Democratic Enfranchisement Beyond Citizenship

The All-Affected Principle in Theory and Practice

Annette Zimmermann
Nuffield College
University of Oxford



Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in Politics in the Department of Politics and International Relations at the University of Oxford

Trinity term 2018
[99,899 words]

Democratic Enfranchisement Beyond Citizenship: The All-Affected Principle in Theory and Practice

A thesis submitted by Annette Zimmermann in partial fulfilment of the requirements for the degree of DPhil in Politics at the University of Oxford, Nuffield College, Trinity term 2018

Abstract

This is a collection of four papers about the All-Affected Principle (AAP): the view that every person whose morally weighty interests are affected by a democratic decision has the right to participate in that decision.

The first paper ("Narrow Possibilism about Democratic Enfranchisement") examines *how* we should distribute democratic participation rights: a plausible version of AAP must avoid treating unlike cases alike, which would be procedurally unfair. The solution is to distribute participation rights proportionately to the risk that a person's interests will be affected. AAP thus implies an account of political equality that requires adherence to the 'one person—one vote' model *only if* interests are indeed equally affected.

The second paper ("Economic Participation Rights and the AAP") argues that AAP supporters have paid insufficient attention to *economic participation rights*. The exercise of such rights raises unique worries about democratic accountability, which is why their exercise is constrained by a number of duties.

The third paper ("What AAP Is, and How (Not) to Fight It") explores how AAP fares in light of possible objections from desirability and feasibility. Unlike crude versions of AAP, a plausibly restricted version of AAP cannot be dismissed as easily as many AAP sceptics may have thought. My reflections here are useful for AAP supporters and sceptics alike: this paper helps clarify what *kind* of objection can cast serious doubt on AAP.

The fourth paper ("Criminal Disenfranchisement, Political Wrongdoing, and Affected Interests") asks: is AAP compatible with criminal disenfranchisement? AAP, when endorsed *in combination with* a plausible theory of punishment, is compatible with disenfranchising a narrow set of criminal wrongdoers only: those guilty of 'political wrongdoing', which is wrong *primarily* because it undermines democratic procedures and institutions for private gain. The upshot is that current *blanket* policies of criminal disenfranchisement are incompatible with AAP.

Acknowledgements

I would first like to thank my supervisor Cécile Fabre for all her advice and constructive feedback. I benefitted significantly from her uniquely sharp insight, patience, reliability, initiative, and genuine interest in helping me develop my ideas in their full complexity. Much of what I know about how to do political philosophy well, I have learned from her. She went above and beyond to give me guidance and support, for which I will always be grateful.

I would also like to thank David Miller, whose unparalleled level of dedication to his role as my college advisor helped me identify a number of important 'big picture' questions in the thesis. I deeply appreciate the way in which he shaped the research environment at Nuffield College, which I consider one of the best places to pursue doctoral work in political philosophy. I am also indebted to Cécile Laborde, who played an instrumental role in shaping my research experience at Nuffield and beyond. I am immensely grateful for her generous personal and professional mentorship.

For their inspiring mentorship over the years, I would like to thank Ben Ansell, Teresa Bejan, Eleni Kechagia-Ovseiko, Karuna Mantena, Gina Schouten, Sophie Smith, and Laura Valentini. For his work as the supervisor for my MPhil thesis at Oxford, which provided the intellectual starting point for my doctoral work, I owe thanks to Jeremy Waldron. For detailed and illuminating feedback on parts of my work, I am indebted to Seyla Benhabib and Mark Warren.

My doctoral research would not have been possible without the generous financial support of the Economic and Social Research Council, the University of Oxford's Scatcherd European Scholarship, the Department of Politics and International Relations, Nuffield College and the Nuffield/Yale Exchange programme, as well as the German National Academic Foundation.

I am grateful for audiences at workshops and conferences in Amsterdam, Berlin, Hamburg, Harvard, Leiden, Manchester, Oxford, Yale, and at the 2017 APSA meeting, for their feedback on my work. In particular, I would like to thank Danielle Allen, Archon Fung, Sean Gray, and Tomer Perry, for inviting me to participate in their working group on the All-Affected Principle at Harvard, which had a lasting impact on my thoughts on this topic.

Finally, I would like to thank my parents and grandparents, whose experience of political oppression and forced migration first awakened my interest in questions concerning the rights of non-citizens and democratic theory; and whose continuous support enabled me to pursue this interest further. For her love and unparalleled level of encouragement, and for her keen insight into philosophical discussions, I am deeply grateful to my partner Leonie Schulte. For their friendship and intellectual companionship, I would like to thank Cinar, Ines, Mitko, Roxanna, Alice, Sofia, Pietro, Christine, Maeve, Elise, Carissa, Matthias, Pepita, Cristina, Akanksha, and many more; with special thanks to my friend Areti for consistent moral support and illuminating philosophical conversations and to my friends Katharine, Shana, Tony, and Udit for their generous help with proofreading.

