁹In an actual calculation, a distinction should be made between the *threshold of inclusion* and the *threshold of exclusion*. Whereas the former refers to the minimum number of votes with which a group can win a seat in the legislature under the best possible conditions (when an opposition is widely fractured among several candidates), the latter describes the minimum number of votes with which a group can win a seat in the legislature under the worst possible circumstances (when an opposition is unified around a minimum number of candidates), see James (2015: 387) and Rae et al. (1971). Using the threshold of exclusion, Lublin (2014) and Bochsler et al. (2023) have developed indices of electability for different geographically-distributed groups, taking into account the interplay between the geographic settlement patterns of the group's members and the geographic-definition of electoral constituencies.

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Geographic constituencies have the propensity to create vote-seat asymmetry between geographically-concentrated and geographically-dispersed groups. In a system with geographic constituencies, the dispersion over constituencies or concentration in a particular constituency correlates to the geographical settlement patterns of groups: The groups that are equally distributed over the constituencies are also geographically-dispersed and the groups that are clustered in one particular constituency are also geographically-concentrated. As a consequence, geographic constituencies electorally punish (or reward) groups on the basis of their geographic settlement patterns. The above example shows that geographic constituencies may enable legislative success for geographically-concentrated groups that constitute only 8% of the population, whereas a geographically-dispersed minority that constitutes a bigger fraction of the population may not be able to win a legislative seat. This implies, for example, that the Mormons in the U.S. have better prospects for electoral success, relative to their share of the vote, than Blacks, Hispanics, Asians or Catholics (Pogge 2002: 27).

This bias towards geographically-concentrated groups is essentially tied to a geographic constituency design, as it would not occur without the geographic-definition of constituencies. While a higher constituency magnitude can reduce vote-seat asymmetry by simply making the system more proportional, a low constituency magnitude is not sufficient for the problem to occur: A geographic constituency-definition is a necessary condition. Other constituency designs may also create a bias but not towards geographically-concentrated groups. For example, class-based constituencies favour groups that are primarily constituted of voters from a particular socio-economic class. The same holds for all other *group-based* constituency designs that divide the electorate over constituencies on the basis of their membership in a particular social group. By contrast, heterogeneous constituencies, by their very nature, avoid a bias towards any group. They guarantee the equal distribution over the constituencies of all groups and thus prevent the concentration of groups in certain constituencies. As a consequence, the prospects for electoral success in a system with heterogeneous constituencies depend only on group size, not on geographic settlement patterns.

The normatively important question is now: Does the bias towards geographically-concentrated groups constitute an unfairness? The requirement of vote-seat symmetry captures a similar idea as the axiom of *anonymity* (also referred to as *symmetry*) in social choice theory, namely that ‘each individual [should] be treated the same as far as his influence on the outcome is concerned’ (May 1952: 681).¹⁰ However, as Charles Beitz (2018: 333-334) observes, while our appeal to the requirement of vote-seat symmetry may be explained by its resemblance to the social choice axiom of anonymity, this does not yet clarify whether there is an unfairness involved in vote-seat asymmetry. The axiom of anonymity stipulates that the outcome of an election should remain unchanged if the identities of the voters are swapped. For example, if a candidate wins when Alex votes for her but Charly does not, then the candidate should also win if Charly votes for her but Alex does not. It is a fairness requirement towards individual voters but not towards groups, and for decision rules within a constituency but not across constituencies. Anonymity at the level of a constituency is perfectly compatible with vote-seat asymmetry across the jurisdiction. The question thus remains whether a bias towards certain groups at the level of the jurisdiction as a whole should be considered unfair. In other words, why should symmetry in vote and seat shares between groups across constituencies be taken as the ‘neutral’ baseline and why should we care about this baseline?

The answer to this question lies in the correspondence between vote-seat asymmetry and the dilution of voting power. A distinction must be made here between *a priori* and *a posteriori* voting power.¹¹ The *a priori* perspective ab-

¹⁰ Grofman and King (2007: 7) present the requirement of vote-seat symmetry with respect to political parties (or *partisan symmetry*) as a ‘simple and direct generalization of the symmetry standard’ for decision rules in social choice theory, cf. Beitz (2018: 333, n. 23). Similarly, Wodak (2024: 7-9) suggests that the requirement of anonymity can be extended to the analysis of voting inequalities *across* geographic electoral constituencies.

¹¹ The distinction between the *a priori* and *a posteriori* perspective should not be conflated with the distinction between an *ex ante* and *ex post* perspective on voting power. The *ex ante* perspective analyses voting power before the votes are cast, whereas the *ex post* perspective looks at the influence of voters after the votes are cast and thus rather analyses ‘the *effect* of agents’ *exercise* of power, not the agents’ power itself’ (Abizadeh 2021a: 749). I therefore take an *ex ante* perspective on voting power. The *a posteriori* perspective can be combined with an *ex ante* perspective, because taking into account other voters’ preferences still allows us to counterfactualise over the preferences of the agent under consideration, cf. Abizadeh (2021a:

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stracts away from other voters' preferences. It assesses the agent's decisiveness or chances of success by considering all *logically* possible profiles of votes, often under the assumption that all profiles are equally probable. By contrast, *a posteriori* voting power measures the agent's decisiveness or chances of success on the basis of information about all *actually* possible profiles of votes. The *a posteriori* perspective allows us to analyse an agent's voting power given her affiliation to a dispersed or concentrated minority (cf. Abizadeh 2021a: 748-751; Beitz 2018: 338-339).

The slogan 'one person, one vote' is often considered to express the idea that all voters should have equal voting power in the system as a whole (Wodak 2024: 14-15). But voters who belong to dispersed groups do not have the same *a posteriori* voting power as voters who belong to concentrated groups. Consider the *Hypothetical Neutral Society* with 300 voters that are distributed over 3 geographic electoral constituencies – a Northern, Central and Southern constituency – in which a single representative is elected with plurality rule. Suppose that the society is considered neutral towards Christian denominations as it consists of 150 Protestant voters and 150 Catholic voters. The Protestant voters are geographically-concentrated in the North, meaning that they are primarily located in the Northern electoral constituency. By contrast, the Catholic voters are geographically-dispersed and are equally distributed over the Central and Southern constituencies. Table 4.1 shows the distribution of voters over the constituencies. The example shows that the Protestant voters have less *a posteriori* voting power. Only $\frac{90}{150} = 60\%$ of Protestant have a chance at electoral success, whereas $\frac{140}{150} = 93\%$ of Catholic voters have a chance at electoral success.¹² Similarly, 93% of Catholic voters have a higher chance at being decisive than any of the Protestant voters.¹³

749-750).

¹² Beitz (2018: 341, n. 41) gives a similar example to show the inequality in voting power between geographically-dispersed and geographically-concentrated partisan voters.

¹³ This follows from the observation that Catholics in the Central and Southern constituencies are more likely to be decisive than Protestants in those constituencies. The probability of being decisive of Catholics in the Central and Southern constituencies is also higher than the probability of being decisive of Protestants in the Northern constituency, since Protestants outnumber Catholics in the Northern constituency with a greater proportion than Catholics outnumber Protestants in the Central and Southern constituencies.

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Hence, as a consequence of a geographic-definition of constituencies, voters of two equally large groups have different *a posteriori* voting power depending on the geographic distribution of those groups.

	Protestants	Catholics	Total
North	90	10	100
Central	30	70	100
South	30	70	100
Total	150	150	300

Table 4.1: The Hypothetical Neutral Society

The example shows that geographic constituencies dilute the voting power of voters in geographically-dispersed groups. This form of vote dilution constitutes a violation of democratic equality. This is not because voters are entitled to being decisive or to having legislative success some of the times. After all, that would absurdly give a minority an entitlement to sometimes rule (Kolodny 2014: 321-328; Viehoff 2014: 373-374). Rather, it constitutes a violation of democratic equality because voters are entitled to having *equal* chances at being decisive or *equal* chances at electoral success as other voters who are affiliated to groups of equal sizes. They are thus entitled to a symmetry in the *a posteriori* voting power of voters from equal sized groups. The bias against voters from geographically-dispersed groups also cannot be justified by the purported advantages of geographic electoral constituencies (cf. Beitz 2018: 350). As I will discuss in Section 4.4, the bias does not only have drawbacks for geographically-dispersed groups but also harms the overall system by increasing the likelihood of legislative gridlocks. Heterogeneous constituencies provide the same benefits as geographic constituencies but do not create the same drawbacks: They rather contribute to preventing legislative gridlock and do not distribute the costs of having multiple electoral constituencies unequally over different groups of voters.

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4.3.3 *Objection: Marginalised Voices*

The objection could be raised that the bias created by geographic electoral constituencies is justified by the need to combat the marginalisation of certain groups. Some groups encounter obstacles to political participation and may need special representation rights to enjoy equal democratic inclusion. The geographic boundaries of constituencies could be drawn to promote the representation of those marginalised groups. This can be done by concentrating the groups in particular *group-conscious* constituencies, in which they are able to elect their own representatives. The bias towards concentrated groups is then a corrective measure, compensating for the political exclusion that those groups otherwise experience (cf. Kymlicka 1995: 145; Young 2002: 141-148; Williams 1998: 15-18,176-202).

This argument is based on the assumption ‘that geography works as a proxy for both identifying and promoting’ marginalised groups (Guinier 1992: 1162). However, the criterion of marginalisation captures a broad range of groups that are not necessarily geographically-concentrated, such as groups based on age, class, gender, ethnicity, race or language. Group-conscious constituencies cannot be created for marginalised groups that are geographically-dispersed. The geographic-definition of constituencies may thus still create a bias against geographically-dispersed groups that cannot be justified by the need to combat marginalisation.

Moreover, it can be questioned whether group-conscious constituencies are the best remedy against marginalisation. For example, Lani Guinier (1991) argues that group-conscious constituencies may enhance the voting power but dilute the legislative power of marginalised groups. This is because representatives in other constituencies will not feel incentivised to represent the group’s interests in the legislature and these interests will consequently not be reflected in legislative outcomes. Therefore, group-conscious constituencies could inadvertently serve as an instrument to further marginalise the group’s voice in legislative decision-making.

