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Why the all-affected principle is groundless

Abstract: The all-affected principle is a widely accepted solution to the problem of constituting the demos. Despite its popularity, a basic question in relation to the principle has not received much attention: *why* does the fact that an individual is affected by a certain decision ground a right to inclusion in democratic decision-making about that matter? An answer to this question must include a reason that explains why an affected individual should be included *because* she is affected. We identify three such reasons in the literature; to wit, interest protection, self-government and welfare, and show why they all fail. We then propose two alternative reasons, equal relations and fairness, and show why they are also deficient. Surprisingly, the all-affected principle then appears groundless, which supports withholding belief in the all-affected principle or(/and) investing future research in identifying the thus-far unidentified reason why being affected grounds a claim to inclusion.

Keywords: The all-affected principle; the problem of constituting the demos; democracy; democratic inclusion; the all-subjected principle

1. Introduction

For any given democratic law-giving entity, who should be included in that entity? This question is known as the problem of constituting the demos (Goodin 2007, 40).¹ It is a crucial question to ask, since obviously procedurally democratic decisions made by the wrong people have no special claim to authority, e.g., a democratic decision in a colonial state regulating matters in its colonies has no authority. Many discussing the problem of constituting the demos appeal to:²

¹ It has also been known as the boundary problem; see (Miller 2009, 201; Whelan 1983).

² Others who subscribe to (some version of) the all-affected principle include (Arrhenius 2005; Brighouse and Fleurbaey 2010; Fung 2013; Gould 2004; Held 1995; Lampert 2015; Olsen and Rostbøll 2017; Shapiro 1999; Young 2000).

The all-affected principle: all whose interests are affected by the relevant collective decisions should have an influence on them (Goodin, 2007: 50; cp. Dahl 1970, 64).³

It certainly speaks in favour of the all-affected principle that it seems to underlie many of the ways in which we delimit the relevant demoi. For instance, the principle of subsidiarity reflects the fact that decisions ought to be taken by those (most) affected by them (Arrhenius 2018, 103-104).

In this article, our aim is to take a step backwards and ask a more basic question that, surprisingly, has received little attention in discussions of the all-affected principle: *why* should an individual affected by a certain decision be included in democratic decision-making about that matter? To that question, the answer must be some reason that explains why an affected individual should be included *because* she is affected. This paper is about that reason. Our aim is, first, to show that the reasons that have been proposed to underlie the all-affected principle are insufficient in the sense that they cannot explain why a given affected individual should be included. Secondly, we want to investigate whether it is possible to find an alternative reason capable of explaining why a given affected individual should be included. If there is no such alternative ground, the all-affected principle is groundless in a way that casts doubt on the principle. This is highly significant. It means that if we want to find a solution to the problem of constituting the demos, we have to come up with an alternative principle and, as we will see,

³ That is a general formulation, and the principle has been specified in different ways. For instance, it has been specified as saying that only those whose interests are actually affected by a decision should be included (Goodin 2007; Owen 2012). It has also been specified as stating that it is sufficient for inclusion that your interests are possibly affected (see e.g. Goodin 2007). For the purposes of this paper, we can leave the question of actuality/possibility aside since we discuss the most plausible grounds that may underlie either of them. The same is true, *mutatis mutandis*, of other issues of specification, e.g. which kind of interests count when we determine whether someone is affected – whether it is only important interests, such as those connected to human rights, or whether it is ‘trivial interests’ as well (Goodin 2007, 51).

this cannot be the all-subjected principle because it runs into similar problems as the all-affected principle.

Two remarks before we move on: there is a distinction in relation to the all-affected principle as to whether we view affectedness as a reason for inclusion in itself (or, as something it is necessarily connected to) or instead as a proxy for something else that is a reason for inclusion in itself (cp. Beitz 2011, 236). The all-affected principle understood in the latter way is compatible with our arguments below. But if affectedness is merely a proxy for something else which itself is a reason for inclusion, then one can accept both the all-affected and the all-subjected principle (as well as additional principles of inclusion, for that matter), as there might be more than one good proxy for why one should be included (being subject to a law might also be a good proxy).⁴ Since most discussions of the all-affected principle take the all-subjected principle to be a competing principle, we take it that most understand the all-affected principle in the first way and, accordingly, with the exception of our discussion in Section 2.3 of the utilitarian rationale, that is what we propose to do in this paper. The reason we make this exception is that in the case of utilitarianism the all-affected principle is clearly a derivative, not a fundamental moral principle – according to utilitarianism, only the principle of utility is that.

Moreover, we will understand being included in making the decision one is affected by as being granted the right to vote on that decision. Focusing on the right to vote is clearly in line with how most theorists of democracy have thought about democratic inclusion, e.g., in relation to universal suffrage. However, most of our arguments below could easily be extrapolated to apply to other ways of inclusion as well.

⁴ If being affected is only a proxy for what matters fundamentally the all-affected principle is not a fundamental principle of political philosophy, but a derivative one or, as Cohen (2008) would put it, a rule of regulation, which, so construed, would be compatible with other rules of regulation, say, the all-subjected principle if that principle is also understood as a rule of regulation (cp. Arrhenius 2005).

Section 2 critically scrutinizes the three reasons that have actually been taken to underlie the all-affected principle, namely interest protection, self-government and welfare. Section 3 critically explores two alternative plausible grounds for why affectedness grounds inclusion which no one has explicitly proposed in the literature. More specifically, we discuss an equal relations rationale – the reason that an affected individual should be included is to avoid members of the community relating to each other as inferiors and superiors – and a fairness rationale specifying that it is unfair to B that A can affect her through democratic decision-making when B cannot affect A through the same decision-making. We find them lacking as well. Hence, Section 4 briefly summarizes the worrisome upshot of this article; to wit, that, despite being widely accepted, there is no reason to think that being affected should ground a claim to inclusion and, thus, that despite its intuitive appeal, the all-affected principle is groundless. We then ask where this leaves us and identify four alternatives: (a) we accept the all-subjected principle; (b) we identify and accept a different principle; (c) we accept, in line with Schumpeter, that there is no democratic solution to the problem of constituting the demos; or (d) we see this as an objection to the ideal of democracy itself. We argue that the way forward is to accept (b), i.e. that we must find an alternative solution to the problem of constituting the demos.