Contents

Introduction 1

1. Narrow Possibilism about Democratic Enfranchisement:
Proportionality, Risk, and Fair Political Equality 45

2. Economic Participation Rights and the All-Affected Principle 105

3. What AAP Is, and How (Not) to Fight It 169

4. Political Wrongdoing, Criminal Disenfranchisement,
and Affected Interests 257

Conclusion 331

Introduction

"Being a stranger is hard,
but being a stranger when you're
so impossibly close is unbearable".[1]

Global interdependency has steadily increased within the last century. Ongoing transnational political integration via treaties and international customary law is just one way in which this process instantiates itself; increasing global migration and trade is another. The empirical fact of gradual globalisation poses a problem for democratic theory: the established model of the self-contained Weberian nation-state, in which citizenship necessarily corresponds to nationality within the confines of distinctive territorial boundaries, and in which citizenship is construed as a necessary condition for democratic enfranchisement, captures the real nature of contemporary polities less and less. This gives us a reason to question whether established democratic theories that make enfranchisement contingent on territorially-bounded citizenship continue to have persuasive normative force in our contemporary world. Democratic theorists must ask themselves what the scope of popular sovereignty should be, or put differently, who ought to be included in the group of persons who have democratic participation rights in a given demos.

[1] Herta Müller, *The Hunger Angel*, trans. Philip Boehm (London: Portobello Books, 2013), 261, a prose poem which describes the political persecution and deportation of ethnic minorities from Transylvania to forced labour camps in the Soviet Union.

Contemporary democracies treat non-citizens similarly to citizens in several respects: for instance, they expect non-citizens who reside on their territory to abide by their laws and policies, and to contribute to the sharing of burdens within a state by paying taxes; and they use coercion to enforce compliance with these expectations. This also applies to some extent to certain non-resident non-citizens: for example, when non-citizens wish to immigrate to a state X, or when they are engaging in trade with citizens of X. Moreover, many states enforce and protect the social and economic rights of resident non-citizens, but also those of certain non-resident non-citizens, for example by imposing international sanctions or engaging in humanitarian intervention.

Yet in spite of these similarities, non-citizens are treated differently from citizens when it comes to their *democratic participation rights*: either non-citizens are accorded no democratic participation rights at all, or they are granted 'second-class' democratic participation rights, i.e. rights that are characterised by a more restrictive content than the corresponding democratic participation rights of citizens or which apply to a narrower decisional domain.[2] The fact that states often distribute democratic participation rights unequally between citizens and (some) non-citizens while distributing obligations and other types of rights equally—or to be more precise, in a way that is *insensitive to citizenship status*—raises the normative question of why, if at all, this asymmetry is justified. Often, non-citizens find themselves in a position of particular vulnerability, and this vulnerability is in part due to the fact that non-citizens usually lack a democratic *enforcement* mechanism for the political consideration of their interests. The empirical asymmetry also gives rise to other problems: by disenfranchising non-citizens who are similar to citizens in a number of other relevant respects—e.g. particular obligations—we may

[2] For example, while long-term resident non-citizens have the right to vote in communal elections in many countries, they usually do not have voting rights in national elections.

commit an expressivist wrong against them: the asymmetry may publicly cement a political attitude that the interests of some persons ('strangers') matter less, no matter how closely the activities and contributions of strangers match those of citizens. Lastly, by failing to question the asymmetry, contemporary polities may miss out on important epistemic considerations concerning the true nature and scope of affected interests. Polities may try to protect the interests of persons whom they disenfranchise by appointing representatives for them, and representatives may consult with non-citizens in order to find out what sorts of policies would in fact advance their interests. But given the long-standing debate in democratic theory about the epistemic disadvantages of representation in comparison to direct participation, democratic theorists might have serious doubts about whether a representation model can respond to the asymmetry in a satisfactory way. For all of these reasons, the asymmetry warrants further scrutiny: any plausible account of democratic enfranchisement must respond to it directly.