As it is beyond the scope of this chapter to engage in the debate about the most effective and justifiable form of group representation against marginal-

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isation, I want to conclude by highlighting that *if* one believes that certain marginalised groups require group-conscious electoral constituencies to ensure their equal democratic inclusion, *then* such constituencies need not be geographically-defined. Group-conscious constituencies could also be created through *stratified* random selection. Some or all of the membership positions in a constituency are then randomly assigned to voters of a marginalised group and the remainder of the membership positions are randomly assigned to voters from the entire electorate. For example, in the U.S., race-conscious random constituencies could be created and combined with completely heterogeneous constituencies, just as race-conscious geographic constituencies are now created and combined with other geographic constituencies. Similarly, in New Zealand, the dedicated Māori constituencies, which solely consist of voters from the indigenous Māori population, do not need to be defined geographically. They can be created by randomly assigning Māori voters to the constituencies and, just as they do now, they can supplement the general electoral constituencies.

4.4 PREVENTING LEGISLATIVE GRIDLOCK

The bias resulting from the geographic-definition of electoral constituencies does not only compromise democratic equality but also the democratic capacity to make collective decisions. In this Section, I will show the effects that geographic constituencies, due this bias, have on cleavage formation and, thereby, on the threat of legislative gridlock. Moreover, I will argue that, as an unbiased design, heterogeneous constituencies do not have such adverse effects but can rather contribute to preventing legislative gridlock.

4.4.1 *Two Hypotheses*

Let me posit two hypotheses about the effects of electoral constituency design on cleavage formation.

Hypothesis 1: Geographic constituencies incentivise political actors to politicise cleavages that *reinforce* geographic divisions.

Hypothesis 2: Heterogeneous constituencies empower political actors to leverage all salient *cross-cutting* axes of social division that exist in the society as a whole.

I expect these differences in effects because geographic constituencies electorally reward geographically-concentrated group identities, whereas heterogeneous constituencies do not prioritise any group identities or social divisions. While these hypotheses will be substantiated with empirical illustrations and existing empirical evidence, comprehensive and systematic testing of the hypotheses is beyond the scope of this chapter.

The hypotheses are based on the assumption that political actors (individual representatives and parties) seek to be re-elected and, therefore, want to satisfy electoral pressures. These electoral pressures incentivise them to make a particular *identity choice*. This is a rational choice to politicise the identity, from a set of potentially mobilisable social categories, that provides a useful vehicle for political competition and can lead to membership in the politically and economically most useful coalition (Posner 2004; 2005: 2-6, 138-139). I expect electoral constituencies to shape the identity choice of political actors *within* a particular constituency and to coordinate this choice *across* constituencies. At the constituency level, constituency boundaries determine whether a group is large enough in size to meet the constituency electoral threshold and thus to win a seat in the constituency. At the national level, electoral constituencies create a 'uniform' context in which it is 'common knowledge' that certain groups are more politically viable at the constituency-level than others (cf. Posner 2005: 5-6). In this way, electoral constituency design coordinates the identity choices by national political parties and influences which cleavages become politically salient in the nation as a whole.¹⁴

If the two hypotheses prove to be correct, then geographic constituencies

¹⁴ Another prominent explanation for what drives the identity choice of representatives refers not to the *size* of identity groups but to the *intensity* of feeling or depth of attachment that individuals have to one identity rather than another. Political representatives often choose to emphasise identities that are intensely felt, as small but intense groups are more easily mobilised for the purpose of voting than larger but less intense groups (Bishin 2009; Hill 2022). Representatives thus do not have the incentives to suppress intensely felt identities, but can still be stimulated by electoral constituency design to also politicise other identities for which the group sizes are larger *vis-à-vis* the constituency boundaries.

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exacerbate the threat of legislative gridlock, whereas heterogeneous constituencies help to prevent legislative gridlock. This is because cleavage formation in the legislature drives the threat of legislative gridlock. On the one hand, the politicisation of *reinforcing cleavages* heightens conflict. Voters and parties are then divided into two camps that tend to be unwilling to make compromises. On the other hand, the politicisation of *cross-cutting cleavages* can moderate political conflict and, thereby, enhance the parties' ability and willingness to make compromises.¹⁵ Given the partial overlap between cross-cutting groups, cross-cutting cleavages create so-called "cross-pressures" for voters: The different group affiliations pull them in different political directions. These cross-pressures reduce the intensity of feeling with which certain identities are held, including partisan identities, and therefore generate moderation in political conflict. This moderating effect on political conflict, in turn, helps representatives traverse group boundaries (Goodin 1975; Rae and Taylor 1970: 85-89; Powell 1970: 37-38; Lipset 1960: 83-90, 203-216).¹⁶

4.4.2 *The Strategic Effects of Geographic Constituencies*

To see how geographic constituencies shape and coordinate strategic identity choices by political actors, imagine a *Hypothetical Harmonious Society* (HHS). In this society, there are two potentially politically salient cleavages that are cross-cutting: a religious cleavage between the Protestants and Catholics, and

¹⁵ See also n. 5 for the difference between reinforcing and cross-cutting cleavages.

¹⁶ It should be pointed out that the extent to which cross-cutting cleavages have moderating effects depends on several factors: The first factor is the degree to which cleavages are cross-cutting: When cleavages are cross-cutting to a higher degree, the moderating effects are expected to be clearer (Lijphart 1977: 75-81). The second factor is the intensity or salience of the cleavages. When the cleavages are of equal intensity, cross-cuttingness might lead to a division into multiple antagonistic groups that are implacably at odds with each other. Alternatively, if one cleavage is superimposed on the other, representatives can give way to their secondary demands in order to fulfil their primary demands, without having to fear for negative electoral consequences (Dahl 1966: 372-380). The third factor is the number and types of political parties that are formed. For example, in the Netherlands of the 1960s, the two major class-based parties, the Liberals and Social Democrats, made cross-boundary appeals and encouraged Protestants and Catholics to unite under a partisan identity. While they had modest success in gaining support from both religious groups, their attempts nonetheless had a moderating effect on the religious cleavage (Dahl 1966: 379).

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a linguistic cleavage between French- and Dutch-speakers. Assume that both cleavages provide an equally viable basis for political competition and coalition-building at the national level, when there are no electoral constituencies, and that political representatives have perfect information about this. Political actors have perfect information when they know the exact numbers in the row and column totals (though not necessarily in each cell) of the society's identity matrix (Posner 2005: 132). Table 4.2 shows the identity matrix of the HHS. It shows that, at the national level, political parties could choose to politicise the linguistic cleavage and build a majority coalition among French-speakers. Alternatively, they could choose to politicise the religious cleavage and build a majority coalition among Protestants.

Now suppose that the electorate in the HHS is evenly distributed over three geographic electoral constituencies (a Northern, Central and Southern constituency) with a Single Member Plurality (SMP) voting rule, meaning that one winner is elected in each constituency based on the highest number of votes. Tables 4.3 to 4.5 show the identity matrices for each constituency. The Northern and Central constituencies have an equal number of French- and Dutch-speakers, but an unequal number of Protestants and Catholics. As there is a large majority of a particular religious denomination in each geographic constituencies, the religious cleavage becomes the most viable basis for political competition. In the South, both cleavages provide a useful vehicle for political competition but since political representatives form political parties and build coalitions with representatives from the Northern and the Central constituencies, they are also likely to emphasise the religious cleavage that dominates the other constituencies. The result is a not so harmonious society that is split into a Protestant and Catholic faction, and a legislature ruled by the Catholics, given that they win two out of three constituencies, even though they form a minority in the nation as a whole.

It should be noted that these strategic effects are amplified by the combination of geographic constituencies with a single seat. Under larger constituency magnitudes, these effects would diminish as the system becomes more proportional. However, the effects can still be observed under relatively low constituency magnitudes. Suppose that the constituency magnitude is three, meaning

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	Protestants	Catholics	Total
French speakers	100	60	160
Dutch speakers	60	80	140
Total	160	140	300

Table 4.2: The Hypothetical Harmonious Society

	Protestants	Catholics	Total
French speakers	40	10	50
Dutch speakers	40	10	50
Total	80	20	100

Table 4.3: The Hypothetical Harmonious Society: North

	Protestants	Catholics	Total
French speakers	20	30	50
Dutch speakers	20	30	50
Total	40	60	100

Table 4.4: The Hypothetical Harmonious Society: Central

	Protestants	Catholics	Total
French speakers	40	20	60
Dutch speakers	0	40	40
Total	40	60	100

Table 4.5: The Hypothetical Harmonious Society: South

that the constituency electoral threshold is 25% under a proportional electoral formula.¹⁷ The Protestants would then be able to get all three seats in the Northern constituency, as they have 80 of the 100 votes. In response, Catholics would likely try to get four seats in the Central and Southern constituencies. The fact that there is one predominantly Protestant constituency may thus also coordinate the choice of political parties to focus on the religious cleavage in a PR system with a low but not minimal constituency magnitude.¹⁸

The HHS demonstrates how single-seat geographic electoral constituencies affect identity choice. By labelling and separating voters, geographic constituencies condition citizens and representatives to engage in primarily group located politics. They coordinate this identity choice across political actors, thereby structuring national electoral competition around one particularly politically salient cleavage. These effects of single-seat geographic constituencies could explain, for example, why language is the main political cleavage in Belgium, and why ethnicity is the primary political cleavage in Malawi. In Malawi, there are at least two potentially salient cleavages: an ethnic cleavage and a religious cleavage. Malawi has three relatively large religious groups – Catholic Christians, Protestant Christians, and Muslims – and two relatively large ethnic groups – the Tumbukas and the Chewas. Each of these groups are large enough *vis-à-vis* the nation as a whole to provide a viable basis for party competition and national coalition-building. But only the ethnic groups are geographically concentrated. The Tumbukas are heavily concentrated in the Northern region, the Chewas are heavily concentrated in the Centre region, and the Southern region consists of a mix of different other ethnic groups.¹⁹ As each of these regions is again divided into geographic electoral constituencies, the safest path to electoral success for representatives in the North and the Centre of Malawi is by fully embracing their partiality in favour of one ethnic

¹⁷In particular, the threshold of *exclusion* would be 25% under the D'Hondt rule, see n. 9 on the different types of thresholds.

¹⁸Note, however, that there is no unique equilibrium under a proportional electoral formula. By contrast, as there is a unique equilibrium in SMP systems, it is easier to see the effects of the geographic constituency definition on the strategic identity choices by political actors in SMP systems (cf. Posner 2005: 150).