2. The all-affected principle and its grounds

Three main reasons are given for why a person should be included in democratic decision-making when she is affected: (i) it gives her an opportunity to protect her interests (the interest protection rationale); (ii) it gives her the ability to be (remain) self-governing (the self-government rationale); and (iii) it maximizes welfare (the utilitarian rationale). As we will argue in

Sections 2.1-2.3, the core problem with rationales appealing to these reasons is that none of them justifies why an affected individual should be included.

2.1. The interest protection rationale

The first rationale is the interest protection rationale:⁵

P1: If X's interests are affected by a certain democratic decision, then X has the opportunity to protect them if and only if X is included in making that decision (The protection condition claim).

P2: X is entitled to the opportunity to protect her interests (The protection entitlement claim).

C1: Thus, if X's interests are affected by a certain democratic decision, X is entitled to be included in making that decision.

Goodin (2007, 50) appeals to a rationale of this kind when he says that 'Protecting people's interests is thus the most plausible candidate principle for bringing the who and the how of

⁵ A slightly different version of the interest protection rationale – which can be deduced in the quotes from Goodin and Whelan in what follows – says: P1*: If X's interests are affected by a certain democratic decision, then X's interests are protected if and only if X is included in making that decision; P2*: X is entitled to protection of her interests; C1*: Thus, If X's interests are affected by a certain democratic decision, X is entitled to be included in making that decision. The 'only if' part of P1* is clearly false, e.g., an 18-year-old may have his interests protected through his parents who can vote to protect his interests. Moreover, including X may lead to less protection of his interests inasmuch as he might decide to vote to protect others' interests whereas someone else – a paternalist, say – would protect X's interests to a larger extent in case he had been allowed to vote on X's behalf. We thus focus on the opportunity version of the interest protection rationale in what follows, but some of the criticisms we put forward against this version, and against the utilitarian rationale, would also apply, *mutatis mutandis*, to the specification of the interest protection rationale discussed in this footnote.

democratic politics into alignment. That principle dictates who should constitute the decision-making group (all affected interests should have a say).⁶

This rationale is also expressed by Miller (2009, 216) when he discusses the all-affected principle: ‘Insofar as the [all-affected] principle is meant to reflect the underlying idea that people should have an equal opportunity to advance and protect their interests politically, it seems that in applying it we should try to ensure that each person’s capacity to influence a decision should correspond to how significantly he or she will be affected by its outcome’.⁷ Once again, the worry is that the individual’s interests will not be taken into account unless she is included.

Whelan, finally, mentions this reason in his classical discussion on the constitution problem.⁸ He says, ‘This proposal [the all-affected principle] appears to be offered in a spirit of defensiveness: it seems to conceive of social decisions as normally imposing burdens or costs on the passive many, and its intent seems to be to provide people with the means of protecting themselves, to the end either of avoiding these costs or of seeing that they are distributed more evenly’ (Whelan 1983, 17).⁹

The interest protection rationale – as expressed by Goodin, Miller and Whelan – thus says that the affected individual is entitled to be included because she should be given an opportunity

⁶ We return to this quote by Goodin when we discuss the utilitarian rationale in Section 2.3.

⁷ To be clear, Miller appeals to this rationale as something that motivates the all-affected principle, but as far as we can tell, he does not approve of it (at least he points to a practical tension which arises if we employ it). Aside from the criticisms of the rationale we present in what follows, one may also criticize the egalitarian form (‘equal opportunity’) that the rationale takes on Miller’s formulation. Why should worse-off people not be given better opportunities to defend their interests?

⁸ He says that it is one of ‘two aspects of its [the all-affected principle’s] *prima facie* plausibility’ (Whelan 1983, 17).

⁹ Admittedly, Whelan also presents another rationale – a utilitarian rationale – which we discuss in Section 2.3.

to protect her interests, and she is given this opportunity only if she is included in democratic decision-making.

There are at least three problems with the interest protection rationale. First, giving everyone an opportunity to protect their interests might not be in their best interest. Suppose we give everyone in society a vote, and suppose further that the society is comprised of three different groups. Every time there is a vote in society, the three groups heavily disagree on what the best decision is and vote for three different solutions. Being confronted with these large differences that had previously gone unnoticed in the voting process on consecutive occasions, each group becomes more distrustful and hostile towards the other groups and starts to spoil outcomes for the other groups when they vote instead of trying to get their own interests promoted, thus resulting in everyone's interests being less well served. What this shows is that there is a difference between promoting people's interests and promoting people's opportunities for protecting their interests, and it is not at all clear that securing the latter secures the former as well.¹⁰ Indeed, giving people the opportunity to protect their interests might actually harm their interests.¹¹ If so, it is unclear why the affected individual should have the opportunity to protect her interests, i.e. it is unclear that the protection entitlement claim is true.

Secondly, we can see another reason to be sceptical of the protection entitlement claim (i.e. P2) once we pose the question of why an affected individual is entitled to the opportunity to protect his interests, if the reason he has these interests in the first place is due to an injustice (cp. Miklosi 2012, 490). Consider a person whose interests, which are now affected, only exist

¹⁰ If a defender of the all-affected principle wants to maintain that, in case of conflict, what is important is that people's interests are promoted, he appeals to the version discussed in Footnote 5, or to another rationale, a utilitarian rationale, which we discuss in Section 2.3.