I. Starting Point: The Democratic Boundary Problem

1. Citizenship-Dependent Views of Democratic Enfranchisement

The question of who should have democratic participation rights is called the *democratic boundary problem* in the recent philosophical literature.[3] One response to the democratic boundary problem is to affirm that the asymmetry is indeed justified: on this view, non-citizens need not, and indeed

[3] For two examples amongst many, see Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," in *Liberal Democracy,* Nomos 25, eds. J. Roland Pennock and John W. Chapman (New York, NY: New York University Press, 1983), 13-47; and David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 201-228.

must not, be granted democratic participation rights, even if their interests are deeply affected by the decisions of a democratic polity. Not all supporters of this view *deny* that the fact that a person's interests are affected matters morally; they simply deny that affected interests are decisive for enfranchisement. Other morally significant factors, such as a concern for national security, or the right to national self-determination, or a sense of culture and solidarity (supposedly) shared by co-nationals or co-citizens only, outweigh the moral significance of affected interests.[4]

Another version of this view holds that long-term resident non-citizens ought to be granted the right to *claim* citizenship (that is, the right to apply for naturalisation), and thereby to also claim democratic participation rights. This particular view has been proposed by Michael Walzer.[5] It is important to stress that this position remains committed to the idea that the scope of the demos is identical to the scope of citizenship, but it presupposes this view instead of defending it explicitly. For that reason, this view does not address the democratic boundary problem directly, but rather circumvents the problem by defining citizenship as the decisive factor for democratic enfranchisement. The crucial challenge for views like this—one that has not been sufficiently addressed so far by its defenders—is to develop a clear normative account concerning the democratic participation rights of *non*-citizens who cannot be naturalised.

The appeal of citizenship-dependent views is that they reflect *intuitions* that are widely shared by ordinary citizens: many people agree with the view that non-citizens simply have no business participating in the democratic

[4] For an example of such a view, see Avishai Margalit and Joseph Raz, "National Self-Determination," *The Journal of Philosophy* 87, no. 9 (1990): 439-461.

[5] Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York, NY: Basic Books, 1983), 31-63. See also David Owen, "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights," *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 641-663, for a critique of Walzer's argument about naturalisation in this context.

decisions of a polity that is not their own, irrespective of how much those decisions affect them, and irrespective of whether they bear obligations that are similar to those of citizens. Another strength of such accounts is that they rely on *straightforward conceptual categories*. Since the group of enfranchised persons is identical to the group of citizens, the citizenship-dependent view is less susceptible to conceptual indeterminacy than its citizenship-independent alternatives: you are either a citizen, and thus part of the group of persons who have democratic participation rights—or you are not a citizen, and thus not a holder of such rights. This also makes it comparatively *easy to practically realise* the simple binary framework on which the citizenship-dependent account relies, which may be one of the reasons why this account underpins the actual enfranchisement policies that many states currently have.

Despite these advantages, the citizenship-dependent view about democratic enfranchisement has one crucial drawback: it cannot *evaluate* the justifiability of the asymmetry between citizens and non-citizens because it already *presupposes* that the asymmetry is justified. By making the normative justification of democratic enfranchisement contingent on particular empirical facts, it becomes impossible for this view to question the empirical status quo of citizenship-dependent enfranchisement. Doing so would require conceptual and normative tools that are *independent of* that empirical status quo.

2. Disaggregating Democratic Enfranchisement from Citizenship

a. AAP and Other Citizenship-Independent Accounts

In contrast to citizenship-dependent accounts, we can find a range of citizenship-independent responses to the democratic boundary problem in the recent literature. These accounts point towards the view that the aforementioned asymmetry may not be justifiable—or, more weakly, that

citizenship *alone* cannot justify it. Consider, for instance, Shapiro's point that one adequate "response to the morally arbitrary distribution of citizenships in the world"[6] would be the detachment of participation rights from citizenship, and instead an attachment of the justification of who gets participation rights to some other concept, such as affected interests or coercion or something else entirely.[7] In my view, there is a presumption in favour of starting with the most inclusive possible solution to the democratic boundary problem, because I think that the normative question of democratic enfranchisement should be resolved *before* considering empirical factors such as who, of the group of prospective rights-holders, already has citizenship in a given state. After all, the scope of enfranchisement can be narrowed down *after* we have considered everyone who might in principle be eligible for holding democratic participation rights. Here, I agree with Abizadeh's view that there is a presumption against the nationalist and statist view that the demos must *necessarily* be bounded in some way.[8]

Of course, the problem of defining the exact scope of the demos remains: must one include *all* non-citizens who are in some way 'governed', or only resident non-citizens? Recently, as Sarah Fine points out, at least two main versions of this position have developed: on the one hand, 'the governed' may be defined as the group of persons whose *interests* are *affected* by the decisions of the demos, and on the other hand, they may be defined as the group of persons who are subject to *coercion* by the demos.[9] The most influential

[6] Ian Shapiro, *The Moral Foundations of Politics* (New Haven, CT: Yale University Press, 2003), 220.