¹⁹See also the ethnic map provided by Robinson (2016: 376).

group and further consolidating this ethnic cleavage.²⁰

4.4.3 *The Strategic Effects of Heterogeneous Constituencies*

Heterogeneous constituencies are neutral with respect to the cleavages around which politics should revolve. They do not shape and coordinate identity choices by political actors, as the groups that are potentially politically viable at the national level are also potentially politically viable in heterogeneous constituencies. For example, in the HHS, political actors face the same electoral opportunities when they politicise the religious cleavage as when they politicise the linguistic cleavage. Political actors are not conditioned to engage in politics on the basis of one particular cleavage. Heterogeneous constituencies thus do not create convergence among political actors on one particular cleavage. In this way, heterogeneous constituencies already help to prevent legislative gridlock.

Do heterogeneous constituencies also encourage the politicisation of cross-cutting cleavages that can further moderate political conflict? Political theorists have recently answered this question negatively (e.g., Bogaards 2003; Ciepley 2013; Deschouwer and Van Parijs 2019; Rehfeld 2005). Their arguments suggest that heterogeneous constituencies instead lead to the suppression of all cleavages in the legislature: They would create a homogeneous legislature that does not reflect any group differences. These arguments focus on heterogeneous constituencies in SMP systems. According to Duverger's law, there are in SMP systems generally two political parties competing for the seats in the legislature.²¹ In the face of heterogeneity, these parties cannot win the majority of votes by appealing to the particularity of any group. As they have to seek electoral support across group divisions in order to win a seat, they

²⁰ Posner (2004) argues that group sizes explain why the Chewas and Tumbukas have become political rivals in Malawi but not in Zambia. As he compares two countries with geographic electoral constituencies, his analysis is not meant to explain the effects of the constituency definition on the activation of this ethnic cleavage.

²¹ According to Duverger's law, the number of political parties in SMP systems ultimately reduces to two, whereas PR systems foster the formation of multiple political parties. In theory, the number of political parties competing in PR constituencies is expected to be equal to the constituency magnitude plus one (Cox 1990).

are incentivised to depoliticise deep social divisions and make “moderate” policy proposals that are accommodative of different groups.²² In particular, following the *median voter theorem*, political parties would be pulled towards the position of the median voter. The median voter has an equal number of voters lying to her left as to her right. Although the median voter does not need to represent a “centrist” political ideology, she is more likely to be centrist in heterogeneous than in homogeneous constituencies. As the median voter is the same in all heterogeneous constituencies, heterogeneous SMP constituencies would incentivise all political actors to represent positions on policy issues that are located closely around the same median voter. The result is a unanimity of interests and opinions in the legislature.²³

However, these arguments assume a two-party political race and do not consider the possibility of a third party entering the political arena. Suppose that voters are deeply divided along a single cleavage. In that case, a third party is most likely to enter when it takes more extreme positions, as more extreme parties have a realistic chance of gaining the highest number of votes by attracting voters on the left or right-side of the political spectrum and have more to gain from entering to avoid others policies than moderate parties (Palfrey 1984; Grosser and Palfrey 2014). Since existing political parties want to deter a third party from entering, they will also strive to retain support from extremists on its flanks. Consequently, an alternative equilibrium emerges in which the two political parties are equidistant from the median and only a third party, if it exists, will be around the centre (Callander 2005; Cox 1990; Powell 2000: 177-178, 187, 196-200). The divergence among political parties, furthermore, increases when the voter group is deeply divided. Voters may threaten to abstain from voting when political parties take centrist positions

²² Bogaards (2003: 64-65), Ciepley (2013: 146-148) and Deschouwer and Van Parijs (2019: 14) contend that heterogeneous constituencies create a centripetal ‘vote pooling’-effect in deeply divided societies: The electoral pressures to seek electoral support and thus to ‘pool votes’ from groups across the deep political divide would drive political actors towards moderation and accommodation.

²³ Rehfeld (2005: 226-227, 231) appeals to the median voter theorem in his defence of heterogeneous constituencies and considers it a democratic virtue of heterogeneous SMP constituencies that they magnify the power of majorities. It should be noted that the median voter theorem only applies under certain conditions: There must be exactly two candidates and an odd number of voters with single-peaked preferences on a single-issue dimension.

and political parties are, consequently, incentivised to seek more extreme positions on pain of losing votes (Dahl 1966: 376; Jones et al. 2022). Political competition in heterogeneous SMP constituencies thus does not drive political parties towards adopting a “centrist” political ideology but rather leads to the expression of intergroup differences in the legislature.

Moreover, when voters are divided along multiple cross-cutting cleavages, political competition in heterogeneous constituencies encourages political parties to politicise all those cleavages. This effect is corroborated by research linking the number of cross-cutting cleavages to the number of political parties within a political system (Neto and Cox 1997: 155; Clark et al. 2017: 641-644).²⁴ Suppose that a Protestant and Catholic Party have already formed in the HHS. These parties are unable to politicise the cross-cutting linguistic cleavage as they try to gain votes from both linguistic groups. Furthermore, suppose that there is a French-speaking Catholic who wants to enter the political scene and is more interested in the French language than her religious denomination. In this case, the French Catholic has a strategic choice to enter the scene under the label of the existing Catholic party or under the label of a new French party. As the French-speaking population is in the majority and the existing parties do not politicise the linguistic cleavage, the French Catholic has a realistic chance of winning a seat under the label of a French party. Heterogeneous constituencies thus provide favourable conditions for a third party to enter the political scene by leveraging another cross-cutting cleavage.

The conditions for politicising multiple cross-cutting cleavages are even more favourable when heterogeneous constituencies are combined with multiple seats. Smaller parties that politicise cross-cutting minority identities can then enter the political scene. As such, multi-seat heterogeneous constituencies can help avert legislative standstills by facilitating the politicisation of the cross-cutting cleavages.

²⁴The number of political parties depends both on the incentives created by an electoral system and the number of cross-cutting cleavages (Neto and Cox 1997: 155). My arguments thus show that the definition of electoral constituencies (heterogeneous or geographic) can undermine or sustain the effects of the existing cleavage structures on the number of political parties.

CHAPTER 4

4.5 CONCLUSION

In many democracies around the world, electoral constituencies are defined in expressly geographic terms, making inclusion in representative relationships dependent on area of residence. In the absence of a viable alternative, these geographic constituency boundaries have remained largely unquestioned. Yet, new technological advancements present the opportunity to replace geographic constituencies with heterogeneous constituencies, which are not geographically-based and can be created purely for political purposes. In this chapter, I have offered a defence of such a transition.

The aim of this defence has been two-fold.²⁵ First of all, it is intended to shed light on the limitations inherent in our contemporary geographically-defined electoral systems. Through the example of the *Hypothetical Neutral Society*, I have demonstrated that geographic electoral constituencies violate democratic equality. I have argued that they unjustifiably increase the capacity to influence legislative outcomes of voters from geographically-concentrated groups and, relatedly, create an unfair asymmetry in the shares of seats that geographically-concentrated and geographically-dispersed groups can obtain with a given share of the vote. Heterogeneous constituencies do not create this bias: They make the legislative success of groups solely dependent on their sizes and not on their geographical settlement patterns.

Second, my defence can be read as a call for institutional reform. Through the example of the *Hypothetical Harmonious Society*, I have demonstrated that geographic constituencies, by electorally rewarding geographically-concentrated minorities, incentivise political actors to crystallise reinforcing cleavages along geographic lines, whereas heterogeneous constituencies empower political actors to politicise the salient cross-cutting cleavages that exist in society. As reinforcing cleavages heighten political conflict and cross-cutting cleavages can moderate political conflict, this suggests that replacing geographic constituencies with heterogeneous constituencies can offer a potential institutional remedy to the democratic problem of legislative gridlock.

²⁵My objectives align closely to those pursued by Pogge (2002: 50-51) in his proposal for self-constituting constituencies.

Group-Conscious Constituencies and Marginalisation

Summary Several countries around the world use group-conscious electoral constituencies to increase the electoral influence of marginalised racial and ethnic groups. In this chapter, I explore which marginalised groups, if any, should be attributed group-conscious constituencies. I make a distinction between marginalised *ascriptive* and marginalised *autonomous* groups. The former group is defined by a primarily negative and individualistic goal of overcoming the structural constraints that members face on the basis of their shared attributes. The latter group is defined by a primarily positive and collective goal of preserving, promoting and protecting a common public culture. The central claim of this chapter is that *if* political theorists and electoral designers believe that marginalised groups deserve a special representative status, *then* they should attribute group-conscious constituencies to *all and only all* marginalised *autonomous* groups. Group-conscious constituencies have a group-reinforcing logic. I argue that this logic conflicts with the goals of marginalised ascriptive groups, whereas it is compatible with the goals of marginalised autonomous groups, even if those groups seek to attain self-government rights rather than political inclusion. The argument has important implications for the practice of race-conscious districting in the United States, where such constituencies are created for blacks without making a distinction between a thick and thin understanding of black identity. The upshot is that race-conscious constituencies should only be given to Blacks, in the thick sense of the term, referring primarily to African Americans but not to all marginalised individuals with a dark skin.

CHAPTER 5

5.1 INTRODUCTION

The demarcation of electoral constituency boundaries plays a crucial role in the struggle for political empowerment of marginalised groups. When the boundaries are drawn group-consciously, this can effectively increase the electoral influence of these groups. In *group-conscious* electoral constituencies, a marginalised group is sufficiently numerous to elect its own representatives. Since the 1956 Voting Rights Act, legal battles are regularly fought in U.S. courts over the number of group-conscious constituencies created for marginalised racial and ethnic groups. In a recent landmark ruling, the U.S. Supreme Court ordered the State of Alabama to create at least two race-conscious electoral constituencies in order to prevent the dilution of the voting power of Black Alabamans. The State of Alabama is, however, determined to appeal this decision again, seeking approval to craft – what it terms – “race-neutral” constituency maps which ‘foster a transformation to a society that is no longer fixated on race.’¹ This legal battle raises the question: For which marginalised groups, if any, is the creation of group-conscious constituencies justified?

Group-conscious constituencies are typically justified by the need to combat marginalisation in the political process. Members of marginalised groups face systemic barriers to political participation, hindering their capacity to influence legislative outcomes. To guarantee political equality, these groups have to be provided a special representative status (Young 1990: 41-42; 2002: 34, 141; Williams 1998: 176-202). A broad range of social groups can be considered marginalised. As Will Kymlicka (1995: 145) observes, the term seems to include ‘everyone but relatively well-off, relatively young, able-bodied, heterosexual, white males.’ However, group-conscious constituencies tend to be created predominantly for one specific set of marginalised groups: racial and ethnic minorities. This is not only the case in the U.S. but also in several other countries, such as Mexico, New Zealand, Niger and Panama.² This focus on

¹See *Allen v. Milligan*, 599 U.S. (2023) for the Supreme Court’s ruling. And see Merrill’s Reply Brief in *Merrill v. Milligan* quoting *Georgia v. Ashcroft*, 539 U.S. 461, 490 (2003) on page 4 for the appeal by the State of Alabama. Available at <https://www.aclu.org/cases/thomas-v-merrill-and-milligan-v-merrill>, visited 2 April 2024.