¹¹ In other contexts, we do not grant people the opportunity to protect their interests because it will harm them. Even if a person believes that it would promote his interests to sell himself to a slave master, we do not grant him the opportunity to protect his interests in this way. A minority might of course reject this restriction precisely because it is paternalistic.

in the first place because he has much more money than he ought to have as a matter of distributive justice. In such cases, it seems wrong to say that the affected individual is entitled to the opportunity to protect his interests. Instead, we must turn to a moralized understanding of the all-affected principle according to which only protection-entitlement-generating interests, when affected, generate a claim to inclusion (cp. Owen 2012, 135). This rationale, however, raises another question which is as difficult, if not more difficult, to answer; namely which of an individual's interests are protection-entitlement-generating? Turning to a moralized understanding of the all-affected principle thus still leaves the question: why does the fact that one's protection-entitlement-generating interests are affected ground that the holder of the interest is entitled to be included? After all, the way in which one's protection-entitlement-generating interests would be affected in the absence of one's inclusion might be in accordance with the relevant principles that specify what is in one's interests.

Thirdly, it is not clear whether inclusion of the affected individual *really* gives the individual an opportunity to protect her interests, i.e., whether the protection condition claim (i.e. P1) is true. Consider a democracy with 80 million eligible voters; it is hard to see that the difference in the individual's opportunity to protect her interests when she is included compared to when she is not is strong enough to justify her inclusion (cp. Fowler 2014, 99). Indeed, as Frazer (2014, 387) points out, 'from the point of view of any given affected individual, it is quite likely that his interests or preferences will not prevail on a given matter. Not only is there a good chance that he will end up in the losing minority, but in any reasonably sized modern polity his contribution to the political process is almost certainly not going to determine which

side ends up the winner'. In that way, inclusion in democratic decision-making may be insufficient, if what we care about is giving each individual an opportunity to protect her interests.¹²

The upshot of these criticisms is that the interest protection rationale fails to provide the reason why a given affected individual is entitled to be included *because* she is affected. We have to look elsewhere for a reason as to why an affected individual is entitled to be included.

2.2. The self-government rationale

We turn now to the self-government rationale, which says:

P3: If X's interests are affected by a certain democratic decision, then X is self-governing if and only if X is included in making that decision (The self-government condition claim).

P4: X is entitled to be self-governing (The self-government entitlement claim).

C2: Thus, if X's interests are affected by a certain democratic decision, then X is entitled to be included in making that decision.

When the affected individual is not included, it is left to others to make decisions about matters that affect him, and others are thereby, in a sense, deciding for him on his behalf – they are, as

¹² Perhaps this simply shows that we need to reformulate the rationale such that one should have the opportunity to protect one's interests consistent with everyone else having the same opportunity to protect their interests, in which case the opportunity may not be much of an opportunity at all since it is compatible with one's interests never being actually protected.

it were, living his life for him. To remain self-governing, the affected individual must be included to avoid that others solely decide on his behalf, and the only way that can be avoided is by including the affected individual in democratic decision-making such that he gets to take part in deciding on matters that affect him. Brighouse and Fleurbaey (2010, 142) appeal to this self-government rationale when they say, ‘equal autonomy could perhaps be achieved by giving equal power to all in every decision, but it would be a low degree of autonomy, because everyone would be under the dominion of the collectivity. Starting from this low point, a proportional allocation of power is bound to enhance autonomy. In this way the proportionality principle [a version of the all-affected principle] appears to give flesh to the notion of self-government at all scales, from the individual to the whole population.’

Näsström (2011, 122) also points to this reason when she says ‘[...] the all-affected principle draws its normative force from the modern notion of self-rule ... The central thrust is that citizens should not be determined by decision-making powers beyond their own control’.¹³

Finally, ‘delineating the demos according to affected interests’, Lampert (2015, 54-55) contends when expressing the self-government rationale, ‘is a required precondition for people to be able to rule themselves at all. I cannot rule myself if the decisions that affect my interests are determined by associations or institutions from which I am excluded – even if those institutions, and the political association I already find myself in, are otherwise organized democratically.’

On reflection, however, it is hard to see that self-government really is what is important in explaining why an affected person is entitled to be included. If we assume that individual

¹³ Note, however, that the last sentence is stated purely as a negative requirement – not being ruled by others – which is different from a positive requirement of ruling oneself. The former can be satisfied if no one acts at all, but that is not the case on the latter as it requires some form of agency.

self-government requires some degree of control (Abizadeh 2008, 39), it is clear that being included in democratic decision-making does not make the affected individual self-governing, inasmuch as she does not obtain control¹⁴ by being included in democratic decision-making, i.e., P3 is false.¹⁵ As Christiano (1996, 19, 24-25) explains, ‘there is a deep tension between the idea that an individual should be free to govern the world he shares in common with others and the claim that every citizen should have this freedom ... I cannot be free to determine the course of an activity I choose in common with others in a democracy. For whatever I want done must acquire the assent of some proportion of the other participants ... With regard to the common activity *C* (such as the legal organization of society), which is democratically controlled by all the participants, I may be free to participate or not and to participate in whatever way I wish, but I am not free to dispose of *C* as I wish. If I share roughly equal control over the common activities, then I am not free with respect to *C* since I must secure other people’s agreement if I wish to pass a law. I will often be unable to find enough people to support my position, and I will be in the minority. But if I am free with respect to *C*, which implies that I can choose it myself, then I have more than equal control. This situation, the incompatibility problem, asserts an incompatibility between democracy and self-government’ (see also Christiano 1996, 24-

¹⁴ What we have in mind here is a counterfactual notion of control according to which an event is under an individual’s control if and only if, had she chosen to bring about a different event, she would have succeeded in doing so (for the right reasons) (cp. Fischer and Ravizza 1998). In this particular case, she does not have more control than if she had not been included in the democratic decision-making.