[7] Based on Shapiro's assertion that "if you are affected by the results, you are presumptively entitled to a say" (ibid.), I take it that he sympathizes with the All-Affected Principle, but of course I do not wish to preclude the possibility that his point is also compatible with the argument from coercion (the All-Subjected Principle).

[8] Arash Abizadeh, "On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem," *American Political Science Review* 106, no. 4 (2012): 867-882.

[9] Sarah Fine, "Democracy, Citizenship and the Bits in Between," *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 626. For a *critique* of both of these approaches, see Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should be Bounded by the State," *International Theory* 4, no. 1 (2012): 39–68.

version of the argument from affected interests, which I will call 'AAP', has been developed by Robert Goodin, who defends the radically inclusionist implication that "we will have to give a say in that decision to anyone who might possibly be affected by any possible outcome of any possible question that might possibly appear on any possible ballot".[10] Ian Shapiro has defended a different version of the argument from affected interests by arguing that, ideally, the demos should be *fluid*, that is, it should change from issue to issue depending on who is affected by that particular issue.[11] Well-known versions of the coercion argument—also known as the 'All-Subjected Principle' (ASP)—have been defended by Arash Abizadeh,[12] but also (amongst others) by Claudio López-Guerra, who argues that "governments must give equal consideration to the good and interests of every person bound by their *laws*".[13] In addition to the two versions mentioned by Fine, there is a another important disaggregationist approach to democratic enfranchisement: the social membership view, which argues that neither coercion nor affected interests are sufficient—and perhaps not even necessary—for democratic enfranchisement. Instead, all those who have established deep social connections to a particular demos via friendships, relationships, and professional ties ought to be accorded participation rights.[14] Lastly, it is worth mentioning another *more general* disaggregationist account here, which is less concerned with questions of democratic enfranchisement,

[10] Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 55.
[11] See Shapiro, *The Moral Foundations of Politics*, 220-222.
[12] Arash Abizadeh, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory* 36, no. 1 (2008): 37-65; see also Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000).
[13] Claudio López-Guerra, "Should Expatriates Vote?" *The Journal of Political Philosophy* 13, no. 2 (2005): 219.
[14] Owen, "Transnational Citizenship and the Democratic State," 648-649. See also Joseph H. Carens, "The Integration of Immigrants," *Journal of Moral Philosophy* 2, no. 1 (2005): 29-46. There are also important similar arguments in the closely related debate on the right of immigrants to stay in a country, such as Ruth Rubio-Marín, *Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States* (Cambridge: Cambridge University Press, 2000).

and more with disentangling other rights—such as the right to stay—from citizenship: the place-based plans view.[15]

Disaggregation accounts are often criticised on the grounds that they "seem [...] to push toward a global demos",[16] which many find undesirable and/or infeasible. However, those accounts do not *necessarily* imply that one global demos ought to be created. Other solutions are available to supporters of these views: they can, for example, accept the view that demoi should roughly align with the boundaries of states, and then argue that people can be members of multiple demoi—or they can reject the view that one can only have democratic participation rights if one is a member of a demos, and instead argue that a person who is a member of one demos may also have (some) democratic participation rights in several other demoi.

b. Genuine Rivals, or Sheep in Wolf's Clothing?

Are disaggregationist accounts which are not committed to AAP best understood as genuine rivals of AAP, or are they in fact compatible with it? The most prominent rival of AAP is the All-Subjected Principle, which seems slightly more restrictive than AAP: after all, one may be affected without being coerced, and ASP supporters would reject enfranchisement in non-coercion cases. Despite their status as rival principles, it is worth stressing that AAP supporters and ASP supporters have a crucial point of *agreement*: the claim that coercion is one morally weighty factor that is sufficient for justifying enfranchisement. AAP is able to incorporate ASP, but insists that coercion is not the *only* relevant criterion with respect to the enfranchisement question.

[15] Anna Stilz, "Occupancy Rights and the Wrong of Removal," *Philosophy & Public Affairs* 41, no. 4 (2013): 324-356; Anna Stilz, "Settlement, Expulsion and Return," *Politics, Philosophy & Economics* 16, no. 4 (2017): 351-374

[16] Song, "The Boundary Problem in Democratic Theory," 53.

Two further disaggregationist approaches look like they might be genuine AAP rivals at first blush: the social membership account and the place-based plans account. But in my view, both actually articulate possible (but not necessary) effects of having one's interests affected by a demos, which is why both accounts actually support the intuitions that motivate AAP, rather than providing a genuine rival account of democratic enfranchisement. Achieving the latter would require showing why being a social member or having place-based plans is *sufficient* for justifying the conferral of democratic participation rights—and it is unclear whether these accounts can plausibly do that.