²See also Handley (2022) for an overview of the countries that restrict the voters in one

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ethnic and racial minorities in the creation of group-conscious constituencies is rarely justified, which is problematic for two reasons: First of all, it increases the risk that political theorists and electoral designers overlook other marginalised groups which warrant similar representation. Second, it increases the risk of inadvertently prescribing inappropriate remedies against the political disempowerment of certain marginalised groups.

In this chapter, I make a distinction between two categories of marginalised groups: marginalised *ascriptive* groups and marginalised *autonomous* groups (Section 5.2). The difference between these groups lies in their political goals. The goal of marginalised ascriptive groups is primarily negative and individualistic: Members aim to overcome the structural constraints that they face due to the social meaning that the broader society attaches to their shared attributes. Women form a paradigmatic example of these groups. By contrast, the goal of marginalised autonomous groups is primarily positive and collective: Members are committed to preserving, protecting and promoting their common public culture. They perceive their marginalisation as a deliberate undermining of their shared cultural beliefs, values, practices and behaviours. Indigenous populations form a paradigmatic example of these groups.

Building on this distinction, my core claim will be:

If political theorists and electoral designers believe that marginalised groups deserve a special representative status, then they should attribute group-conscious constituencies to all and only all marginalised autonomous groups.

The logic behind group-conscious constituencies is *group-reinforcing*: Their purpose is to assert the distinct political status of a group. This distinguishes group-conscious constituencies from, for example, quota requirements that may, despite first appearances, have a *group-cancelling logic* and thus may eventually ‘put a group out of business as a group’ (Fraser 2014: 18; cf. Htun 2004: 451). The group-reinforcing logic determines which groups benefit from dedicated electoral constituencies. I argue that this group-reinforcing logic is *only* compatible with the goals of marginalised autonomous groups, not

or more electoral constituencies to members of a particular race or ethnicity.

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with those of marginalised ascriptive groups (Section 5.3). Moreover, I argue that this group-reinforcing logic of political inclusion is compatible with the goals of *all* marginalised autonomous groups, even if they do not seek cultural self-determination through political inclusion but through self-government rights (Section 5.4).

My argument has important implications for the practice of race-conscious districting in the United States. Some political theorists have advocated for race-conscious constituencies to politically empower black voters (James 2011: 900; Williams 1998: 231-239). Yet, they have done so without distinguishing a thick and thin understanding of black identity. The former refers primarily to African Americans who share a “Black culture” on the basis of a common cultural heritage or a history of oppression. The latter refers to a broader group of black people, who share certain inherited physical attributes such as a dark skin and tightly coiled or curly hair (Shelby 2002: 239-244). When theorists are concerned with Blacks, in the thick sense, their defence for race-conscious constituencies holds ground. However, they often seem to be referring to blacks, in the thin sense. In that case, the State of Alabama may have a point that group representation should foster a society in which being black no longer matters for one’s political power and race-conscious constituencies fail to contribute to achieving that goal.

5.2 TWO CATEGORIES OF MARGINALISED GROUPS

Marginalised groups are *social* groups. They are typically identified by the members’ shared *attributes*, such as class, gender, race, or religion, but they are more than arbitrary classifications of individuals on the basis of those attributes. The shared attributes must also be *socially salient*, in the sense that group members themselves or the broader society must attach a certain social meaning to them. As social groups, marginalised groups are thus constructed in social interactions (cf. Young 1990: 42-48).³

³I use a broad notion of *social group*. I assume that when the group is constituted by the perceptions, attitudes and behaviours of others, members do not need to identify with the group themselves. At the same time, a social group can also be solely based on self-ascription and mutual identification by the members. Imagine a secret religious sect whose members

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Social groups are *marginalised* when group members experience structural constraints in their every day lives that generate deep cultural and socio-economic injustices. These constraints are often not the result of the intentions of a tyrannical group. Rather, they are the product of the negative meaning attached by the broader society to the group members' attributes. Members thus find themselves in a certain societal position on the basis of attributes that cannot (readily) be changed, rather than their individual actions or achievements. The consequent cultural and socio-economic inequalities, in turn, generate political inequalities. They create barriers to political participation: Members of marginalised groups tend to have fewer resources to mobilise around their group identity, lower prospects of winning a seat in the legislature, and fewer opportunities to make their voice heard in democratic deliberations. As a consequence, their voice is marginalised or even silenced in the political process (Young 1990: 41-42; 2002: 34, 141; Williams 1998: 15-18, 176-202).

The claims to group representation of marginalised groups do not follow immediately from the social injustices that group members experience. A substantial proportion of group members also needs to actually have a form of *group solidarity*. In particular, a substantial proportion of group members must satisfy at least two conditions of group solidarity: *mutual identification* and *commitment to shared goals*.⁴ As I will explain below, attributing marginalised groups a special representative status otherwise cannot be justified.

First, a substantial proportion of group members must share a sense of belonging together as a group: They must perceive their group affiliation as integral to who they are and mutually recognise one another as members of

recognise each other as part of this sect. This would be a social group even if the rest of society does not know about it. My notion of social group is thus broader than, for example, the definition by Tajfel and Turner (2001: 100), according to which a social group 'is a collection of individuals who perceive themselves to be members of the same social category, share some emotional involvement in this common definition of themselves, and achieve some degree of social consensus about the evaluation of their group and their membership of it.'

⁴I am concerned with solidarity as a relationship *among* members of the same group, not solidarity *with* members of another group (O'Neill 1996: 201). Moreover, I take mutual identification and shared goals to be necessary elements for group solidarity but they might not be sufficient. For example, Shelby (2002: 237-238) considers the two elements plus group loyalty and mutual trust to be jointly sufficient for a robust form of group solidarity. And Miller (2017: 62-65) also sees mutual concern, collective responsibility and limits on inequality as defining features of group solidarity.

the group. Mutual identification by a substantial proportion of members is necessary for a claim to group representation because social groups are dynamic entities whose sense of identity is shaped by socio-political institutions. Imposing group representation on members who have no understanding of themselves as a group thus risks constructing or affecting their group identity (Haslanger 2004: 111). And, as Melissa Williams (1998: 201) points out, institutionally defining members as a group independent of their self-identification would be ‘to advocate vanguardism’.

Second, a substantial proportion of group members must think of their actions as a means to a group end and believe that other group members also share this commitment to reaching certain goals. These shared goals serve as a justification for a claim to group representation. Without such shared goals, the purpose of granting a special representative status to a group would remain unclear. A good indicator for the existence of such shared goals is the degree of political mobilisation around the group identity. Shared goals motivate group members to invest their time and resources in political engagement with the aim of bringing about social change. They also help these groups in overcoming collective action problems by fostering a belief among members that all are equally willing to make the necessary sacrifices (cf. Shelby 2002: 233).⁵ Despite facing significant barriers to political participation, some marginalised groups are thus unusually politically active, such as women, black Americans and indigenous populations. As such groups can be considered to have an especially strong claim to group representation, they will be the focus of my analysis.⁶

⁵There is a body of political science literature that explains the high rates of participation among marginalised groups by reference to the existence of a *group consciousness*. The conditions used to operationalise this notion are similar to those used for group solidarity. See Chong and Rogers (2005) for a critical overview of that literature.

⁶Williams (1998: 199) suggests that some groups may also objectively have an especially strong claim to group representation because of the depth of the history of discrimination against them, which continues to exist in contemporary stereotypes and reinforces their current subordinate social status. As an objective criterion would be in tension with her worries about vanguardism, she seems to consider it ultimately subordinate to the subjective criterion, as she acknowledges that a claim to group representation ‘depends critically on whether some substantial proportion of its members have developed a sense of shared political identity.’

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The *content* of the solidaric commitment of marginalised groups may vary. In particular, a solidaric commitment among members of marginalised groups can concern one of two types of shared goals:

Social Empowerment. Group members are united in their commitment to fighting against being separated, labelled, and made second-class citizens. They share the goal of overcoming or mitigating the structural constraints that they experience in their everyday lives. This goal can often only be achieved by challenging the perceptions, attitudes and social norms perpetuating their marginalisation.

Cultural Self-Determination. Group members are united in their commitment to preserving, protecting and promoting their common public culture. Their joint goal is to be culturally self-determining. If they consider it impossible to freely pursue their own cultural development within the larger state, they may demand powers of self-government on a particular territory or plot of land, whether by forming a federal subunit or by seceding.⁷

The first goal is primarily negative and individualistic: The group seeks to eliminate the significance of group membership for each members' social position. Members' identification with the group is constituted by their shared experience of marginalisation, which is the result of the negative social meaning ascribed by the broader society to their shared attributes. The group identity is thus rooted in a sense of victimhood, which is not to say that members should be ashamed of it (Shelby 2002: 265).⁸

By contrast, the second goal is primarily positive and collective. Group members identify with each other and with the group on the basis of a common public culture. This common public culture involves an identifiable set of

⁷In line with Miller (2020a: 89-90), I use an identity-based conception of self-determination. In this conception, self-determining groups are *likely* to be territorially compact and may demand territorial control *in order to* preserve and protect their common public culture. Waldron (2010) distinguishes this from a territorial conception of self-determination, which *only* concerns territorially compact groups for which the joint goal *primarily* consists in occupying and controlling a given territory or plot of land.