¹⁵ Why assume, one may object, that self-government requires control in social contexts? A person does not have control over the course of her marriage or friendship. But intuitively, self-government is consistent with participation in marriage or friendship—but only if there is some kind of inclusion on decision-making about the relationship. We have chosen the control understanding of self-government as that is common in discussions of self-government in the context of the constitution problem and of democracy more generally, e.g. Christiano (1996) also uses the control understanding (see also Abizadeh 2008; Brennan 2011, 99; Griffin 2008, 247; Miklosi 2012, 499). By entering a marriage, the individual is not (as) self-governing (as before), i.e., he cannot just do what he wants when he wants to but must cooperate with his partner. The partners in the marriage may be collectively, but not individually, self-governing. Being in a marriage may not violate self-government but that is because one has freely chosen to give up (part of one’s individual) self-government in order to marry the other person. A forced marriage is not consistent with the forced part being individually self-governing. We thank an anonymous reviewer for raising this objection.

26).¹⁶ The self-government rationale thus cannot explain why a given affected individual is entitled to be included since inclusion does not increase individual self-government.

Due to these problems, a defender of the all-affected principle may turn to a collective understanding of self-government, as the collective seems to be in control when it comes to democratic decision-making. The problem is that to understand self-government in a collective sense makes us incapable of explaining why a given affected individual is entitled to be included since, presumably, the collective would remain self-governing even if a particular affected individual did not partake in the decision-making – the collective would still be in control over the decision-making which suffices for being self-governing – in which case collective self-government cannot be the reason why the affected individual is entitled to be included.¹⁷

The upshot is that the self-government rationale runs into a dilemma: either we understand self-government in an individual sense, but in this case it is unable to explain why an affected individual must be included because including him in democratic decision-making does not make him self-governing; or we understand self-government collectively, since the collective is self-governing, but neither is this version capable of explaining why a given affected individual should be included since the collective would be self-governing even if the affected individual were not included. Thus, the self-government rationale is unable to explain why a given affected individual is entitled to be included, i.e. the reason we are looking for is not self-government.

¹⁶ As Kolodny (2014a, 208-209) explains, ‘if individuals had interests in control, then that would seem to argue not for democracy, but instead for a lottery for control. That would seem the appropriate way to distribute a scarce, indivisible resource among people with equal interests in it’ (see also Brennan 2011, 99; cp. Brennan and Lomasky 2006, 246; Griffin 2008, 247; Miklosi 2012, 499; Saunders 2011, 281; Viehoff 2014, 351). For our argumentative purposes, it does not have to be true that inclusion decreases self-government as the quoted passage from Christiano (1996) seems to suggest. It suffices that inclusion does not increase self-government.

¹⁷ There is the additional problem with turning to collective self-government that it is not clear why the collective must be democratic for it to be self-governing (Kolodny 2014a, 209).

2.3. The utilitarian rationale

Instead of the interest protection and self-government rationales, some have proposed that what underlies the all-affected principle – what explains why an affected individual should be included – is a utilitarian rationale:

P5: For all individuals, X, if X's interests are affected by a certain democratic decision, then utility is maximized if and only if X is included in making that decision (The utility maximization condition claim).

P6: Utility should be maximized (The utility claim).

C3: Thus, for all individuals, X, if X's interests are affected by a certain democratic decision, X should¹⁸ be included in making that decision.

According to Andric (2017), Whelan appeals to this rationale in the following quote:

Utilitarianism holds that the right action (or decision) is that which in the circumstances produces the greatest net increase in happiness or welfare of those affected by it ... It [the utilitarian principle] may also serve as a standard for political decision-making, prescribing that public policy aim at the greatest overall welfare of those over whom rule is exercised. The utilitarian argument for political democracy – that those affected should not

¹⁸ The 'should' here does not express a claim to inclusion. If I am not included in making a particular decision that I am affected by, I have no particular complaint about that. Everyone can complain about it in the sense that an impersonally worse outcome is brought about (in all likelihood).

only be benefited by governmental decisions, but also participate in making them – follows from either or both of two additional points. It may be claimed that each individual is the sole, or best, judge of his own interests, which he defends and promotes with his vote in the democratic process. Or, it may be denied that any ruler or group of rulers other than the people (those affected) as a whole can be depended upon to be motivated by the utilitarian principle: democratic decision-making is the procedure most likely to lead to utilitarian results even in the absence of benevolent motives in individuals. Utilitarianism suitably developed thus may yield the all-affected principle for collective decision-making, and appeal may be made to it in support of this variety of democratic theory (Whelan 1983, 17-18).

Bauböck (2018, 48) also points to this utilitarian rationale when he says, ‘AAI [the all-affected principle] is rooted in utilitarian and public choice views of democracy according to which its legitimacy and advantage over alternative forms of political rule lie in its capacity to maximize the satisfaction of political preferences and to resolve collective action dilemmas in the production of public goods’.

