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Dead People and the All-Affected Principle

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ABSTRACT Discussions of the all-affected principle as a solution to the boundary problem – how do we specify the group making democratic decisions? – have focused extensively on future people. We have yet to focus on dead people, however. This article tries to bridge this gap by arguing that the all-affected principle – i.e. the all actually affected interests principle – entails inclusion of dead people. This is true since dead people can be harmed or legally affected, and this is sufficient to having a claim for democratic inclusion. The last part of the paper discusses where this leaves the all-affected principle in the quest for the proper boundary principle, including a discussion of possible institutional solutions to the enfranchisement of dead people.

Keywords: Democracy; Democratic inclusion; Dead people; The all-affected principle; Post-humous harm

1 Introduction

Discussions of the boundary problem¹ – especially discussions of the all-affected principle – have focused extensively on future people,² e.g. whether future people are affected to an extent that generates for them a democratic inclusion claim. This is exemplified by Goodin who says the following in his discussion of the all-affected principle: “virtually (maybe literally) everyone in the world – and indeed everyone in all possible future worlds³ – should be entitled to vote on any proposal or any proposal for proposals”.⁴

However, we have yet to discuss a, in some ways similar but still different, group of people: dead people.⁵ This is potentially disturbing, insofar as Scanlon is right that “some of the most common forms of moral bias involve failing to think of various points of view which

we have not occupied, underestimating the reasons associated with them, and overestimating the costs to us of accepting principles that recognize the force of those reasons.”⁶ In this paper, I try to bridge this gap by investigating whether the all-affected principle entails inclusion of dead people.

My main argument is as follows:

- (1) If the all-affected interests principle is the proper boundary principle, and if people are harmed or legally affected posthumously, then dead people should be included in democratic decision-making.
- (2) The all-affected interests principle is the proper boundary principle.
- (3) People are harmed or legally affected posthumously.
- (4) Thus, dead people should be included in democratic decision-making.

The conclusion is surprising in itself as discussions of the all-affected principle as the proper boundary principle have yet to acknowledge the inclusion of dead people. For instance, in Owen’s discussion of the all actually affected principle, he does not consider whether it entails inclusion of dead people.⁷ In addition, some people have criticized the all-affected principle for being too expansionist in terms of the demos by either implying a global democracy⁸ or by implying inclusion of future people.⁹ What these critics (and the defenders for that matter) of the all-affected principle have not discussed is that the all-affected principle is expansionist in a different way in that it entails inclusion of dead people.

The paper is structured as follows. In section 2, I introduce the all-affected principle and the notion of posthumous harm. I argue that since to be harmed is one modality of being affected, dead people have a claim for democratic inclusion insofar as they are harmed.

Furthermore, I argue that even if there is no possibility of posthumous harm, dead people still have a democratic inclusion claim given that dead people can be legally affected, and this is sufficient to generate a democratic inclusion claim. After having argued that the all-affected

principle entails inclusion of dead people, in section 3, I discuss where this leaves the all-affected principle in the discussions of the boundary problem. I suggest that there are two likely ways to go from here: (i) to claim that it is absurd to suggest that dead people should be included in democratic decision-making, just as it is absurd to suggest that future people should be included in democratic decision-making “as democracy is essentially a matter of rule *by* the people”.¹⁰ In this view, it is a *pro tanto* reason against the all-affected principle that it entails inclusion of dead people; or (ii) to acknowledge that given the fact that dead people are sometimes affected by the democratic decision-making of the present – by either being harmed or legally affected – it is reasonable that they have a claim for democratic inclusion. In that sense, it speaks in favour of the all-affected principle that it entails inclusion of dead people. I point to two worries for (i), and discuss, in relation to (ii), possible institutional solutions to the enfranchisement of dead people. Ultimately, though, I do not believe that dead people should be included in democratic decision-making as they are not socially related to people living in the present and since the value of democracy lies in the fact that it is a constituent part of what it is to relate as social equals.

2 The All Actually Affected Interests Principle and Dead People

2.1 Defining the All Actually Affected Interests Principle

Let me begin with the all-affected principle and its implications for inclusion of dead people. Generically speaking, the all-affected principle says that those who are affected by a given decision ought to be included in the making of that decision in the first place.¹¹ In this generic version, the principle does not give us much guidance on how to bound the demos, i.e. who to include in democratic decision-making. First of all, we might question what it means to be affected. The common answer in the literature is that to be affected is to say that one’s interests are influenced by a given decision.¹² The question that follows is hence which types of interests

we are talking about. Is it only significant interests such as the interest in having the opportunity to live a decent human life, or should we include every interest attached to a person? The issue is that if every interest entails a claim for inclusion, then arguably anyone should be included in any decision. Furthermore, it is necessary to answer whether affectedness requires that one be *actually* affected, or whether being *possibly* affected is sufficient. That is whether it is sufficient for a claim for inclusion that one had the possibility of being affected (even if it turned out that one never was), as the all possibly affected interests principle says,¹³ or whether it is necessary for a claim for inclusion that one's interests are actually affected by the given decision, as the all actually affected interests principle says.