Let us consider both accounts in turn. The reason why I would classify the social membership account as a 'sheep in wolf's clothing' from the perspective of AAP is that the fundamental *interests* of any person A who is a social member in polity X are *affected* by X: perhaps A formed social ties to other people in X *after* X started affecting A's interests—although this is of course not necessarily the case: X could be affecting the fundamental interests of some distant non-resident non-citizens B who will never come into contact with the people in X. But the point is that it does not seem likely that someone was a social member in X *before* X started affecting her fundamental interests: social membership already implies affectedness. So if social membership is a (possible) consequence of being relevantly affected, but never occurs without a person being relevantly affected, what does social membership add? It does not seem to have an independent normative force that is *sufficiently strong* for justifying democratic enfranchisement,[17] but it may highlight *one of several*

[17] Furthermore, I doubt that social membership can even be a *necessary* condition for having democratic participation rights because this would imply that people would be forced to integrate themselves and to form personal ties with members of a particular community. But this disadvantages people who, due to certain psychological features, find it difficult to form close personal ties. It also disadvantages people who are born with certain unchangeable features which constitute their identity, but which differ from the identity features of the majority in the demos by which they happen to be affected. Of course, proponents of the social membership argument may simply bite the bullet here and accept the implication that integration is necessary for enfranchisement. But disadvantaging persons because of their own

important and distinctive ways in which a person's interests can be affected. The intuitions that drive the social membership account thus ultimately support the intuitive appeal of AAP.

In fairness to place-based plans accounts, such accounts typically do not aim to justify *democratic enfranchisement* specifically. Rather, this view is concerned with justifying other, more general rights, such as the right to (physically) remain in a particular place after one has lived there for a particular amount of time, thus disaggregating the notion of citizenship from a cluster of rights typically associated with citizenship. The reason why I nevertheless consider this view at this juncture is because it is an important *general* disaggregationist account, and because one *could* potentially apply this general account to address the more specific issue of democratic inclusion: one could invoke place-based plans as a possible sufficient reason for citizenship-independent enfranchisement, thus making an analogous move to the one that the social membership view makes.[18] But, again, having place-based plans is typically a *result* of having one's fundamental interests affected, which again supports the intuition that what really matters for democratic enfranchisement are affected interests. Since AAP is able to capture a whole range of cases in which a person has participation rights because her fundamental interest in autonomy is affected, AAP can accommodate persons who make legitimate place-based plans.[19]

---

bad brute luck—as opposed to bad option luck—is unfair. A better alternative would be to regard social membership merely as an *additional-but-not-necessary reason* for, or as a *desirable effect* of, inclusion in the demos.

[18] I do not mean to imply here that those who have defended place-based plans accounts so far are committed to making this move.

[19] It is important to stress the qualifier 'legitimate' in this context because not *all* place-based plans are legitimate, for example when they result from wrongful actions such as colonial settlement. For a recent discussion of this (widely shared, and intuitively clear) point, see Lea Ypi, "What's Wrong with Colonialism," *Philosophy & Public Affairs* 41, no. 2 (2013): 158-191. If we were to commit ourselves (in my view, wrongly) to the claim that place-based plans of any kind are sufficient for enfranchisement, then we have to accept the morally unappealing conclusion that colonisers are entitled to an equal say in the demos of the colonised territory, and that they have this entitlement *purely because* they committed the wrongful act of

To be clear, I am not committing myself to the view here that potential effects of being affected, such as social membership or place-based plans, are morally irrelevant. My goal is not to reject these arguments outright, and I grant that both accounts offer persuasive arguments that are relevant for debates that are adjacent to, but separate from, debates about democratic enfranchisement. The upshot here is simply that, when it comes to the specific question of enfranchisement, many of the intuitions that motivate AAP's (ostensible) citizenship-independent rivals actually point us towards AAP. By articulating partial aspects of what it means to be affected, they lend prima facie support to the view that AAP matches important and widely shared intuitions. The challenge, of course, is to develop a complete account of what kind of picture of democratic enfranchisement exactly the AAP actually commits us to.