As explained in the introduction, if this utilitarian rationale underlies the all-affected principle, the all-affected principle must be understood not as a fundamental principle but instead as a rule of regulation (cp. Beitz 2011, 236).¹⁹ On this understanding, over time and on the whole applying the rule of including those who are affected result in the greatest sum of welfare

¹⁹ It is obvious why it would fail as a fundamental principle: we can easily imagine situations in which including a given affected individual would not maximize utility. For instance, note that to participate in democratic decision-making in a way that maximizes utility comes with costs in terms of time and other resources (Andric 2017, 271; Christiano 1996, 39). Suppose a given affected individual is highly conscientious and spends a large amount of time to make sure he votes in the right way. Participating in democratic decision-making for this individual thus comes with great costs in terms of welfare. If he had not been included, he would have spent his time in ways that would have resulted in a greater amount of utility (cp. Andric 2017, 271; Miller 2009, 211-212).

even if there are a number of cases – perhaps very costly to identify in advance – where deviating from the rule would have resulted in greater welfare. This rationale may thus succeed even if it is true in some cases that non-inclusion of affected individuals maximizes utility, as long as it is the case that following this rule of regulation generally maximizes utility, e.g. because there are educative effects of being included in democratic decision-making; because of the wisdom of the crowd; because of the dangers of exclusionary procedures such as self-dealing and entrenchment by rulers; because institutionalized efforts to identify which voters would act against utility maximization would inevitably be counter-productive (Arneson, 1993; Beitz 2011, 240; Goodin 2007, 50; Mill, 1861; Whelan 1983, 17-18).²⁰

We have the following responses to the utilitarian rationale so construed. Whether inclusion of affected individuals generally maximizes utility is an extremely complex question. As far as we are aware, there has not been put forward an empirical justification for this claim.²¹ Moreover, for the purpose of assessing a utilitarian justification of the all-affected principle understood as a rule of regulation we should not compare a situation in which all affected are included with one in which none are. Rather, we should compare a situation where all affected are included with one in which some other principle of inclusion is implemented to see which situation contains most welfare. Hence, even if inclusion of all affected promotes welfare relative to a situation with non-inclusion of all or most affected, this might not justify the all affected principle, since inclusion on the basis of some other principle, e.g., the all-subjected principle,

²⁰ We thank an anonymous reviewer for raising this objection.

²¹ Brighouse and Fleurbaey (2010) present a theorem that shows that a prioritarian criterion (giving unequal voting weights on behalf of unequal stakes) will maximize interest satisfaction. Since this is a prioritarian criterion it will not help the utilitarian rationale. Moreover, the result only holds on the assumption that ‘every individual always votes according to his interests’ (143-144), and that is clearly false. What if they replaced ‘the voters always vote according to their interests’ with ‘voters vote according to their interests more reliably than anyone else votes for their interests in the long run’ – might that not help the prioritarian solution? No, because the problem we point to does not have to do with the reliability of the voter’s ability to promote their interests. It has to do with the fact that some voters vote according to others’ interests instead of their own. In that case, inclusion in accordance with the prioritarian criterion will not necessarily maximize interest satisfaction.

might result in an even greater sum of welfare (cp. Beitz 2011, 241-242).²² This means that many of the reasons that, historically speaking, utilitarians have offered in defense of democracy do not really justify inclusion on the basis of affectedness as opposed to subjectedness or some other basis (cp. Andric 2017, 271; Miller 2009, 211-212). For instance, the benefits of the “wisdom of the crowd,” the educative effects of inclusion on citizens much stressed by Mill, and the reduction of the dangers of exclusionary procedures such as self-dealing and entrenchment by rulers are all important benefits that can be achieved through inclusion on the basis of subjectedness or some other ground and not just, or necessarily to a higher degree, on the basis of inclusion on the basis of affectedness.²³ Moreover, from a utilitarian perspective subjectedness in certain ways is preferable to affectedness as ground of inclusion. It is simpler and therefore less resource-consuming to regulate on the basis of subjectedness as opposed to affectedness; it is arguably easier to determine whether people are subjected to decisions than to determine whether they are affected by decisions (Schaffer 2012, 337-338). Finally, consider a restrictive version of the all-affected principle, which as a general rule enjoins inclusion on the basis of affectedness except in cases where the great majority are negatively affected by the inclusion of members of a small and intensively disliked minority. No one has defended such a principle of inclusion, but it might be preferable to the all-affected principle from a utilitarian perspective because of how utilitarians weigh, morally, the relatively trivial interests of the

²² Obviously, most people who are subjected are also affected, so, in all likelihood, there will be considerable overlap between which individuals are included in the two counterfactual situations.

²³ Note that Mill, when discussing the benefits of democracy, does not focus on affected individuals. Instead, he focuses on citizens, which more naturally points in the direction of the all-subjected principle (given that non-citizens may be affected by a foreign government): “There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community, every citizen not only having a voice in the exercise of that ultimate sovereignty...” (Mill 2010 [1861], 135. Moreover, the baseline from which he judges the benefits of democratic inclusion is a despotic monarchy. It is not that he judges the benefits of inclusion of affected individuals from a baseline where, say, subjected and only subjected individuals were included.

many against the important interests of the few.²⁴ Moreover, given the fact that most states contain intensively disliked minorities, e.g., hardened criminals or racial or religious minorities, the present point has important practical implications and holds more than just theoretical significance.²⁵ These considerations suggest that the utilitarian rationale is unable to provide a grounding of the all-affected principle.

3. Alternative grounds for the all-affected principle

We have now seen that the three reasons, which have been proposed in the literature for why an affected individual should be included, cannot provide a grounding for the all-affected principle. This is highly significant because unless we can come up with an alternative reason for why an affected individual must be included, the all-affected principle fails as a solution to the problem of constituting the demos.²⁶ Therefore, in this section, we propose two alternative reasons for why an affected individual should be included which have not previously been discussed in relation to the all-affected principle.²⁷ In Section 3.1, we analyse whether an affected individual must be included because it secures that people can stand in equal relations in a

²⁴ This argument also provides an answer to the following objection: because of the difficulties in identifying whom among affected individuals whose inclusion maximizes utility, it may maximize expected utility to include everyone affected. It is not difficult to find out who belongs to e.g. a racial or religious minority, so we may maximize utility by including people in accordance with the restricted version, instead of in accordance with the all-affected principle.

²⁵ This objection also speaks against the prioritarian rationale.