To concretize, we can say that the all actually affected interests principle is limited to inclusion in relation to those policies on the democratic agenda, whereas the all possibly affected interests principle entails inclusion of those people affected by policies that could have been on the agenda but in fact never were. The idea with the all possibly affected interests principle is thus that actual people are possibly affected if there are technically possible¹⁴ policies that would have made a difference to how well off they were, even if these policies were never on the agenda as long as they could have been on the agenda. By way of example, we can imagine that the reason why some policy was never on the agenda was that the politicians did not want the electorate to vote for this policy. Since anyone actually affected is also possibly affected, I will only discuss the all actually affected interests principle in what follows and discuss what this principle entails in terms of inclusion of dead people.¹⁵

2.2 *Posthumous Harm*

The question in front of us now is whether the interests of dead people are actually affected by the range of policies from which a polity chooses? The central question is hence whether the

dead have interests that are affected by contemporary democratic decisions. If they do, they have a claim for inclusion. Consider the following example:

The dead green philosopher: Suppose that a philosopher had spent her entire academic career trying to persuade people to pursue a climate mitigating policy because of our obligations towards future people. Actually, this was so important to the philosopher that she had chosen to abstain from other activities that would leave her less time to convince others on climate policy such as familial relationships. Whatever might be said about the priorities of this philosopher, it is clear that she has a strong interest in the fact that the polity of which she is a member chooses to pursue a climate mitigating policy. Tomorrow is election day, and the philosopher has chosen, obviously, to vote for the green party in favour of a climate mitigating policy. On the evening before election day, she happens to be in a car accident that kills her on the spot. For that reason, she is unable to vote in the election. However, on the same evening, she had texted her friend that she was going to vote for the green party.

Does she have a claim for being included according to the all actually affected interests principle? To answer this question, we can start by turning to the philosophical discussions of posthumous harm, i.e. whether it is possible to harm the dead. Two camps have emerged from these discussions: those who believe that posthumous harm is possible, and those who do not. In the following, I turn to some of the arguments put forward in favour of the possibility of posthumous harm. As some might be unpersuaded by the possibility of posthumous harm, I further show why dead people (sometimes) have a democratic inclusion claim according to the all actually affected interests principle even if there is no possibility of posthumous harm.

One of the prominent persons in the first group,¹⁶ i.e. those in favour of the possibility of posthumous harm, is Feinberg who argues that a person's interests might continue to exist independently of his or her death. He says,

“I would like to suggest that we can think of some of a person's interests as surviving his death, just as some of the debts and claims of his estate do, and that in virtue of the defeat of these interests, either by death itself or by subsequent events, we can think of the person who was, as harmed”.¹⁷

In order to argue why this is the case, Feinberg borrows a distinction from George Pitcher to say that dead people can be described in two different ways: “(1) as he was at some stage in his life – i.e. as a living person, or (2) as he is now, in death – mouldering, perhaps, in a grave”.¹⁸ The first is a description of an *ante-mortem* person, whereas the second is a description of a *post-mortem* person. It is possible to harm *ante-mortem* persons posthumously “by betrayals, broken promises,” etc., but it is not possible to harm *post-mortem* persons posthumously.¹⁹ The interests of the *ante-mortem* person that can be set back, on behalf of which he can be harmed, are those he had while alive: “Because the objects of a person's interests are usually wanted or aimed-at events that occur outside his immediate experience and at some future time, the area of a person's good or harm is necessarily wider than his subjective experience and longer than his biological life”.²⁰ Wilkinson adds to this, as he explains: “people have goals and the fulfilment of their goals has moral significance because it affects their well-being or the quality of their lives. The fulfilment of people's goals in many cases logically requires other people to do certain things or the impersonal world to be a certain way ... some elements of well-being – loves, friendships, goals – are, in a word, relational”.²¹ If I want to write the greatest book on political philosophy, this requires that other people do (or do not do) certain things, e.g. that no

one else writes a book that is better than mine is. In that sense, “some aspects of well-being do not require changes in the individual concerned in order for that individual to be affected”,²² given the underlying assumption that well-being is partly a matter of the fulfilment of one’s goals.²³ And as it is sometimes the case that the goals of the *ante-mortem* person can be frustrated after the person’s death, the person’s well-being can be affected for the worse after the person’s death, i.e. the person can be harmed²⁴ posthumously. This is the case with the dead green philosopher if her life project of a green climate policy fails.²⁵ For these reasons, dead people can be harmed according to proponents of the possibility of posthumous harm.

2.3 Dead people: Posthumous harm and legal affectedness

Those who believe in posthumous harm must necessarily believe that dead people have interests as it is by virtue of these interests that they argue that dead people can be harmed. If they believe that dead people have interests, they must acknowledge that, in some cases, it might be sufficient for dead people to have a claim for inclusion according to the all actually affected interests principle.²⁶ It seems ad hoc to accept that dead people have interests that are affected and then just exclude them. Sometimes, these interests may even be more important than the interests of living people.²⁷ For example, a person who deeply wants his sensitive personal information to remain hidden after his death might have a stronger interest in data regulation being upheld than a contemporary person who merely wants access to the man’s personal information to make an impression on his daughter and thus does not want the data regulation to be upheld. The dead green philosopher seems to be another example of a dead person who has a claim for being included as her interest in a climate mitigating policy is affected by whoever wins the election, and an interest in a climate mitigating policy seems apt for inclusion in democratic decision-making. Remember that Feinberg says, “the desire that some social or *political cause* triumph [...] can be the basis of interests that survive their owner’s death” [my emphasis].²⁸