II. The Research Gap

While I agree with the general *aims* of existing citizenship-independent solutions to the democratic boundary problem, I think that one cluster of arguments within this position is particularly promising: those arguments which advocate a version of the AAP. There are many people in the world whose interests are affected by a state precisely *because* they are coerced by it or because they have social ties to its members, or both. But there are also a significant number of people who are neither a social member of a state nor are they coerced by that state, and whose interests are still fundamentally affected by that state's political decisions. Unlike other disaggregationist accounts, the maximally inclusive AAP is able to capture *all* of these cases and identify their moral implications. Of course, this does not mean that the

colonisation in the first place. Indeed, I doubt that any supporter of the place-based plans view would support such a view, and to my knowledge, no contributor to this debate has proposed it so far.

conclusions of the AAP will also be maximally inclusive. A plausible version of the AAP is likely to reject the conferral of democratic participation rights to anyone who is affected in some morally trivial way, or someone who is affected *purely because* they committed some type of moral wrongdoing.[20] But the crucial point is that only an argument like the AAP which starts from radically inclusive premises can investigate *all* morally relevant cases instead of just a subset of them.

Although I think that a version of the AAP is the most promising contender for providing a solution to the democratic boundary problem, I am sceptical of currently existing versions of the AAP because they fail to address the following four major research gaps.

Firstly, no existing version of the AAP is sufficiently nuanced and context-sensitive. This is a problem because existing versions of the AAP demand the enfranchisement of *anyone* who is *in any way* affected by the decisions of a demos, regardless of how much, how long, and why they are affected. On this view, a tourist passing through London and a Brazilian entrepreneur trading goods with a businessman in Oxford would get the same democratic participation rights in the UK as a long-term Sheffield resident. So on these accounts, unequal degrees of affectedness are supposed to justify an equal (democratic) say. While this is consistent with the standard notions of political equality—the idea that each holder of democratic participation rights gets one vote, and one vote only—it seems unfair.[21] The reason why it would be unfair is because participation rights would give the tourist a say over others that is disproportionate to her comparatively low stake in the political decisions of the UK. The tourist loses very little if she does not get participation rights,

[20] Consider, for instance, the colonisation example discussed above.

[21] For an influential argument to the effect that factors like length of residency and territorial location carry normative significance, see Rainer Bauböck, "Expansive Citizenship: Voting Beyond Territory and Membership," *PS: Political Science and Politics* 38, no. 4 (2005): 686.

whereas the Sheffield resident loses much more, for the stakes for him are much higher. It seems to me that a more plausible version of the AAP needs to take context seriously by developing specific criteria that allow us to determine exactly who counts as affected *enough,* that is, affected in a way that is sufficiently morally weighty to justify why the affected person has democratic participation rights. This will have major implications for how AAP supporters see the value of political equality.

Secondly, and relatedly, existing versions of the AAP have no clear account of what 'being affected' means, and why it is morally significant to have one's interests affected. In order to answer this question, we have to start by identifying the types of interests that are so valuable that they have to be protected by rights—and not just any rights, but rights of democratic participation. The normative links between these concepts are far from uncontroversial, and this critique has been put forward against the AAP even by those who sympathise with disaggregationist approaches to the democratic boundary problem: as Abizadeh argues, for example, there is so far "no [obvious] intrinsic connection between effects on one's interests in general and a right of democratic say".[22] This problem is especially serious because democratic participation rights give us a say in what kinds of rights *other* people have. Given the vast potential impact of participation rights on the interests of our fellow members of society, the question which interests we mean and what we mean by 'affected' when we talk about affected interests must be addressed in a more explicit and nuanced way. Thus, on my view, being affected is not enough for justifying democratic participation rights: what really matters is whether one is affected *in a morally significant way*. A related problem is that existing versions of the AAP fail to engage with the question what kinds of concrete participation rights exactly are part of the category of democratic

[22] Abizadeh, "On the Demos and Its Kin," 878.

participation rights. Given that practices of democratic participation go far beyond voting, this is an urgent and undertheorised conceptual question.

Thirdly, existing versions of the AAP lack a sufficiently deep engagement with the philosophical debate on feasibility. While many defenders of the AAP explicitly acknowledge the ways in which feasibility issues constrain the practical implementation of the moral implications of their argument, they fail to reflect on the question whether feasibility constraints alone constitute an objection that is fatal, or merely an objection that gives us reason to modify some of the ultimate conclusions of the argument. For example, Goodin explicitly concedes that it is impossible to implement his possibilistic version of the AAP, which demands that everyone who is possibly affected by our decisions ought to have a say in those decisions. Instead, he argues, we should pursue the next best option, i.e. compensating affected people for not being able to enfranchise them.[23] But regardless of which concrete policy options we ought to pursue, we need to know whether feasibility constraints can provide a persuasive basis for a more general objection to our normative argument: if implementing what an argument demands is not only unrealistic, but unrealisable, why should we think that it is desirable? Supporters of the AAP must address this issue directly.