²⁶ There might actually be another option, namely that an affected individual is entitled to be included, but we cannot say why (cp. Kolodny 2014a, 222). We do not believe this is an attractive option, as a solution to the constitution problem should be both extensionally adequate, i.e. stating plausible necessary and sufficient conditions for inclusion, and intensionally adequate, i.e. justifying ‘these conditions by appealing to a plausible rationale’ (Andric 2017, 266). Merely saying that affected individuals should be included, although we do not know why, would only convince those who already believe that the all-affected principle is the proper solution to the problem of constituting the demos. Moreover, those who support other solutions could make the same claim with regard to their preferred solutions.

²⁷ Some might suggest a third alternative – an epistemic rationale – specifying that a given affected individual is entitled to be included because it results in the demos making the best decision, epistemically speaking, given that the affected individual has a superior epistemic position (cp. Brennan 2016 and Estlund 2008). However, we find it extremely unlikely that including every single affected individual and excluding every non-affected individual makes for the best composition of the demos, epistemically speaking (see e.g. Frazer 2014).

democracy. In Section 3.2, we analyse whether an affected individual must be included on grounds of fairness.

3.1. The equal relations rationale

We believe that the demos must be bounded in accordance with the value of democracy (López-Guerra, 2005: 221; Miller, 2009: 204). If the demos is bounded in accordance with the value of democracy, we cannot, out of a concern for democracy, complain against this demarcation. Recently, several people, including Anderson (1999) and Kolodny (2014a; 2014b), have argued that democracy is valuable because it embodies valuable, equal relations between members of the community which, presumably, cannot be realized without democracy. It may thus be that an equal relations rationale is able to explain why an affected individual must be included because she is affected. This rationale would say that an affected individual is entitled to be included in democratic decision-making because it ensures that people can stand in equal relations in a democracy (cp. Kolodny 2014b; Dworkin 2011, 390; Viehoff 2014, 374):²⁸

P7: If X's interests are affected by a certain democratic decision, then it is the case that: X's entitlement to stand in social relations of equality to others is satisfied if and only if X is included in making that decision (The equal relations condition claim).

P8: X's entitlement to stand in social relations of equality to others should be satisfied (The equal relations entitlement claim).

²⁸ In explicating this rationale, we are heavily influenced by Kolodny's account of relational egalitarianism. However, Kolodny (2014a, 228) does not support this equal relations rationale, which is based on being affected (as opposed to being subjected), but he only discusses this in passing so there is value in diving deeper into the issue.

C4: Thus, if X's interests are affected by a certain democratic decision, X is entitled to be included (in making that decision).

You need to be included in the democratic decisions that affect you, since if you are not, others are deciding for you on democratic matters that affect your life. In that case, they are your superiors and you are their inferior (cp. Fowler 2014, 99). To see this more clearly, we need to be more specific on what it is to relate as equals. According to Lippert-Rasmussen (2018, 71), relating as equals has two components:

‘X and Y relate as equals if, and only if:

- (1) X and Y treat one another as equals;
- (2) X and Y regard one another as equals’.

As he explains, (1) is a behavioural component whereas (2) is an attitudinal component. One can specify the behavioural and attitudinal components in different ways, but we do not need to do that for present purposes. What is important is that when we specify the equal relations rationale, we can say that the reason the affected individual is entitled to be included is that otherwise he will regard others – those who get to decide – as superiors, and they will (or have reason to) similarly regard him as inferior; and/or we can say that the reason the affected individual is entitled to be included is that otherwise he will be treated as an inferior since others get to decide for him, whereas the others will be treated as superiors by being granted this decision-making power. Since both (1) and (2) are necessary in order to relate as equals, it is sufficient for unequal standing that one of them is not satisfied, assuming that absence of equal standing is sufficient for unequal standing.

Is this rationale able to explain why a given affected individual is entitled to be included in democratic decision-making? No, the problem is that people may affect each other without being relevantly socially related. As Lippert-Rasmussen (2018) argues, X and Y are socially related only if: (1) X is socially related to Y and Y is socially related to X; (2) X can causally affect Y and Y can causally affect X; and (3) X can communicate and interact with Y and Y can communicate and interact with X (Lippert-Rasmussen 2018, 126-129). In motivating the third condition, he asks us to consider the following case:

Robinson Crusoes: “Consider an archipelago of small islands, each of which is inhabited by a lonesome Robinson Crusoe-like person. Each of these persons can read in a book, one copy of which has washed ashore on each of the islands, about the conditions of all the other Robinson Crusoes, and while the sea is such that traveling between the islands is impossible, each Robinson Crusoe can put foodstuff on a raft and put it into the sea where it will then drift to the next island, affecting the conditions of the person living on that island” (Lippert-Rasmussen 2018, 128).

The Robinson Crusoes are not socially related in the way that matters for relational egalitarians because they cannot interact – “they cannot adjust their conduct in light of each other’s conduct” – nor are they able to communicate (Lippert-Rasmussen 2018, 128; cp. Kolodny 2014a, 226). This is in line with Anderson’s (1999, 313) argument that for X and Y to relate as equals, they must strive to “live together”, collectively determining what to do.

It follows on this understanding of what being social related involves that when Countries X and Y are separated by an iron curtain preventing any form of communication between citizens of X and citizens of Y, and members of X are affected by a decision made by members of Y, e.g., air pollution, this does not entail that members of X are entitled to be included in polity Y,

since members of X do not stand in relations to members of polity Y, in which case relations of inferiority and superiority cannot arise (cp. Kolodny 2014b, 293). This means that even if relational egalitarianism were a convincing answer to who should be included in democratic decision-making, this would not help the all-affected principle because people may affect each other without being relevantly socially related. Hence, since on relational egalitarianism, only those who are relevantly socially related should make democratic decisions together, relational equality cannot explain why a given affected individual should be included.