⁸From a black theological perspective, the condition of oppression constituting the group identity may even be considered to have long-term positive effects as it can bring black people closer to God (Shelby 2002: n. 51).

beliefs, values, behaviours, traditions and practices that shape their way of life and world-view.⁹ It can either stem from the common ethnic origins of the members or emerge as a “counter-culture” in response to the perceived deprivation of the group within the political system. Group members actively practice this culture and often experience it as a basis for their self-respect. Their group identity is also inherently active: They intend to freely pursue their cultural development by deciding and doing things together as a group. This distinguishes these groups from, for example, certain religious groups that have an essentially passive identity as they do not engage in collective action but rather aim to interpret the message of God (Miller 1995: 24).¹⁰

The two goals reflect different understandings among group members of the value of their solidarity. When group members commit to attaining social empowerment, they presumably perceive their solidaric relationships as *instrumentally* valuable. Their goal is external to that relationship and when the goal is reached, the relationship may cease to exist. By contrast, when group members are committed to cultural self-determination, they tend to perceive their relationships of solidarity as *intrinsically* valuable. The value of those relationships may, for example, be considered to lie in providing a social basis for self-respect and individual autonomy (Straehle 2020: 532-535). The solidaric commitment flows from those existing valuable relationships, and aims to strengthen and gain control over them.¹¹

Allow me to highlight that I employ a non-moralised understanding of solidarity.¹² I am referring to the value of solidarity *as it is perceived* by group

⁹ I base myself on the notions of common public culture used by Miller (1995: 26), Margalit and Raz (1990: 443-44) and Shelby (2002: 241).

¹⁰ Miller (1995: 90, 140) defends the view that solidarity among group members is a *necessary* condition for the effective exercise of collective self-determination. This has, however, been contested (Abizadeh 2002). Either way, it seems plausible to assume that solidaric commitments *facilitate* effective collective self-determination. Groups that already have solidaric relationships are thus at least plausible candidates for having a claim to collective self-determination.

¹¹ See also Miller (2017: 65-69) on the instrumental and intrinsic value of solidarity.

¹² I remain ecumenical about some of the normative questions that have been asked about solidarity, such as whether standing in solidaric relationships generates obligations (cf. Gilbert 1999) or whether individuals have a duty to form solidaric relationships (cf. Kolers 2016). Like Miller (2017: 65-66), I am somewhat sceptical about this latter idea, because solidarity involves emotional identification with the rest of the group and it is not clear that people have enough

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members. This does not mean that the relationship actually has value. Mafiosi may also have a solidaric commitment to social empowerment or cultural self-determination, just as terrorist cells, xenophobic nationalists, racist groups and so on. However, given that these groups clearly pursue bad ends, the solidaric relationships built to realise those ends do not have any actual overall value (Sangiovanni 2023: 111-112). The fact that these groups *can* form certain solidaric commitments also does not imply that they *ought to* be provided group representation. From the perspective of the institutional designer, there has to be some normative criterion for evaluating the plausibility of the claims about marginalisation that inform solidaric commitments. I assume that, in order to have a right to group representation, the claims to social empowerment and collective self-determination by solidaric groups must at least be reasonable.¹³

Two categories of marginalised groups can be distinguished on the basis of the content of their solidaric commitment:

Marginalised Ascriptive Groups are largely united by a solidaric commitment to social empowerment.¹⁴

Marginalised Autonomous Groups are largely united by a solidaric commitment to cultural self-determination.

It is in practice not always clear-cut whether a particular marginalised group belongs to one category or the other. Just as some group members may not share a solidaric commitment, quite fundamental disagreement among group members may arise about the precise content of their shared goals. Solidaric commitments among group members may also change over time. Relatedly, the initially instrumental relationships of solidarity may come to be perceived as intrinsically valuable over time. One could argue that such a shift in the

control over this to be obligated to form solidaric relationships.

¹³ I employ the notion of reasonableness in a broadly Rawlsian sense, see Quong (2011). This means that claims of marginalisation do not have to be valid according to the true theories of justice and collective self-determination. Like many deliberative democrats, I have a partially procedural understanding of how we determine whether those claims are valid in the first place. This means that reasonable political claims should be heard in the political process and that groups should be empowered to make them, even if those claims eventually turn out to be unjustified.

¹⁴ I borrow the term *marginalised ascriptive groups* from Williams (1998: 15).

understanding of their solidaric relationship has taken place among many indigenous populations. I will identify a particular group as belonging to one or the other category when a substantial proportion of the members are generally assumed to share a solidaric commitment to the category's goal.¹⁵

Women form a paradigmatic example of marginalised ascriptive groups. They are marginalised on the basis of their inherited physical attributes, such as body shape and voice, but do not possess interests, values, or practices that are fundamentally different from those of men.¹⁶ When adopting a *thin* conception of black identity, black Americans can also be classified as a marginalised ascriptive group. In this thin conception, blackness is defined by inherited physical attributes. These attributes make individuals vulnerable to anti-black racism, irrespective of their law-abiding behaviour, socio-economic status, or assimilation into the dominant culture (Shelby 2002: 239-240).

By contrast, a paradigmatic example of marginalised autonomous groups is given by indigenous populations. These populations share a cultural heritage and are often considered to have a right to self-determination on their ancestral homeland. When adopting a *thick* conception of black identity, black people can also be classified as a marginalised autonomous, rather than an ascriptive, group. In this thick conception, Blackness traces descent from certain sub-Saharan African peoples. The descendants share a "Black culture", which either stems from the cultural heritage of their ancestors or is created by experiences of oppression and slavery that their ancestors endured since their forced displacement from Africa. Using this thick conception of black identity, it is conceivable that an individual suffers from anti-black racism without being authentically Black, either because she is assimilated into the dominant "White" culture or because she does not have the required ethnic origins (Shelby 2002: 241, 243). For the remainder of this chapter, I will capitalise the word "Black" when I specifically refer to the group of people falling under the

¹⁵Note that I do not intend to "define" the two categories of groups with a set of necessary and sufficient conditions. Rather, my goal-based characterisation of these groups is intended to fulfil the practical political purpose of helping political theorists and electoral designers in the institutionalisation and justification of group representation (cf. Williams 1998: 18).

¹⁶Note that some people think that women have distinctive values (e.g., Gilligan 1982). In that case, the example would not work perfectly but my argument does not hinge on the example.

thick conception of black identity.¹⁷

5.3 THE LOGIC OF GROUP-CONSCIOUS CONSTITUENCIES

Electoral constituencies are subsets of the enfranchised citizenry that are tasked with electing a defined number of representatives for the legislature (Carlsen Häggrot 2023a: 302). Group-conscious electoral constituencies largely or solely consist of members of a particular social group. In group-conscious constituencies, members of the group are sufficiently numerous to authorise and hold to account their own representatives. That is, they can grant authority to representatives by electing them and they can hold those representatives to account at the next election cycle by deciding on their re-election (James 2011: 905). The threshold at which the group is considered “sufficiently numerous” depends on the voter turn-out and political cohesiveness of the group and its competitors within the constituency.¹⁸ I use the term group-conscious constituencies to refer both to *majority-minority* constituencies, where the group constitutes at least a majority within the constituency, and to *communal* constituencies, where the group comprises the whole constituency. For example, race-conscious constituencies in the U.S. exemplify majority-minority constituencies, whereas the dedicated Māori constituencies in New Zealand exemplify communal constituencies.

Group-conscious constituencies have *substantive* and *symbolic* benefits.

¹⁷For the connection between “African American” or “Black” identity, in the thick sense, and self-determination, see, e.g., Karuka (2017) and Robinson (2001). One could say that the thin conception of black identity refers to racialised blacks, whereas the thick conception of black identity refers to ethnically Blacks (Haslanger 2000: 45; Phinney 1996: 918-919). I do not use this terminology as the concept of race is deeply contested. See for a discussion in the concept, e.g., Glasgow (2010).

¹⁸For example, the percentage of minority voters needed to elect a Hispanic representative are higher than the percentages needed to elect a Black representative. For Blacks, a combined Black plus Hispanic population above 50% with a plurality of Black voters usually suffices to elect a Black candidate, and a 65% Black majority virtually guarantees the election of a Black representative. By contrast, for Hispanics, a combined Black plus Hispanic population above 55% with a plurality of Hispanic voters usually suffices to elect a Hispanic candidate, and a 60% Hispanic majority plus a combined minority population of 70% provides a safe seat for a Hispanic candidate. The primary explanation for this difference is that a much higher percentage of the Hispanic population is not eligible to vote (Grofman and Handley 1992).

The more numerous the group is in a constituency, the more notable these benefits are. In this Section, I argue that the substantive and symbolic benefits provided by group-conscious constituencies are only compatible with the goals of marginalised autonomous groups. I will contrast the benefits of group-conscious constituencies with those provided by quota requirements and show that the latter are better suited to the goals of marginalised ascriptive groups.

Substantive benefits pertain to the substantive activity of representing. Group representation yields substantive benefits when it enhances the inclusion of the interests, opinions or perspectives of the group or its members into the political process (Pitkin 1967: 114-115).¹⁹ Group-conscious constituencies empower marginalised autonomous groups to pursue the substantive representation of their shared cultural interests and perspectives. They can authorise their own representatives to act for them in the legislature and can hold those representatives to account at the next elections. This iterative process of authorisation and accountability establishes a continuous connection between representatives and the group members, increasing the incentives for representatives to stand in for the group's substantive interests. It enables group members to actively shape the representation of their group interests through interactions with representatives. This is particularly notable in constituencies that are composed solely of group members, as there is then no need to vote as a cohesive voting block in order to secure the election of a representative of the group. The absence of such strategic voting pressures allows for a more open and dynamic exchange of views among group members. This opportunity for group members to make collective decisions as a group fits the cooperative nature of marginalised autonomous groups.

Although group-conscious constituencies increase the number of representatives in the legislature that are dedicated to substantively representing a group, this does not necessarily translate into more legislation in favour of the

¹⁹ Following Young (1990: 363-364), I define *interests* as that 'what affects or is important to the life prospects of individuals', *opinions* as 'the principles, values and priorities held by a person as these bear on and condition his or her judgement about what priorities should be pursued and ends sought' and a *social perspective* as the experiences with and knowledge of social processes that derive from a distinct structural social position. A social perspective sets a 'framework of interpretation' of interests and opinions, but does not entail a particular conclusion on political outcomes (Young 2002: 139-140).

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group's interests. As group members are concentrated in specific constituencies, they lack the capacity to influence representatives in other constituencies. Consequently, those representatives do not have electoral incentives to acknowledge the group's interests and perspectives. This may lead to a decrease in the number of votes in support of legislation benefiting the group (Cameron et al. 1996; Guinier 1994: 135; Lublin 1997: 98-119; Rehfeld 2005: 236-237). There is thus a trade-off between substantive *dyadic* representation, concerning the positions taken by a particular representative on behalf of its electoral constituency, and substantive *collective* representation, concerning the policies adopted by the entire legislative body (cf. James 2011: 905).