It may even be sufficient for a claim to inclusion on the all-affected principle that dead people can be wronged. After all, that it is possible to be wronged without being harmed seems plausible in other contexts. For instance, a person's privacy may be violated even though the person is not aware of it, say, I look in his diary and he never finds out. In such a case there is no harm but there seems to be a wrong. We may extend this to dead people. Suppose a polity democratically decides to implement a law which makes it legal to dig up dead people from their graves to collect their bones (we can assume that bones are a valuable collector's item). It may plausibly be claimed that dead people, since they are affected by this policy, should be included in deciding on whether to implement this policy. Thus, even if this policy does not harm dead people, it may wrong them, and being wronged may be sufficient to have a claim for inclusion. Note that harmless wrongdoing is different from posthumous harm, even under a broad notion of harm. Imagine that the dead person that would be dug up from his grave did not have any opinion on the matter while alive. In that case, he cannot be posthumously harmed as that requires that the person has a goal, or a preference, that can be frustrated after his death. It seems, however, that there still is a wrong, a harmless wrong, and this shows that there can be harmless wrongdoing, which is different from posthumous harm, even under a broad notion of harm.

Even if we assume that dead people cannot be harmed (or wronged), however, the all actually affected interests principle still entails inclusion of dead people. This is the case since dead people can be legally affected. Someone is legally subjected (and thereby affected) "to a body of laws if and only if that body of laws materially affects him in any way".²⁹ In this context, one can be subject to a body of laws – i.e. be affected – even though one does not have any legal duties, e.g. due to power-conferring laws which confer the power to establish legal relationships, such as the regulations of marriage and the laws defining the terms of valid contracts.³⁰ To be conferred the power to establish a legal relationship is clearly to be affected, and

dead people can be conferred such power. For example, it is possible for people to own patents when they are dead; it is even possible for people to win patents – i.e. to be conferred the legal power to establish a legal relationship – once they are dead. Consider the case of Steve Jobs, co-founder of Apple, who died in 2011. In 2014, Steve Jobs had 458 patents of which 141 had been awarded to him following his death.³¹ By being conferred 141 patents posthumously – by being conferred that legal power – Steve Jobs is clearly actually affected. And if the polity decides to vote on the law defining the terms of valid patents – assuming they want to vote on whether it should apply posthumously – Steve Jobs has a claim for being included in the democratic decision-making on the all actually affected interests principle.

Some might object that this will not convince those who do not already believe in the possibility of posthumous harm since to be legally affected necessarily involves harm;³² there is no separation between harm and legal affectedness, as it were. To see that they are different, we can look – as we did with harmless wrongdoing – at a situation in which the dead person did not have any opinion on the matter while alive. Suppose a dead person is granted the legal power of a patent but the person, while alive, did not have an opinion as to whether that would benefit or harm him – he simply did not care. To be granted the legal power of this patent posthumously would then clearly neither harm nor benefit him,³³ as he does not have any preferences with regard to possession of this legal power. However, he would still be legally affected, as the body of laws materially affects him by granting him this legal power. If that is the case, this means that a person can be legally affected posthumously without being harmed,³⁴ and this implies that those who reject the idea of posthumous harm do not have to reject the idea of posthumous legal affectedness.

Admittedly, this assumes a narrow understanding of harm, which focuses on a person's well-being, and even though this is the most important understanding, there are other, broader, definitions of harm. Even on these, however, a person can be legally affected without being

harm, for instance if a person is given a worse legal status in an activity in which he is not involved and in which the probability of him being involved at some point is close to zero.

The upshot is that dead people have a claim for inclusion in democratic decision-making on the all actually affected interests principle, even if dead people cannot be harmed. It is important to note that I have merely pointed to sufficient conditions for inclusion of dead people. This means that there might be other reasons for inclusion of dead people than those explicated here; I remain agnostic as to whether this is the case.

3 Where Does This Leave the All-Affected Principle?

I have argued that the all actually affected interests principle entails inclusion of dead people in democratic decision-making since dead people can be harmed or legally affected. I would now like to discuss where this leaves the all-affected principle in the search for the proper boundary principle. I believe we can expect two widely different reactions, one of which requires that we discuss possible institutional solutions to the enfranchisement of dead people. As already noted, ultimately, I do not believe that dead people should be included in democratic decision-making, however.

3.1 Including dead people in democratic decision-making

A defender of the all-affected principle might point out that since we have seen that dead people are sometimes affected by the democratic decision-making of the present – by either being harmed or legally affected – and since we actually do know, at least sometimes, what dead people would vote for, it is reasonable that they have a claim for democratic inclusion. It is not at all implausible to take account of what the dead want (or would have wanted). We can see constitutions, for instance, as rules laid out by people who are now dead.³⁵ The defender might

continue by claiming that it is not at all implausible to argue for the inclusion of dead people as different policies might ultimately make a difference to who is dead. For instance, we choose policy X (to subsidise treatment for leukaemia) and Ben is now dead as he died from lung cancer, but had we chosen policy Y (to subsidise treatment for lung cancer) instead, Ben would still be alive.