3.2. The fairness rationale

We have seen that the equal relations rationale is unable to explain why a given affected individual is entitled to be included. Like equal relations, fairness has been emphasised in discussions and justifications of democracy. Dahl (1989, 108) emphasises fairness in his discussion of democracy: ‘No lawmaker is, in the familiar expression, above the law. The assumption rests on the elementary principle of fairness that laws cannot rightfully be imposed on others by persons who are not themselves obliged to obey those laws’ (cp. Lopez-Guerra 2005, 227). Although Dahl connects this to self-determination, fairness can clearly be distinguished from self-determination such that it is not necessarily the case that just because the self-determination rationale is deficient, as we have seen, a fairness rationale is as well; after all, a fairness rationale need not appeal to self-determination. Given that fairness has been suggested as a popular reason for why democracy is valuable, and given, as we saw in Section 3.1., that the demos must be bounded in accordance with the value of democracy, it may be that fairness is able to ground the all-affected principle. This is what we analyse in this section.

The fairness rationale would specify that an affected individual is entitled to be included due to *fairness* (cp. Beitz 2011, 237; Lopez-Guerra 2005, 227; Temkin 2017):²⁹

P9: If X's interests are affected by a certain democratic decision, then it is the case that: X is being treated fairly if and only if X is included in making that decision (The fairness condition claim).

P10: X is entitled to fair treatment (The fairness entitlement claim).

C5: Thus, if X's interests are affected by a certain democratic decision, then X is entitled to be included in making that decision.

According to Broome, 'the particular business of fairness is to mediate between the conflicting claims of different people'. Fairness requires that claims be satisfied in proportion to their strength, by which he means that 'equal claims require equal satisfaction, that stronger claims require more satisfaction than weaker ones, and also – very importantly – that weaker claims require some satisfaction ... that people identically situated should be treated identically' (Broome 1991, 94-95). He describes fairness as a 'subdivision of justice', and whereas justice is concerned with all claims, fairness is only concerned with fairness claims (Broome 1991, 96).

The reason for inclusion on the fairness rationale would be that it is unfair to B, all else being equal, that A can affect her through democratic decision-making, when B cannot affect

²⁹ Fairness has also been proposed as a reason for why democratic decisions have authority, as Viehoff (2014, 342-343) explains. Viehoff does not endorse this reason.

A through the same decision-making. That is, it is unfair for someone to impose democratic decisions on others by affecting them when that person cannot likewise be affected by those democratic decisions being imposed upon him.

However, this fairness rationale suffers from the following problem: it is comparative and this implies that the fairness condition claim (i.e. P9) is false. Fairness is comparative in the sense that it ‘is concerned only with how well each person’s claim is satisfied *compared with* how well other people’s are satisfied. It is concerned only with relative satisfaction, not absolute satisfaction’ (Broome 1991, 95). This means that we can satisfy fairness by including none of the similarly affected individuals in democratic decision-making. Indeed, as Broome (1991, 95) says, ‘... if all the candidates get the same quantity of the good, then fairness has been perfectly achieved, even if they get very little, or indeed none at all’.

There is, however, a further problem with the fairness rationale. Broome (1991, 94) explains, ‘Certainly, fairness is *only* concerned with claims, and not with other reasons. Suppose there is some reason why a person should have a good, but she has no claim to it. Then if she does not get the good, that may be wrong, but she suffers no unfairness. It cannot be unfair to deny her a good she had no claim to in the first place’ (Broome 1991, 94). The problem with this is that by using fairness as a rationale, we are in a sense assuming what needs to be shown, namely that a given affected individual has a claim to inclusion. It is impossible to talk of fairness, if Broome is right, without assuming that some have fairness-independent claims to something, as it is on that basis that people can be treated fairly or unfairly (cp. Broome 1991, 96). As Tomlin aptly puts it: ‘If claims are the subject of fairness, fairness cannot be the subject of claims’ (Tomlin 2012, 203, 208). We are interested in explaining *why* it is that an affected individual has a claim to inclusion; we are not interested in explaining what should happen *given* that he has a claim to inclusion. Since claims to inclusion must exist logically prior to

questions of fairness, the fairness rationale is unable to explain why a given affected individual is entitled to be included in democratic decision making.

One may object here that even if this shows that fairness alone cannot ground claims to inclusion, fairness may still play a role given the dialectical situation in which the all-affected principle is usually discussed. This is a situation in which some, but not others, are included in democratic decision-making. In that situation, those who are not included may be treated unfairly.³⁰ We have two responses. First, this objection acknowledges the truth of our argument that fairness cannot explain why a given affected individual should be included. This is significant in itself. Suppose we are in a situation in which we do not have collective decision-making, e.g. an anarchist society. In this context, the fairness rationale cannot explain why (affected) individuals should be included in democratic decision-making. Second, even if the fairness rationale does speak to the dialectical situation assumed by the objection, this does not necessarily help the all-affected principle. Suppose every subjected individual is included and some affected individuals are not. To propose it to be unfair in this situation that affected individuals are not included begs the question, e.g. those who are drawn to the all-subjected principle might respond: “Perhaps you are right if affectedness grounds a claim to inclusion. But that is precisely the issue at stake. And all subjected are included, so you need to offer a reason in defense thereof.”

What if we understand the fairness rationale in an absolute, instead of a comparative, sense? Estlund (2008, 69) takes absolute fairness, what he calls substantive fairness, to be ‘When each (relevant) individual has no more or less (of the relevant goods) than he or she ought to have, or is due’ (see also Hooker 2005, 340). In this sense, fairness is to give each what

³⁰ We thank an anonymous reviewer for raising this objection.

is owed to them independently of what others get. We can then reformulate the fairness rationale such that it says that the affected individual is entitled to be included because this is what she ought to have – this is what she is due – given her situation.