Given this trade-off, institutions for group representation should also be considered for their symbolic benefits. These benefits extend beyond the effects on policy output and concern the broader impact of group representation on perceptions, attitudes and societal norms (Hayes and Hibbing 2017: 33; Pitkin 1967: 97). The symbolic benefits of group-conscious constituencies are that they affirm the distinct political status of marginalised autonomous groups: They have a *group-reinforcing* logic (cf. Htun 2004: 451). By creating group-conscious constituencies, the electoral designer establishes that the group needs to have its own representatives and extends recognition to the fact that the group forms an autonomous collective whose members have committed to deciding and doing things together as a group. These symbolic effects are likely stronger if the group is attributed communal instead of majority-minority constituencies.

Group-conscious constituencies emphasise the autonomy of voters in selecting representatives who effectively advocate for the group's substantive interests. Without restrictions on the competing candidates, group members are free to elect representatives regardless of whether they belong to the group themselves. By contrast, quota requirements rely on the autonomy of representatives in providing substantive representation. Quotas guarantee the presence of members of the group in the legislature and these members have as representatives a certain political discretion in articulating the interests and perspectives of the group. In particular, these representatives can use their political discretion to respond to newly presented issues on behalf of their group (Dovi 2002: 732-733; Phillips 1998: 44-45, 69-71, 77-83).

Because quota rely on the autonomy of representatives, they are particularly beneficial for the substantive representation of marginalised ascriptive groups. Three prominent theorists have argued that members of these groups share a unique perspective as a consequence of their distinct experiences of marginalisation. Jane Mansbridge (1999: 641) considers ascriptive similarity to capture ‘the outward signs’ that people have lived through ‘a set of common experiences.’ Melissa Williams (1998: 6) claims that members of marginalised ascriptive groups share a ‘distinctive *perspective* on matters of public policy that comes from that experience.’ And Iris Marion Young (2002: 98, 136) asserts that members of marginalised ascriptive groups are ‘differently positioned in social structures’ and this distinct social position produces ‘a particular location-relative experience (...) or point of view on social processes.’ This distinct perspective would enable all group members to represent the substantive interests of the group. As Jane Mansbridge (1999: 644) suggests, ‘a voter can expect the representative to react more or less the way the voter would have done, on the basis of descriptive similarity.’²⁰ There would then be no need for mechanisms of authorisation and accountability that incentivise representatives to react as they think their voters would.

However, by insisting that *all and only all* members of marginalised ascriptive groups share distinct experiences and perspectives, the three theorists fall into the trap of essentialism. They portray the groups as more homogeneous than they actually are and, thereby, fail to appropriately acknowledge the internal diversity within the groups. Given intra-group diversity, shared experiences and perspectives can, at best, be attributed to group members in a *probabilistic* sense. That is, members of marginalised ascriptive groups may be *more likely* than others to share certain experiences, which in turn constitute a distinct social perspective. For example, while blacks may be more likely to live in poverty than whites, not all blacks actually experience poverty in their lives. And while most blacks certainly experience anti-black racism, there are always outliers. These outliers may not share the same experiences

²⁰ Mansbridge (1999: 643-648) considers descriptive similarity especially useful for the representation of *uncrystallised* interests. These are interests that have not been on the political agenda for long or received little attention and, therefore, cannot be anticipated during election time.

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and perspectives as most other group members, but can still be ‘authentically black’ (James 2011: 901-902).²¹

Instead of a distinct perspective due to experiences of marginalisation, members of ascriptive groups can be said to have a ‘group perspective’, which is a list of issues of shared concern.²² For example, certain issues are gendered, such as abortion and pregnancy. While women do not take the same positions on these gendered issues, they share a distinct concern with these issues (cf. Phillips 1998: 68-69). Quota can ensure that the impact of those issues on group members is not neglected in the legislature. For example, a female representative could substantively represent women, not necessarily by advocating a specific stance on any issue, but by highlighting the gendered nature of issues like abortion and pregnancy. By initiating debate on the gendered impacts of policy decisions on such issues, she can facilitate a discussion that might otherwise be overlooked in a legislature dominated by men.

In contrast to group-conscious constituencies, quota requirements are also compatible with the goals of marginalised ascriptive groups. As marginalised groups fight against being separated, labelled, and made second-class citizens, group representation should not lead to the recognition of group differences, but rather contribute to dissolving the distinct status of the group. It should create equal inclusion of the members in the political process by guaranteeing that their capacity to influence political decisions remains unaffected by the attributes that they happen to have. Quota can have such a *group-cancelling* logic. Their purpose can be to dissolve the distinct political status of the group and thus, in the words of Nancy Fraser (2014: 18), to ‘put the group out of business as a group’.²³ By guaranteeing the presence of certain groups in the legislature,

²¹ Young (2002: 148, cf. 138-139) herself recognises this when she acknowledges that ‘there are good grounds for questioning an assumption that a social perspective is unified to the extent that all those positioned by structures in a similar way will express issues conditioned by this situated perspective in the same way.’

²² Laurel Weldon (2002: 1156-1158; 2011: 34-35) suggests that this ‘group perspective’ emerges as a ‘collective phenomenon’ through the social interactions among group members and that it is therefore not accessible to each individual member. She therefore argues that this group perspective is best represented by a small ‘body’ of group members.

²³ This group-cancelling logic should not be misunderstood as aimed at eliminating groups in social life. I agree with Young (1990: 47) that group differentiation is an inevitable aspect of social processes. But I disagree with her that political institutions should, therefore, ‘promote

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quota can change the historically embedded understanding that members of those groups are unfit to rule (Mansbridge 1999: 648-650). Party-list quota may be more effective in the pursuit of group-cancellation than legislative seat quota, as they guarantee political presence by integrating groups into political parties. This integration underscores the diversity within marginalised ascriptive groups, as it demonstrates that a wide variety of interests and perspectives represented by the political parties can also be held by members of those group (cf. Htun 2004: 442). As such, quota, and party-list quota in particular, can provide symbolic benefits to marginalised ascriptive groups.²⁴

To conclude, whereas the group-reinforcing logic behind group-conscious constituencies sustains the goals of marginalised autonomous groups, it undermines the goals of marginalised ascriptive groups by establishing the differences that those groups seek to eliminate. It follows that *if* political theorists and electoral designers believe that marginalised groups deserve a special representative status, *then* they should create group-conscious constituencies *only* for marginalised autonomous groups.

5.4 OBJECTIONS: VOICE OR EXIT?

Given that group-conscious electoral constituencies should *only* be attributed to marginalised autonomous groups, the question remains whether they should be attributed to *all* marginalised autonomous groups. In this Section, I address three objections according to which some marginalised autonomous groups cannot or should not get group-conscious constituencies.

The first objection holds that group-conscious constituencies can only be attributed to geographically compact groups and, therefore, group-conscious constituencies cannot be attributed to marginalised autonomous groups that are not geographically compact (cf. Williams 1998: 205-206). The ob-

reproduction of and respect for group differences without oppression.’ As I have argued, fighting marginalisation in the political process may sometimes consist in making social group differences matter less for political inclusion and participation.

²⁴Quota can also provide other symbolic benefits: By guaranteeing the presence of group members in the legislature, they can enhance the *de facto* legitimacy of the political system, increase levels of trust in the government, and create greater engagement in politics (Hayes and Hibbing 2017; Lawless 2004; Mansbridge 1999: 650-651)

jection is based on the assumption that group-conscious constituencies are geographically-defined, making it impossible to construct such a constituency for geographically-dispersed groups. It is for this reason that the U.S. Supreme Court stipulated, on the basis of Section 2 of the 1965 Voting Rights Act, that a minority must be geographically compact in order to qualify for a race-conscious constituency.²⁵

However, the desirability of defining group-conscious constituencies geographically can itself be called into question. Geographic constituencies create a bias in the system in favour of geographically-concentrated groups and geographically-defined group-conscious constituencies would electorally disadvantage minorities that happen to reside in those constituencies but do not share the group's interests (Guinier 1994: 119-156; Young 2002: 151).

To prevent the disadvantages towards voters of other groups, group-conscious constituencies could be created that *solely* consist of voters who *self-identify* as a member of a particular group. For example, in New Zealand, voters can choose to register to vote either in a general electoral constituency or in one of the dedicated Māori constituencies. This process of self-registering fits with the nature of marginalised autonomous groups, as membership in these groups is defined by self-identification with the group and with others on the basis of a common public culture.

Additionally, to decouple constituency boundaries from geographic boundaries, group members should not be assigned to dedicated constituencies on the basis of geographic location. In New Zealand, the voters who register for a Māori electoral roll are divided over the dedicated electoral constituencies on the basis of geographic location and, as a consequence, those constituencies are still geographically-defined. Instead, group members could be assigned to the dedicated constituencies on the basis of random selection. This aligns with recent calls for replacing geographic constituencies with random constituencies, which are more heterogeneous around ideology and group identity (Ciepley 2013; Rehfeld 2005). Group-conscious random constituencies are similarly more diverse with respect to the many minorities within marginalised

²⁵Geographic compactness is one of the three conditions of the so-called "Gingles test", formulated in *Thornburg v. Gingles*, 478 U.S. 30 (1986).

autonomous groups. If the boundaries of group-conscious constituencies are randomly drawn, then there is no reason to think that those constituencies can only be created for marginalised autonomous groups that are geographically compact.

The second objection holds that some marginalised autonomous groups would prefer to forgo group-conscious constituencies as their self-understanding would not align to the group-reinforcing model of political inclusion. Some marginalised autonomous groups frame their claims against the majority not as claims to group-based *inclusion* in shared legislative institutions but rather as claims to *exclusion* from the political authority of the nation-state (Williams 1998: 200; 2004: 93-94). These groups may fear that group representation rights symbolise the group's subordination to the nation-state and express a shared citizenship status (Murphy 2008: 211; Williams 2004: 101, 113-114).²⁶ Their worry is based on the assumption that citizenship is grounded in a national or civic identity, to which the group's own identity is necessarily subordinated. However, this need not be the case. Instead, citizenship has been defined in multicultural terms, implying that the political community consists of multiple cultural groups, or as a shared fate, emphasising common interests and experiences that bind individuals together despite belonging to different cultural groups (Kymlicka 1995; Williams 2004: 103-109).