Lastly, AAP supporters have so far rarely commented on the question of whether a commitment to AAP entails a commitment to a particular stance on the issue of *disenfranchisement*. Democracies typically disenfranchise a whole range of agents—children, animals, prisoners—for a variety of reasons: on the grounds of a lack of competence or, in the latter case, on the grounds of punishment. Is disenfranchisement compatible with AAP, given that disenfranchised individuals continue to be affected by our democratic

[23] Goodin, "Enfranchising All Affected Interests," 65-68.

decisions?[24] These questions are interesting for anyone interested in democratic theory, not just AAP supporters: after all, even AAP sceptics may agree with the conclusions that AAP supporters draw regarding the justifiability of disenfranchisement. This would be a surprising and interesting result in and of itself, given that most current critiques of AAP object to AAP's conclusions while accepting a number of its central premises. Applying AAP in this way is also useful because it would help clarify the *limitations* of AAP's normative reach as a principle of democratic enfranchisement vis-à-vis other normative principles (of justice, of punishment, and so forth).

III. Methodology

The central methodological debate in political philosophy in recent years has been the debate on the respective merits of ideal and non-ideal theory. As Zofia Stemplowska and Adam Swift point out, it is hard to characterise the distinction between the two clearly, as there are many different views on what exactly constructing an ideal theory—and a non-ideal theory, respectively—entails.[25] Laura Valentini, for instance, identifies three arguably very different ways of mapping the contemporary debate: the ideal/non-ideal dichotomy can refer to "(i) full compliance vs. partial compliance theory; (ii) utopian vs. realistic theory; (iii) end-state vs. transitional theory".[26] One added complication is that, irrespective of how one maps the debate, one still has to face the problem of how ideal and non-ideal theory relate *to each other*—and this question is, again, controversial: whilst there is widespread agreement in

[24] In this thesis, I focus on disenfranchisement as punishment; I bracket the complex issue of disenfranchisement on the grounds of competence, which would be an urgent and interesting topic to tackle in a future research project.

[25] Zofia Stemplowska and Adam Swift, "Ideal and Nonideal Theory," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012), 373.

[26] Laura Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map," *Philosophy Compass* 7, no. 9 (2012): 654.

the discipline that it would be implausible to construct a purely ideal theory without *any* regard for non-ideal concerns (or vice versa), there is widespread disagreement about which level of theorising ought to have *priority* over the other, and in which *order* political philosophers should address ideal and non-ideal concerns.

Any attempt to develop my own account of ideal and non-ideal theory that responds directly to these questions would of course be far beyond the scope of this thesis. My methodological strategy, instead, is to endorse an account of ideal theory that strikes me as a plausible starting point: G. A. Cohen's view, including the claim that there are some normative principles which are fact-insensitive, and that we ought to start by identifying those principles rather than taking facts about the status quo as the jumping-off point for our theorising.[27] As Cohen argues, "[i]f justice is, as Justinian said, each person getting her due, then justice is her due irrespective of the constraints that might make it impossible to give it to her".[28] To clarify, I accept the view that facts are relevant for our moral reasoning about principles, but I reject the idea that all *fundamental* principles must be grounded in facts. A well-known example, put forward by Cohen, illustrates this: One might think that the moral principle that one should keep one's promises is grounded in the fact that people are able to pursue their projects successfully only if we all keep our promises. As Cohen points out, this argument relies on the meta-principle that we ought to help people pursue their projects. Contrary to the first principle,

[27] Examples for the latter kind of 'realist' mode of theorising—as opposed to Cohen's 'utopian' mode—include William Galston, "Realism in Political Theory," *European Journal of Political Theory* 9 (2010): 385-411; Raymond Geuss, *Philosophy and Real Politics* (Princeton, NJ: Princeton University Press, 2008); Edward Hall, "How to Do Realistic Political Theory (and Why You Might Want To)," *European Journal of Political Theory* 16, no. 3 (2017): 283-303; Robert Jubb, "Recover It from the Facts As We Know Them," *Journal of Moral Philosophy* 13, no. 1 (2016): 77-99; Matt Sleat, *Liberal Realism: A Realist Theory of Liberal Politics* (Manchester: Manchester University Press, 2013); Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton, NJ: Princeton University Press, 2005).

[28] G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), 252–53.

this principle is *not* grounded in facts.[29] Thus, Cohen argues, there are certain moral principles which are fact-insensitive.