If we base the fairness rationale on absolute fairness instead of comparative fairness, we may avoid the problems suffered by the equal relations rationale, namely that it is sufficient to include affected individuals sometimes, and that it is satisfied when no affected individuals are included. The problem is that it does not survive the criticism mentioned in the above paragraph – we still have to establish independently that being included is the response she is owed given that she is affected. And we have already seen that this cannot be established by appeal to concerns about opportunity for interest protection, self-government, welfare or equal relations. Hence, while appealing to absolute fairness avoids the objections to the comparative fairness rationale, it is useless in the present context since it presupposes an answer rather than gives an answer to why being affected grounds a claim to inclusion.

4. Conclusion

We have scrutinized the three rationales which have been suggested in the literature for why an affected individual must be included in democratic decision-making: (i) the interest protection rationale; (ii) the self-government rationale; and (iii) the utilitarian rationale. We have argued that these rationales fail to explain why an affected individual must be included. Therefore, we proposed and analysed two alternative rationales which have not previously been discussed in relation to the all-affected principle: (iv) the equal relations rationale; and (v) the fairness rationale. However, neither are they able to explain why an affected individual is entitled to be included *because* she is affected. Surprisingly, we have no principled reason for thinking that

being affected should lead to inclusion.³¹ This casts significant doubt on the all-affected principle and should incentivize its defenders to offer novel accounts of why being affected grounds a claim to democratic inclusion.

Where does this leave us? We believe that there are four alternatives going forward: (a) we accept the all-subjected principle; (b) we identify and accept a different principle; (c) we accept, in line with Schumpeter, that there is no democratic solution to the problem of constituting the demos; or (d) we see this as an objection to the ideal of democracy itself.

Consider (a). The all-subjected principle is the other prominent solution to the constitution problem. It specifies that being subject to a decision instead of being affected by a decision is what generates a claim to inclusion. Most people who have discussed this principle believe that the underlying rationale of the all-subjected principle is self-government (Abizadeh 2008, 39-40;³² Goodin 2016, 369; Lopez-Guerra 2005, 221; Miller 2009, 214; Näsström 2011, 120-122).³³ If that is indeed the case, this means that the all-subjected principle is vulnerable to the criticism we put forward against the self-government rationale. In other words, it is false that X

³¹ This is also true on a plural version in which we combine some of the rationales. If we were to, say, combine the interest protection rationale and the self-government rationale, we would still be left with the problem of illegitimate interests, and the ensuing problem of specifying a plausible moralized account of relevant interests.

³² For instance, Abizadeh (2008, 39-41; cp. Blake, 2002) argues that to be subject to state rules (political power) violates one's self-government. For this subjection to be justified, the individual must 'have the opportunity (1) actually to participate in the political processes that determine how power is exercised, on terms that (2) are consistent with their freedom and equality.' As he further explains, he takes (1) and (2) to 'correspond to a deliberative conception of democracy according to which those subject to political power must be able to see their political institutions and laws as the outcome of their own free and reasoned public deliberation as equals.' The problem with (1) and (2), as seen from the point of view of self-government being the justification of inclusion, is that including subjected individuals in democratic decision-making does not make them individually self-governing, as explained in section 2.2: the individual does not have control. Perhaps Abizadeh would say that inclusion is still sufficient as a justification even though it does not make the individual self-governing, but in that case, his argument would not help defenders of the all-subjected principle who argues that the subjected individual must be included because when he is subjected to a certain democratic decision, then he is self-governing if and only if he is included in making that decision.

³³ The argument would be P11: If X is subjected to a certain democratic decision, then X is self-governing if and only if X is included in making that decision; P12: X is entitled to be self-governing; C6: Thus, if X is subjected to a certain democratic decision, X is entitled to be included in making that decision.

is self-governing if and only if X is included in making the decision to which he will be subjected.

Moreover, we have no reason to believe that it will be easier than in the case of the all-affected principle to find an alternative, fundamental ground upon which to base the all-subjected principle.³⁴ If friends of the all-subjected principle appeal to fairness, they are in a sense assuming that subjected individuals have claims to inclusion since it is on behalf of these that they can be treated unfairly; claims to inclusion must exist logically prior to questions of fairness, as it were. Surprisingly, our discussion of the underlying values of the all-affected principle also points to the limitations of the all-subjected principle. Thus, (a) is not an attractive way forward.

Does our arguments in this paper entail that there are no grounds for democracy at all (re d)? No, what follows is that there does not seem to be a reason why affected individuals qua affected should be included in democratic decision-making. That the discussed rationales do not support the all-affected principle does not necessarily imply that they do not support democracy at all. For instance, relational egalitarianism may be able to explain why those who are relevantly socially related should make democratic decisions together (even though it cannot explain why an affected individual should be included) and in that case, there would still be a ground for democracy. Moreover, a similar constitution problem arises for other forms of government. Suppose we live in a world of kingdoms. In that world, we would also have to find out who belongs to which kingdoms and for which reasons, e.g. who should obey the decisions of Louis XIV?; who should obey the decisions of George III?, etc. Thus, this is not a discussion

³⁴ It may be that subjectedness can work as a rule of regulation – cf. our discussion of the utilitarian rationale – but ideally, we should prefer a more robust solution to the constitution problem and subjectedness as a rule of regulation is not incompatible with a fundamental principle of inclusion. Thus, we believe it is too early to give up on finding a fundamental principle (cf. solution (b)).

for or against democracy since similar problems arise in relation to other forms of government and our negative conclusion should not make us lose faith in democracy. We also believe that it is too early to accept that there is no democratic solution to the problem of constituting the demos (re c); it may simply be that we have not found it yet. This means that we take (b) to be the most attractive way forward. An alternative solution to the problem of constituting the demos must be found. This, however, is an issue for us and hopefully others too to address in future research.

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