Relatedly, these groups may fear that group representation makes their case for self-government rights, such as a right to secede, less politically viable. They may think that enhanced political inclusion signals fair treatment and, thereby, renders the state more legitimate (Williams 2004: 113-114). Their worry is based on the assumption that the political viability of secession depends on dissatisfaction with the state. However, the political will to secede can also be the result of successful mobilisation efforts. Enhanced political representation may make it easier for political leaders to mobilise voters around the group identity. As such, it could actually contribute to creating a willingness to secede. Moreover, the political willingness to secede may also depend on the perceived capacity of the group to do so. If the group already has an es-

²⁶In a similar vein, a philosophy of assimilation also motivated the government in New Zealand to introduce a Māori constituency (Fleras 1985: 556-558).

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established semi-autonomous government, federal representation can establish vital links between the federal government and this semi-autonomous government, streamlining the process of obtaining necessary aid and support from the federal government. The success of the semi-autonomous government could alleviate the grievances of the group, stopping short of full independence, but it could also fuel the desire for secession by demonstrating that full political autonomy is a realistic and achievable option (Erk and Anderson 2009: 196-197).

The third objection holds that group-conscious constituencies would illegitimately expand the political power of marginalised autonomous groups that already have self-government rights within a federal state. As Will Kymlicka (1995: 143) observes,

the logical consequence of self-government is reduced representation, not increased representation. The right to self-government is a right against the authority of the federal government, not a right to share in the exercise of that authority.

The objection is based on a particular notion of democratic legitimacy, according to which all and only those who are subject to democratic decisions should be included in those decisions. For groups with a right to self-government, this notion of democratic legitimacy is taken to imply the right to representation on any body that can interpret or modify their powers of self-government but not necessarily the right to representation in the federal legislature. This is because the right to self-government entails exemptions from legislative obligations that are imposed by the federal government. Where such exemptions are in place, political representation in the federal legislature would empower the group to decide on laws that do not apply to them. Political representation in the federal legislature would thus illegitimately empower members of the group to decide on laws from which they have been exempted because of their self-government rights (Kymlicka 1995: 142-143; Williams 2004: 102,109).

In my view, the objection exaggerates the conflict between group representation and self-government rights, making it seem more profound than it actually is. Even if a group enjoys self-government rights, its members will

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continue to be subject to the majority of laws authorised by the federal government. This includes, for example, all laws resulting from foreign policy, such as international trade agreements and climate agreements. It may also include the laws that are clearly circumscribed to the lands surrounding the group's territory, as members of the group may spend some or all of their lives outside the territory on which the group exercises self-government rights and thus on the territory that is under the control of the federal government. For example, a rapidly growing number of indigenous people in Canada live their lives outside the reserves that form the basis of indigenous self-government (Williams 2004: 110). Moreover, the group's own autonomous government will experience a significant degree of interdependence and jurisdictional overlap with the federal government. For example, if an indigenous government assumes jurisdiction over health-policy, it is still dependent on the federal policy to attract and educate experts and other hospital staff. Even if a group enjoys self-government rights, democratic legitimacy thus requires that its members are included in decision-making at other levels of government (Murphy 2008: 202-2023; Williams 2004: 110-111).

But what about the federal laws that actually do not apply to the members of a self-governing group? The illegitimate empowerment of the members on those laws can be effectively prevented by assigning representation rights on an issue-by-issue basis. In this scenario, representatives would refrain from voting on legislation related to obligations from which their constituents are exempted due to self-government rights (Kymlicka 1995: 126-127, n.17; Williams 2004: 112). To implement this issue-specific voting scheme, it is crucial to define clearly which representatives are authorised to vote on behalf of a self-governing group. A dedicated electoral constituency for the group could therefore facilitate a solution to a potential conflict between self-government rights and political representation.

5.5 CONCLUDING REMARKS

The arguments in this paper have important implications for one of the most contentious debates over constituency design: Should black Americans cast

their ballot in race-conscious electoral constituencies? The answer to this question depends on one's understanding of black identity. The arguments in this chapter imply that African Americans (or Blacks in the thick sense) should be attributed race-conscious constituencies, but that the broader group of blacks, whose members share typically "black" physical attributes, should not be granted such constituencies.

The group-reinforcing logic of race-conscious constituencies only aligns with the goal of cultural self-determination. African Americans often understand their solidaric commitment as a commitment to this goal. They tend to perceive their marginalisation as part of an effort to assimilate them into the dominant "White" culture. Their struggle against marginalisation tends to be (at least partly) a struggle to preserve, protect and promote their Black culture. Race-conscious constituencies can help them in this struggle by institutionally recognising their distinct political status and enabling them to authorise and hold to account their own representatives.

Conversely, the group-reinforcing logic of race-conscious constituencies undermines the goal of social empowerment. Blacks, understood in terms of a thin identity, often understand their solidaric commitment as a commitment to this goal. Their struggle against marginalisation tends to be a struggle to overcome or mitigate the structural constraints that they experience on the basis of their inherited physical attributes. Race-conscious constituencies would establish the differences that many black civil rights movements seek to eliminate. They risk perpetuating the outsider status of black individuals and risk impeding their efforts to be recognised as equal citizens with diverse identities.²⁷

In the U.S., race-conscious constituencies are not only reserved for marginalised autonomous group. The Supreme Court stipulated, on the basis of Section 2 of the 1965 Voting Rights Act, that a group must be *politically cohesive* in order to qualify for a race-conscious electoral constituency. The political cohesiveness of a group hinges on whether voting patterns are racially

²⁷Thernstrom (2009: 1-3) describes this also as a risk of race-conscious constituencies for African Americans. She does not make a distinction between the two types of black identity and, therefore, does not acknowledge that many African Americans may actually desire to have a distinct political status.

polarised: Enough group members must have voted for the same candidate in the past and this candidate must not have been the preferred candidate by the White majority.²⁸ Political cohesiveness may be a good indicator that group members share a solidaric commitment, but it is insufficient to determine the content of this commitment. Marginalised ascriptive groups can also be politically cohesive and even aggregates of two minority groups can be politically cohesive.²⁹ In fact, if a group does not even have to share certain attributes, such as skin colour or ethnic origin, then any interest group or political minority can have a claim to a race-conscious constituency (Grofman et al. 1992: 67-73).

The fact that race-conscious constituencies are often applied to groups for which it is the “wrong” remedy, namely marginalised ascriptive groups, also reflects in the original purpose of the Voting Rights Act. Its original purpose was to ‘encourage the transition to a society where race no longer matters: a society where integration and color-blindness are not just qualities to be proud of, but are simple facts of life.’³⁰ Race-conscious constituencies would lead to more black legislators, elected in Southern States. This would decrease anti-black sentiments among Southern whites and change the historically-embedded understanding that skin colour signified talent and competence (Thernstrom 2009: 13-14, 214-224). However, while race-conscious constituencies have ultimately led to more black legislators, they have also established the differences that they sought to eliminate. For those who continue to fight against the marginalisation of blacks, the argument of this chapter demonstrates that the solution does not lie in further legal disputes over electoral constituency boundaries. To ameliorate barriers to political participation based on skin

²⁸The requirement of political cohesiveness overlaps with the requirement that the white majority must be demonstrated to vote as a bloc against the minority group’s preferred candidate. These are two of the three conditions of the so-called “Gingles test”, formulated in *Thornburg v. Gingles*, 478 U.S. 30 (1986). The other condition requires that the minority group is sufficiently large and geographically compact. See also n. 25 on the latter condition.

²⁹While U.S. courts have not done so often, they granted that blacks and Hispanics could be combined in order to form a cohesive voting block in *LULAC v. Midland Independent School District*, 812 F.2d 1494 (5th Cir. 1987), later vacated for reasons unrelated to the Voting Rights Act, and *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988); 849 F.2d 943 (5th Cir. 1988), cert. denied 492 U.S. 905 (1989). See also Grofman et al. (1992: 72).

³⁰See *Georgia v. Ashcroft*, 539 U.S. 461, 490-491 (2003).

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colour, black civil rights movements should seek political support for other measures, such as racial party-list quota.

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Appendix: Summaries and Declarations

SUMMARY

The traditional nexus between democratic and territorial boundaries has recently come under scrutiny. Global challenges have highlighted the limitations of confining democratic politics to the territory of the nation-state. Increased immigration has prompted discussions on the extension of democratic participation rights to people residing beyond state boundaries, such as expatriates and would-be immigrants. And processes of digitalisation have opened avenues for engaging in democratic politics regardless of geographic proximity. This dissertation contributes to the ongoing debate in democratic theory on the alignment between democratic and territorial boundaries. It comprises two parts, consisting of two chapters each.

In the first part, I explore the relationship between the boundaries of the *demos* and the territorial boundaries of the nation-state. I question whether the right to participate in democratic decision-making can legitimately be restricted to residents within the territorial jurisdiction of the nation-state. This part forms a response to the cosmopolitan idea that democracy requires a global *demos* on state decisions, given their cross-border impact. To assess what democracy requires, I take the value of democracy to lie in upholding the equal freedom and equal status of all who are subject to the state's rule.

In the Chapter *Border Coercion and Territorial Rights*, I respond to the view that immigration laws subject all foreigners to coercion, who should therefore be included in democratic decision-making on these laws. I refine the underlying all-subjected principle of democratic inclusion, by showing that states do not subject outsiders to coercion when they merely enforce their territorial rights. One upshot of this argument is that refugees clearly have claims to democratic inclusion, but that the global *demos*-thesis rests on a controversial scepticism towards territorial rights.

In the Chapter *Denizenship and Democratic Equality*, Daniel Häuser and I contest the widely held assumption that territorial presence eventually results in a claim to equal democratic inclusion. This assumption is typically based on a concern for the equal freedom and equal moral status of denizens (resident

non-citizens). We argue that the original citizenship of some denizens can function as a substitute for full democratic inclusion in the state's decisions. One implication of this argument is that democratic concerns with temporary labour regimes are overstated.

In the second part, I challenge the geographic definition of *electoral constituency* boundaries. In many democracies, subgroups of voters that reside within a specific, compact geographical area on the state's territory are tasked with electing a certain number of representatives to the national legislature. In this part, I argue that such geographic constituencies violate democratic equality and propose an alternative geographically-dispersed system that combines heterogeneous random constituencies with group-conscious constituencies.

In the Chapter *Heterogeneous Constituencies and Legislative Gridlock*, I advocate replacing single-seat geographic constituencies by multi-seat heterogeneous constituencies, which are created by randomly and permanently assigning voters to constituencies. I argue that multi-seat heterogeneous constituencies enhance democratic equality and contribute to preventing legislative gridlock, as they do not dilute the voting power of geographically-dispersed groups and facilitate processes of bargaining and coalition-building by encouraging representatives to politicise cross-cutting cleavages (instead of reinforcing geographic divisions).