If a defender of the all affected principle wants actual democracies to be demarcated according to this principle, he would have to point to possible institutional solutions to the enfranchisement of dead people. As this is also of (at least indirect) interest to the critic, I now turn to discuss possible institutional modalities.³⁶

Before turning to discuss new institutional solutions, we must first note that it is actually possible for dead people to partake in existing institutions of democratic decision-making, at least for those decisions, or elections, that are closest in time to the person's death. This is the case since in this time frame, dead people are not different from voters who are incapable of casting a vote on Election Day and who thus cast a postal vote. Suppose that there is to be an election in two months, and a person who has the right to vote knows that he will be away on Election Day, for which reason he casts a postal vote. A week later, this person suddenly dies in an accident. On Election Day, this person is obviously dead, but he has already submitted his vote, so we can actually count his vote as we count other postal votes. There are actual cases in which people have died between the moments they casted their vote and Election Day. For instance, in 2008 the 88-year old Florence Steen cast her absentee ballot on the South Dakota primary but died before the election.³⁷ In UK general elections, Purdam estimates that there is a possibility of around 3,000 people casting their vote and dying before Election Day.³⁸ This solution obviously would only be able to cover a small percentage of dead people, but it is still important since it shows that we could enfranchise some dead people by modifying the postal vote system to allow people's vote to count even if they are dead before Election Day.³⁹

We actually already have institutions in place that try to represent the interests of the dead - this is true of institutions handling wills. When we abide by the will of a dead person, we are representing his interests in present decision-making. Suppose that a person had specified in his will exactly how he would vote in coming elections, specifying what party he would vote for and which areas he particularly cared about, say culture and climate. In one sense, then, writing a will could be like casting a vote insofar as we allowed a trustee to vote on behalf of what a dead person had specified in his will.

With this in mind, I now want to propose new institutional solutions to representing dead people. I want to do so by analogy to similar discussions when it comes to designing institutions for future generations. In the introduction to “Institutions for Future Generations”, González-Ricoy and Gosseries (2016) present a useful distinction between *future-focused institutions* and *non-future-focused institutions*. Whereas the first type is an institution whose main or exclusive purpose is to promote future-oriented policies, the aim of the latter type “is to increase the future-oriented nature of institutions for which promoting far-sightedness is *not* part of their core business.”⁴⁰ As examples of the former, they mention Beckman and Ugglá’s proposal of an ombudsperson for future generations⁴¹ and Caney’s proposal of a legislative committee for the future who would scrutinize and evaluate all policies in terms of how they affect the future.⁴² As examples of the latter, they mention Ekeli’s *sub-majority rule model* according to which one-third of the legislators are granted two procedural rights to protect future interests, namely an ability to delay legislation and a right to require referendums.⁴³

We need to note that there is a difference between future people and dead people, inasmuch as dead people have been able to, while alive, express their views, for which reason we sometimes know what dead people would have voted for (I return to this in the next section). We can thus adapt the distinction between *future-focused institutions* and *non-future-focused institutions* such that it fits the situation of dead people, by distinguishing *representational past-*

focused institutions and *non-representational past-focused institutions*. Whereas dead people are represented “directly” in the former, by people who cast a vote on their behalf upon instructions from the dead person expressed while the person was alive, *non-representational past-focused institutions* instead aim to increase the extent to which institutions take the past into account in ways other than directly casting votes on their behalf. Obviously, in cases in which the dead person did not express the content of a mandate before her death, we have to rely on *non-representational past-focused institutions*.

One example of a *representational past-focused institution* is the one I mentioned before in which a dead person, through her will, is able to express what she would vote for, if she could vote, and in which a living person votes for this option on behalf of the dead person. Another proposal – similar in structure - is proposed by Mulgan, who argues that each adult would receive a fixed stock of ten votes which she can use when she prefers. If she wants to use some of the votes when she is dead, she can leave binding instructions for proxies to vote on her behalf.⁴⁴

One example of a *non-representational past-focused institution* would be to adapt Ekeli’s proposal of a *sub-majority rule model* to dead people. Instead of granting one-third of the legislators two procedural rights to protect future interests, they would be granted these procedural rights to protect dead people’s interests. In terms of the right to delay legislation, Ekeli says “A minority of at least one-third of the legislators should be granted the right to require that the final enactment of a law proposal should be delayed until a new election has been held, if they believe that the law in question can inflict serious harm upon posterity”.⁴⁵ Similarly, we could grant a minority of one-third of the legislators the opportunity to delay a law proposal until a new election has been held, if they believe that the law conflicts to a significant extent with the interests of dead people (e.g., if the law would allow demolition of a historical building). We could do the same when it comes to the right to require referendums. Instead of granting

“the right to demand a referendum on a bill that can have serious adverse impact on the living conditions of future generations”,⁴⁶ we could grant this right to demand a referendum on a bill that is in serious conflict with the expressed interests of dead people.

We have seen that it is indeed possible to institutionalize the enfranchisement of dead people. From the perspective of the defender of the all-affected principle, it seems that the better option, *ceteris paribus*, is to represent the interests of dead people directly through *representational past-focused institutions* precisely because dead people, like living people, have a democratic inclusion claim when affected. Only in the instances in which we do not know how the dead person would have voted should we turn to *non-representational past-focused institutions*.

3.2 Why dead people should not be included in democratic decision-making

A critic of the all-affected principle might instead say that it is absurd to suggest that dead people should have participatory rights to democratic decision-making in the present just as it is absurd to suggest that future people should have participatory rights, and this is a (further) reason why the all-affected principle is not the proper boundary principle. As Saunders says: “The fact that the all-affected principle can be construed as recommending the inclusion of non-agents within the democratic process at all suggests a faulty conception of democracy. Rule in the interests of the people (or affected patients) is not democracy, but guardianship. Democracy is essentially a matter of rule *by* the people, that is, a matter of their agency”.⁴⁷ There is a difference, we might say, between being affected as a condition of moral consideration and being affected as a condition of participatory rights in a democratic system,⁴⁸ - a difference which Goodin also mentions in his discussion⁴⁹ - and whereas contemporary people should have participatory rights in a democratic system, the interests of dead and future people should only be taken into account by contemporary people when they make democratic decisions.

There are two worries with this response.⁵⁰ The first is whether this response opens up for use of this distinction in other areas as well where it might not seem reasonable. If we make use of the distinction between being affected as a condition of moral consideration and being affected as a condition for participatory rights in a democratic system when it comes to dead people, we seem able to use the same distinction when it comes to people residing abroad. If we were not willing merely to grant moral consideration in case of people residing abroad, we would have to point to a relevant difference between these two cases. This brings me to the second point.

It is not sufficient to point out that there is a difference between people residing abroad and dead people, inasmuch as we know what the former, but not the latter, would vote for, since this is not always true. As mentioned, there is a relevant, and interesting, difference between dead people and future people, namely that dead people, unlike future people, were able to formulate the content of a mandate before their death. One challenge with enfranchising future people is that we cannot be certain that they would want to vote in their own self-interest, but from the point of view of the present we usually assume this. But future people might, just like some contemporary people, want to vote altruistically instead. This uncertainty is not present in the case of dead people who were able to formulate the content of a mandate before their death. In that sense, dead people have been, unlike future people, able to exercise agency, and lack of agency thus cannot be a reason why dead people are merely owed moral consideration as opposed to participatory rights. In fact, were we to include dead people in democratic decision-making we can expect living people to become more articulate about how they would vote on matters coming up for a vote after they have died, solving some of the practical issues.

I do believe, though, that this response is correct in the sense that dead people should not be included in democratic decision-making. The reason, however, is not about ability to exercise agency but is instead related to the value of democracy. As Lippert-Rasmussen and I argue

in another piece, what makes democracy valuable gives us an answer to how the demos should be constituted.⁵¹ Since we believe the value of democracy lies in the fact that it is a constituent part of what it is to relate as social equals,⁵² we should include in democratic decision-making those who stand in social relations with each other. However, dead people are not socially related to people living in the present in the relevant way. As Lippert-Rasmussen shows, for X and Y to relate as equals it is necessary and jointly sufficient (i) that they treat one another as equals and (ii) that they regard one another as equals. It is clear that (i) is not satisfied as dead people and living people do not stand in a relationship in which they can interact and thus treat one another as equals, “i.e. they cannot adjust their conduct in light of each other’s conduct, and they cannot communicate.”⁵³

An interlocutor may insist that if we, contemporary people, can regard and treat future people as our equals, then surely they can reciprocate and establish an egalitarian social relationship with us even after we are dead. While it is true that they cannot communicate to us that they have done so, we can communicate with them through wills and other written instruments, expressing our expectations about our post-mortem treatment.⁵⁴

While it is true that there can be such form of communication between dead people and contemporary people, there cannot be that form of communication that is involved in a dialogue, and it is this dialogic form of communication that matters to relational egalitarianism. As Anderson, probably the most prominent relational egalitarian, explains:

“Positively, [relational] egalitarians seek a social order in which persons stand in relations of equality. They seek to live together in a democratic community, as opposed to a hierarchical one. Democracy is here understood as collective self-determination by means of open discussion among equals [...] To stand as an equal before others in discussion means that one is entitled to participate, that others recognize an obligation to listen respectfully and respond to one’s arguments ...”⁵⁵

Thus, as dead people are not socially related to people living in the present in the way which matters to relational egalitarianism, and since I believe the value of democracy lies in the fact that it is a constituent part of what it is to relate as social equals, dead people should not be included in the democratic decision-making of the present.

4 Conclusion

I have argued that the all-affected principle – i.e. the all actually affected interests principle – entails inclusion of dead people. This is true since dead people can be harmed or legally affected – as I show, it is possible to be legally affected without being harmed – and this is sufficient to have a claim for democratic inclusion. In the last part of the paper, I investigated how we could institutionalize the enfranchisement of dead people. I proposed institutional solutions to representing dead people by analogy to similar discussions when it comes to designing institutions for future generations. Whereas *representational past-focused institutions* represent dead people directly in the sense that living people cast a vote on their behalf upon instructions expressed from the dead person while the person was alive, *non-representational past-focused institutions* aim to increase the extent to which institutions take the past into account in ways other than directly casting votes on their behalf.

Ultimately, though, I do not believe that dead people should be included in democratic decision-making as they are not socially related to people living in the present and since the value of democracy lies in the fact that it is a constituent part of what it is to relate as social equals.

NOTES

¹ The boundary problem concerns who should be included in democratic decision-making for that decision-making to be just, see Frederick G. Whelan, 'Prologue: Democratic Theory and the Boundary Problem', in Pennock and Chapman (eds.), *Liberal Democracy*, (New York, Oxford: Oxford University Press, 1983).