In the Chapter *Group-Conscious Constituencies and Marginalisation*, I examine the justifiability of group-conscious constituencies, in which a minority can authorise and hold to account their own representatives. These constituencies are often justified as a means to empower marginalised groups. I argue that they sustain the commitment to cultural self-determination of marginalised *autonomous* groups, whereas they undermine the commitment to social empowerment of marginalised *ascriptive* groups. The upshot is that indigenous communities lack the constituencies to which they are entitled and that race-conscious constituencies, as used in the U.S., are based on the controversial assumption that racial groups wish to preserve a distinct cultural identity.

To conclude, this dissertation contributes to debates on democratic inclusion, democratic equality, electoral design, territorial rights and immigration by examining the interplay between democratic and territorial boundaries.

ZUSAMMENFASSUNG

Die traditionelle Verknüpfung zwischen territorialen Grenzen und den Grenzen des demokratischen Gemeinwesens ist in den letzten Jahren ins Blickfeld der demokratietheoretischen Auseinandersetzung gerückt. Globale politische Herausforderungen haben aufgezeigt, dass demokratische Politik nicht auf das Territorium einzelner Nationalstaaten beschränkt bleiben kann. Auch haben zunehmende Migrationsbewegungen Diskussionen über die Erweiterung demokratischer Partizipationsrechte ausgelöst, so fordern prominente Theoretiker:innen beispielsweise ein Wahlrecht für potenzielle Immigranten. Darüber hinaus hat die Digitalisierung die Schaffung neuer demokratischer Foren ermöglicht, die nicht auf die geographische Nähe der Beteiligten angewiesen sind. Diese Dissertation trägt zur anhaltenden demokratietheoretischen Debatte über das Verhältnis demokratischer und territorialer Grenzen bei. Sie besteht aus zwei Teilen, die jeweils zwei Kapitel umfassen.

Der erste Teil dieser Dissertation untersucht die Beziehung zwischen den Grenzen des *Demos* und den territorialen Grenzen des Staates. Es wird hinterfragt, ob das Recht zur Teilnahme an demokratischen Entscheidungsfindungsprozessen legitimerweise auf die Bewohner des Herrschaftsgebiets von Nationalstaaten beschränkt werden kann. Insbesondere formuliert dieser Teil eine Antwort auf die kosmopolitische Forderung nach einem globalen *Demos* für staatliche Entscheidungen mit grenzüberschreitenden Auswirkungen. Dabei liegt der Untersuchung die Annahme zu Grunde, dass demokratische Standards letztlich mit dem *Wert* der Demokratie begründet werden, den diese Arbeit im Erhalt der gleichen Freiheit und des gleichen moralischen Status aller der Herrschaft eines Staates unterworfenen Menschen verortet.

Das Kapitel *Border Coercion and Territorial Rights* untersucht die prominent vertretene These, die Einwanderungsgesetzgebung unterwerfe alle Ausländer staatlichem Zwang, weshalb diese in die demokratische Entscheidungsfindung über diese Gesetze einbezogen werden müssten. Das Kapitel entwickelt eine nuanciertere Version des Unterwerfungsprinzips demokratischer Inklusion, aus dem folgt, dass Staaten Außenstehende nicht im normativ

relevanten Sinne Zwang unterwerfen, wenn sie an der Grenze lediglich ihre Territorialrechte durchsetzen. Eine zentrale Schlussfolgerung aus dieser Argumentation ist, dass Flüchtlinge zweifelsfrei Ansprüche auf demokratische Einbeziehung geltend machen können, die Forderung nach einem globalen Demos aber auf einer kontroversen und vorläufig unbegründeten Skepsis gegenüber Territorialrechten beruht.

Im Kapitel *Denizenship and Democratic Equality* bestreiten Daniel Häuser und ich die verbreitete Annahme, die physische Präsenz auf dem Herrschaftsgebiet eines Staates begründe im Laufe der Zeit einen Anspruch auf vollwertige demokratische Mitbestimmungsrechte. Diese Annahme beruht meist auf der Sorge um die gleiche Freiheit und den gleichen moralischen Status von *Denizens* (ansässigen nicht-Bürger:innen). Wir argumentieren, dass die Staatsbürgerschaft des Heimatlandes mancher ansässiger Ausländer als Ersatz für ihre gleichwertige Einbeziehung in demokratische Entscheidungsfindungsprozesse dienen kann. Eine Implikation dieses Arguments ist, dass demokratiethoretische Bedenken gegenüber zeitlich begrenzter Arbeitsmigration überbewertet sind.

Der zweite Teil dieser Dissertation hinterfragt die geographische Demarkierung von Wahlkreisen. Viele Demokratien weisen Wähler:innen, die innerhalb eines begrenzten geographischen Gebiets auf dem Territorium des Staates leben, Wahlkreisen zu und beauftragen Sie mit der Wahl einer bestimmten Anzahl von Abgeordneten in das nationale Parlament. In diesem Teil der Arbeit wird aufgezeigt, wie geographische Wahlkreise die demokratische Gleichheit zwischen Bürger:innen verletzen können. Im Anschluss daran wird ein alternatives Wahlsystem vorgeschlagen, in dem Wahlkreise nicht geographisch definiert werden, sondern heterogene und nach dem Zufallsprinzip zusammengestellte Wahlkreise mit sogenanntem *group-conscious districting* kombiniert werden.

Im Kapitel *Heterogeneous Constituencies and Legislative Gridlock* wird dafür argumentiert, geographisch definierte Einzelsitzwahlkreise durch heterogene Mehrsitzwahlkreise zu ersetzen, die durch die zufällige und dauerhafte Zuweisung von Wähler:innen an Wahlkreise gebildet werden. Es wird gezeigt, dass heterogene Mehrsitzwahlkreise die demokratische Gleichheit stärken

und zur Überwindung politischer Blockaden beitragen, da sie das Gewicht der Stimmen geografisch verteilter Gruppen nicht verwässern. Zudem fördern sie Verhandlungs- und Koalitionsbildungsprozesse, indem sie Repräsentant:innen dazu veranlassen, quer zu einander verlaufende gesellschaftliche Konfliktlinien zu politisieren (anstatt geografisch verlaufende Konfliktlinien noch weiter zu vertiefen).

Im Kapitel *Group-Conscious Constituencies and Marginalisation* untersuche ich die Rechtfertigbarkeit der in manchen Demokratien etablierten Praxis, Wahlkreise in Hinblick auf die Vertretung sozialer Gruppen zuzuschneiden, um so gesellschaftlichen Minderheiten die Möglichkeit zu geben, ihre eigenen Vertreter:innen zu autorisieren und zur Rechenschaft zu ziehen. Diese Praxis wird oft als Mittel zur politischen Stärkung marginalisierter Gruppen gerechtfertigt. Diese dieses Kapitel ist, dass solche gruppenbezogenen Wahlkreise tatsächlich dazu beitragen können, innerhalb marginalisierter *autonomer* Gruppen die Bindung an das Ziel kultureller Selbstbestimmung aufrechterhalten. Für marginalisierte Gruppen, deren Mitgliedschaft in erster Linie auf *Fremdzuschreibungen* beruht, können sie dem politischen Ziel der Überwindung der Marginalisierung aber im Wege stehen. Das zentrale Resultat dieser Untersuchung ist, dass beispielsweise indigene Gruppen einen Anspruch auf eigene Wahlkreise geltend machen können, während die Einteilung von Wahlkreisen anhand des Merkmals *race*, wie diese in den USA praktiziert wird, von der fragwürdigen Annahme ausgeht, dass die entsprechenden Gruppen tatsächlich den Erhalt einer distinktiven kulturellen Identität anstreben.

Zusammenfassend trägt diese Dissertation zu Debatten über demokratische Inklusion, demokratische Gleichheit, die Ausgestaltung von Wahlsystemen, Territorialrechte und Migration bei, indem sie das Zusammenspiel zwischen demokratischen und territorialen Grenzen untersucht.

PUBLICATIONS

The following publications are included in this dissertation:

- Bloks, S.A. Democratic Inclusion and Territorial Rights: A Moral Account of Border Coercion. [*Under Review*] (Chapter 2)
- Bloks, S.A. and D. Häuser. Denizenship and Democratic Equality. *Critical Review of International Social and Political Philosophy* [*Forthcoming*] (Chapter 3)
- Bloks, S.A. Heterogeneous Electoral Constituencies: Enhancing Democratic Equality and Preventing Legislative Gridlock. [*Revise & Resubmit*] (Chapter 4)
- Bloks, S.A. Group-Conscious Electoral Constituencies: Justifications and Implications for Marginalised Groups. [*Working Title, To Be Submitted*] (Chapter 5)

DECLARATION

I hereby declare that I, Suzanne Bloks, have not received any commercial consultation on my doctoral thesis. This thesis has not been accepted as part of any previous doctoral procedure or graded as insufficient.

Hamburg, 3 May 2024

Place, Date

Signature of doctoral candidate

AFFIDAVIT

I, Suzanne Bloks, hereby declare under oath that I wrote the dissertation titled “Democratic Boundary Problems: Philosophical Inquiries into Peoples, Elections and Territories” myself and in case of cooperation with other researchers pursuant to the enclosed statements in accordance with Section 7 subsection 3 of the Doctoral Degree Regulations of the Faculty of Humanities dated 7 July 2010. I have used no aids other than those indicated.

Hamburg, 3 May 2024

Place, Date

Signature of doctoral candidate

PERSONAL DECLARATION
for
DISSERTATION BY PUBLICATION

Concept/planning Formulation of the fundamental academic problem, based on previously unanswered theoretical questions, including a summary of general inquiries that can be answered on the basis of analysis or experiments/investigation. Planning of the experiments/analyses and formulation of the methodological approach, including decision about methods and independent methodological development.

Implementation Degree of integration in the concrete investigations or analyses.

Creation of the manuscript Presentation, interpretation, and discussion of sought-for findings in the form of an academic paper.

Calculation of personal contribution proceeds according to a point system of 1–100 percent.

The candidate has made an independent contribution of 100 percent to **THREE** of the papers.

For a **FOURTH** paper (Chapter 3), the candidate's personal contribution breaks down thus:

Concept/planning: 50 %

Implementation: 50 %

Creation of manuscript: 50 %

My co-author has agreed to the above percentages for my own contributions.

Hamburg, 3 May 2024

Place, Date

Signature of doctoral candidate