² See e.g. Ludvig Beckman, 'Democratic Inclusion, Law, and Causes', *Ratio Juris*, 21, 3 (2008): 348-364; Ben Saunders, 'Defining the demos', *Politics, Philosophy & Economics*, 11, 3 (2011): 280-301; Torbjörn Tännsjö, 'Future People, the All Affected Principle, and the Limits of the Aggregation Model of Democracy', in T Rønnow-Rasmussen, B Petersson, J Josefsson and D Egonsson (eds.) *Hommage à Wlodek. Philosophical Papers Dedicated to Wlodek Rabinowicz* (Lund: Lund University, 2007). For solutions to designing institutions for future generations, see the different proposals in Iñigo González-Ricoy and Axel Gosseries, *Institutions for Future Generations* (New York: Oxford University Press, 2016).

³ Goodin actually adds here in a footnote that "in addition, depending on one's views about the interests of the dead, past worlds as well", Robert E. Goodin, 'Enfranchising All Affected Interests, and Its Alternatives', *Philosophy & Public Affairs* 35, 1 (2007): 40-68 at p. 55, footnote 32. However, he does not follow this thought further, and neither does he consider it in relation to the all actually affected interests principle as I do in the following (cp. endnote 4).

⁴ Goodin op cit., 55; see also Robyn Eckersley, *The Green State. Rethinking Democracy and Sovereignty*, (Cambridge, MA: MIT Press, 2004); Kristian Skagen Ekeli, 'Green Constitutionalism: The Constitutional Protection of Future Generations', *Ratio Juris*, 20, 3 (2007): 378-401.

⁵ To be fair, Mulgan notes the following about enfranchisement of the dead: "Extending the franchise is not the only way to take account of peoples' interests. Perhaps the dead cannot be enfranchised. It does not follow that their current interests can be ignored altogether", see Tim Mulgan, 'The Place of the Dead in Liberal Political Philosophy', *The Journal of Political Philosophy*, 7, 1 (1999): 52-70, at p. 63. However, Mulgan does not discuss whether the all-affected principle entails the inclusion of dead people as I will do in the following. See also Bergström who shortly discusses the possibility of inclusion of dead people due to them being affected, Lars Bergström, 'Democracy and future generations', in Folke Tersman (ed.), *Democracy Unbound: Basic Explorations*, (Stockholm: Filosofiska institutionen, Stockholms Universitet).

⁶ T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: The Belknap Press of Harvard University Press, 2000), p. 206.

⁷ David Owen, 'Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem', *Ethics & Global Politics* 5, 3: 129-152.

⁸ Sarah Song, 'The Boundary Problem in Democratic Theory: Why the Demos should be Bounded by the State', *International Theory* 4, 1 (2012): 39-68.

⁹ Beckman op. cit.; Saunders op. cit.; Tännsjö, op. cit.

¹⁰ Saunders op. cit., 287.

¹¹ Robert A. Dahl (1970), *After the Revolution? Authority in a Good Society* (New Haven and London: Yale University Press); Goodin op. cit.

¹² See e.g. Gustaf Arrhenius 'The boundary problem in democratic theory', in Tersman op. cit., and Goodin op. cit.

¹³ The all possibly affected interests principle says that all whose interests are possibly affected by a given decision ought to be included in making that decision in the first place (Goodin, op. cit., 55). Note, though, that "possibility" can appear in two different ways leading to two different versions of the all possibly affected interests principle: (i) all possibly affected actual people or (ii) all possibly affected actual *and* possible people. To see the difference, it is important to understand the difference between actual and merely possible people. Actual people are people who exist in the actual history of the world, whether in the past, the present or the future, whereas merely possible people are those who might have existed but in fact never did (Nils Holtug, 'On the Value of Coming into Existence', *The Journal of Ethics* 5 (2001): 361-384, at p. 362). Goodin seems to read the principle in the second sense as he says that "virtually (maybe literally) everyone in the world – and indeed everyone in all possible future worlds – should be entitled to vote on any proposal or any proposal for proposals" (Goodin op. cit., 55). However, as the second version says that merely possible people have a claim for inclusion when they are possibly affected, it needs to be justified why merely possible people, and not only actual people, ought to be included – the inclusion of merely possible people is not necessary to formulate the principle as possibly affected instead of actually affected and hence involves a further step of argument.

¹⁴ By technically possible, I mean policies that the polity are able to pursue given the polity's institutions, knowledge, economy etc.

¹⁵ Though see endnote 27. Owen distinguishes between a choice interpretation and an outcome interpretation of the all actually affected interests principle. According to the choice interpretation, "all whose interests are actually affected by a choice between a range of options should have their interests taken into account in the determination of the option chosen." According to the outcome interpretation, "all whose interests are actually affected by an outcome should have their interests taken into account in the determination of that outcome." As Owen

shows that the choice interpretation is more plausible than the outcome interpretation, I will only discuss this interpretation of the all actually affected interests principle in what follows. See David Owen, ‘Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem’, *Ethics & Global Politics* 5, 3: 129-152.

¹⁶ Other philosophers in this group are Barbara Levenbook, ‘Harming Someone after His Death’, *Ethics*, 94, 3: 407-419 (1984); George Pitcher, ‘The Misfortunes of the Dead’, *American Philosophical Quarterly*, 21, 2 (1984): 183-188; Paul Griseri, ‘Can a Dead Man Be Harmed?’, *Philosophical Investigations*, 10 (1987): 317-329; Dorothy Grover, ‘Posthumous Harm’, *The Philosophical Quarterly* 39, 156 (1989): 334-353; Steven Luper, ‘Posthumous Harm’, *American Philosophical Quarterly*, 41, 4 (2004): 63-72; Daniel Sperling, *Posthumous Interests: Legal and Ethical Perspectives* (Cambridge: Cambridge University Press, 2008); and T M Wilkinson, *Ethics and the Acquisition of Organs* (New York, Oxford: Oxford University Press, 2011). I turn to Pitcher and Wilkinson next.

¹⁷ Joel Feinberg, *Harm to Others* (New York, Oxford: Oxford University Press, 1984), p. 83.

¹⁸ Pitcher op. cit., 184; Feinberg op. cit., 90.

¹⁹ As a *post-mortem* person really is not a person, just as a plastic dog is not a dog. Pitcher op. cit., 184, says, “I take it that no one would want to argue seriously that a post-mortem person can be harmed after his death, any more than one would maintain that a post-mortem person can be *wronged* after his death. Dust can neither be wronged nor harmed.”

²⁰ Feinberg op. cit., 86.

²¹ Wilkinson op. cit., 30-31, 34.

²² Wilkinson op. cit., 38.

²³ Wilkinson op. cit., 33. Some, e.g. hedonists, might deny this precisely because they deny that well-being can be affected without changes in the individual concerned, see e.g. Ben Bradley, *Well-Being and Death* (Oxford: Oxford University Press, 2009). In that sense, the possibility of posthumous harm might in the end come down to whether “well-being is partly a matter of the fulfilment of one’s goals”, Wilkinson op. cit., 33. With that being said, however, I argue below that the possibility of posthumous harm is not even necessary for dead people in order to have a democratic inclusion claim on the all actually affected interests principle (and a fortiori on the all possibly affected interests principle). However, it is still valuable to discuss posthumous harm, as many philosophers accept the idea.

²⁴ Where harm is roughly equivalent to reductions in well-being, Wilkinson op. cit., 30.

²⁵ The two central criticisms of the possibility of posthumous harm is “the problem of the subject” and “the problem of backwards causation”. Whereas “the problem of the subject” points out that after the person is dead, the person no longer exists and there is no subject to be harmed (Taylor, op. cit., 312), the “problem of backwards causation” (Taylor, op. cit., 314) pertains to the fact that the notion that a person can be harmed after his or her death seems to “commit one to endorsing the metaphysically dubious view that backwards causation is possible” (Jan Faye, ‘Backward Causation’, *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), Edward N. Zalta (ed.)). As an answer to the first criticism, Wilkinson argues that it is not the case that there is no subject to harm once the person is dead as it is possible to harm the interests of the *ante-mortem* person even though it is not possible to harm the *post-mortem* person (Wilkinson, op. cit., 37). As an answer to the second criticism, Wilkinson, following Pitcher, argues that posthumous harm does not presuppose backwards causation as the harm done to the dead is the non-fulfilment of the person’s goals and this is a logical claim, not a causal claim. As well-being includes the fulfilment of goals, and as fulfilment of goals extends beyond the person’s own body and mind, well-being partly depends on other persons and features of the impersonal world. Hence, “the fact that a goal is fulfilled is a fact about the world, not about the person’s mind. A goal could be fulfilled without any change to the mental states of the person whose goal it is, without the person realizing it. A causal process might have to occur for a goal to be fulfilled, but that the goal is fulfilled is logical” (Wilkinson, op. cit., 31, 38).

Though see endnote 24.

²⁶ This is also the case on the all possibly affected interests principle. Indeed, many more dead people should be included in this version of the all-affected principle. This is true since it is not even necessary within this principle that we are certain that we can harm (and thus affect) dead people by the democratic decisions we, as contemporary people, choose to pursue. It is sufficient that we *possibly* affect dead people by these democratic decisions. And, since it is a metaphysical possibility that we affect dead people by our democratic decisions, this possibility is sufficient for dead people to have a claim for democratic inclusion. It is important to stress that this has to do with an ontological possibility instead of an epistemic possibility. The reason why dead people have this claim for inclusion does not have to do with the fact that there is an epistemic disagreement as to whether it is possible to harm the dead (as we have seen is the case in the philosophical literature). The all possibly affected interests principle has to do with the fact that it is metaphysically possible that we can affect the interests of the dead. Note that to interpret possibly affected as metaphysical possibility is to stretch the principle very far. For instance, as it is also metaphysically possible that stones have interests that might possibly be affected, stones may also have a claim to inclusion on this reading. I would like to thank an anonymous reviewer for discussion on this.

²⁷ Cp. “For people *do* have preferences – sometimes very strong preferences – concerning what will happen when they are dead”, Bergström op. cit., 191.

²⁸ Feinberg op. cit., 86.

²⁹ Robert E. Goodin, ‘Enfranchising all subjected, worldwide’, *International Theory* 8, 3: 365-389, at p. 370. Goodin discusses this when specifying what it means to be subject to the laws of a state (as he wants to investigate the limits of implications of the all-subjected principle which is the primary alternative to the all-affected principle. He rightly points out that if we understand subject to a body of laws in this way, i.e. being legally affected, “the all-subjected principle basically collapses into the all-affected principle”, Goodin op. cit., 370. I mention it to counter the potential objection that being legally affected is not sufficient to generate a democratic inclusion claim on the all actually affected interests principle. It is impossible to be subjected without being affected, Miller op. cit., 214.

³⁰ Ludvig Beckman, ‘The Subjects of Collectively Binding Decisions: Democratic Inclusion and Extraterritorial Law’, *Ratio Juris*, 27, 2 (2014): 252-270, at p. 256.

³¹ Steve Cook, ‘Steve Jobs Has Won 141 Patents Since His Death’, *Business Insider*, <https://www.businessinsider.com/steve-jobs-has-won-141-patents-since-his-death-2014-11?r=UK&IR=T&IR=T> Accessed 21.12.2018.

³² I would like to thank both anonymous reviewers for pushing me on this.

³³ I assume here a preferentialist account of well-being. However, the conclusion also follows on an objective list account of well-being, if we assume that this change in legal status does not have an effect on any of the objects on the list. See also the example in the next paragraph.

³⁴ This does not entail that those who are indifferent towards politics would not be harmed by being denied the right to vote. Even if a person does not have any preferences with regard to politics, the person may still prefer having the right to vote as long as everyone else have the right to vote. And even if he does not have such a preference, the person may be harmed given that some of his other preferences are frustrated due to the pursued policy had that policy been different if he had possessed the right to vote. I would like to thank an anonymous reviewer for pushing me to clarify this.

³⁵ I would like to thank (concealed) for putting forth this example. For discussion of constitutions, especially of whether there can be intergenerational justifications for constitutional rigidity, see Axel Gosseries, ‘The Intergenerational Case for Constitutional Rigidity’, *Ratio Juris*, 27, 4 (2014): 428-539.

³⁶ I would like to thank both anonymous reviewers for encouraging me to discuss institutional solutions to the enfranchisement of dead people.

³⁷ Simon Davis, ‘What Happens if You Vote and Die Before Election Day?’, *Vice*, https://www.vice.com/en_us/article/exkp5e/what-happens-if-you-vote-and-die-before-election-day Accessed 13.05.2019. As Davis further explains, because of state law, Florence Steen’s vote was discounted. American election laws are determined by the individual states, and most states actually do count the votes of people who die between the moments they posted their vote and Election Day.

³⁸ Kingsley Purdam, ‘How many dead people vote?’, *Significance* 13, 6 (2016): 24-27.

³⁹ There is of course the danger that dead people’s vote can be used in fraudulent ways, e.g. someone may try to vote on behalf of a person who is already dead to gain an extra vote. This puts heavy demands on voter registration and identification practices.

⁴⁰ González-Ricoy and Gosseries op. cit., p. 6-7. In terms of *non-future focused institutions*, they introduce a subdivision between *future-focused changes in non-future focused institutions* – “measures that *primarily* aim at increasing the long-termism of policies adopted by institutions that are not per se focused on the long term” – and *future-beneficial changes in non-future-focused institutions* which are “expected ‘merely’ to carry beneficial long-termist side effects”. Ekeli’s proposal falls under the former subcategory. I set aside this subdivision and focus on the distinction between *future-focused institutions* and *non-future-focused institutions*.

⁴¹ See Ludvig Beckman and Frederik Uggla, ‘An Ombudsman for Future Generations: Legitimate and Effective?’, in González-Ricoy and Gosseries op. cit.

⁴² See Simon Caney ‘Political Institutions for the Future: A Fivefold Package’, in González-Ricoy and Gosseries op. cit.

⁴³ See Kristian Skagen Ekeli ‘Electoral Design, Sub-Majority Rules, and Representation for Future Generations’, in González-Ricoy and Gosseries op. cit.

⁴⁴ Tim Mulgan, ‘La démocratie post mortem’, *Revue Philosophique de Louvain* 1, (2003): 123-137.

⁴⁵ Ekeli op. cit., p. 220.

⁴⁶ Ekeli, op. cit., p. 220.

⁴⁷ Saunders op. cit., 287.

⁴⁸ See e.g. Rainer Bauböck, ‘Global Justice, Freedom of Movement and Democratic Citizenship’, *European Journal of Sociology* 50, 1 (2009): p. 17; Ludvig Beckman, *The Frontiers of Democracy: The Right to Vote and its Limits* (Palgrave Macmillan, 2009), at pp. 45ff.

⁴⁹ Goodin says, “Ordinarily, the all affected interests principle is taken to be a standard for defining the scope of membership in the demos. Alternatively, or additionally, it might be used to delimit the scope of the decisional power of the demos.” Goodin op. cit., p. 62 (see also p. 66-67). I would like to thank an anonymous reviewer for making me aware of this.

⁵⁰ I would like to thank an anonymous reviewer for discussion on this.

⁵¹ Kasper Lippert-Rasmussen and Andreas Bengtson, ‘The Problem(s) of Constituting the Demos: A (Set of) Solution(s)’, manuscript (2019).

⁵² For such an argument of the value of democracy, see Niko Kolodny, ‘Rule Over None II: Social Equality and the Justification of Democracy’, *Philosophy & Public Affairs* 42, 4 (2014): 287-337.

⁵³ Kasper Lippert-Rasmussen, *Relational Egalitarianism: Living As Equals* (Cambridge, Cambridge University Press, 2018), p. 71 and 128.

⁵⁴ I would like to thank the two anonymous reviewers for pushing me to respond to this.

⁵⁵ Elizabeth Anderson, ‘What Is the Point of Equality?’, *Ethics* 109, 2 (1999): 287-337, at p. 313.