One important feature of this view is that it does not commit Cohen to a picture of ideal theory that relies on assumptions about full compliance, like Rawls's account of ideal theory: whether persons comply with the normative demands of an ideal theory does not make a difference for the content of the fundamental principles in that theory.[30] Cohen's view is that we ought to determine the content of such fundamental principles—such as "what is justice?"—before we consider downstream questions, such as fact-sensitive normative "principles of regulation".[31] The latter include action-guiding questions like "what should the state do?" and "which social states of affairs ought to be brought about?", conditional on what we can *feasibly* do, and conditional on the comparative importance of other normative values aside from justice.[32] The mistake in Rawls's theorising about justice, in Cohen's view, is that Rawls locates principles of justice too far downstream, thus conflating principles of regulation with fundamental principles.[33] The view that I want to endorse here is that it is plausible to *separate* fact-insensitive principles from

[29] G. A. Cohen, "Facts and Principles," *Philosophy & Public Affairs* 31, no. 3 (2003): 216.

[30] As Stemplowska and Swift helpfully clarify, "unlike Rawls, Cohen does not ask us to make any idealized assumptions. He is after principles that hold no matter what assumptions about compliance, circumstances, and all other facts, we should make; fundamental principles apply not to circumstances different from ours but to all circumstances, including ours. And he is not suggesting that facts are irrelevant to our reasoning about such principles: His thesis denies that facts can ground fundamental principles, not that reflecting on facts is helpful when we try to discover what these principles are—it is about the structure of normative beliefs, not their genesis." Stemplowska and Swift, "Ideal and Nonideal Theory," 383-384.

[31] Cohen, "Facts and Principles," 241.

[32] G. A. Cohen, "How to Do Political Philosophy," in G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton, NJ: Princeton University Press, 2012), 227. For discussion of the view that the latter two questions are conditional on feasibility constraints, see Enzo Rossi, "Facts, Principles, and (Real) Politics," *Ethical Theory and Moral Practice* 19, no. 2 (2016): 510.

[33] "It is a fundamental error of *A Theory of Justice* that it identifies the first principles of justice with the principles that we should adopt to regulate society. Rawls rightly says that 'the correct regulative principle for anything depends on the nature of that thing:' facts are of course indispensable to the justification of principles of regulation. But principles of regulation necessarily lack ultimacy: they cannot tell us how to evaluate the effects by reference to which they themselves are to be evaluated." Cohen, "Facts and Principles," 241.

fact-sensitive normative principles of regulation. This claim does not imply that fact-sensitive principles are irrelevant: in fact, as Cohen himself says, "I reject that [...] what I call justice does not bear on practice".[34] Following that view, I discuss both the fact-insensitive foundations of AAP and fact-sensitive concerns about its realisation in this thesis.[35] The relevant claim here is simply that there is a division of labour between the two, because they answer different questions.[36] If one accepts the division of labour claim, one should also accept the claim that it makes sense to identify fact-insensitive principles first, because they provide an evaluative background against which we can develop and assess action-guiding normative principles.[37]

Cohen, of course, is thinking about the nature of (substantive) *justice* when developing his stance on ideal theory. I am sympathetic to the view that questions of substantive justice are appropriately located at that upstream level of fact-insensitive principles, however, I do not take this to imply that there can be no other fact-insensitive principles. Here, I do not focus on questions of substantive justice: the fundamental fact-insensitive principles that I am primarily concerned with are the *principle of equal concern* for the morally weighty interests of persons, and the value of *procedural fairness* in the context of democratic enfranchisement and decision-making.[38]

[34] Cohen, *Rescuing Justice and Equality*, 306.
[35] See "What AAP Is, and How (Not) to Fight It".
[36] For discussion of the division of labour claim, see Matt Sleat, "Realism, Liberalism and Non-Ideal Theory Or, Are there Two Ways to Do Realistic Political Theory?" *Political Studies* 64, no. 1 (2016): 28.
[37] In fact, Rawls also endorses the view that "until the ideal is identified [...] nonideal theory lacks an objective, an aim, by reference to which its queries can be answered", which implies a division of labour claim as well—the difference to Cohen's view is simply that Rawls construes the ideal/non-ideal dichotomy in terms of assumptions of perfect compliance, whereas the relevant criterion for Cohen is fact-insensitivity. See John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 90.
[38] At various junctures in this thesis, however, I will discuss the relationship between democracy and substantive justice, in order to highlight the limits of AAP: we may be able to implement AAP in an all-things-considered justifiable way only if certain *preconditions* related to substantive justice are present in society (such as reasonable agreement about basic principles of justice, and the motivation to realise those principles in a stable way), and if AAP is

Why are these two ideals best construed as fact-insensitive? First, the principle of equal concern is fact-insensitive in the sense that the question of whether it is possible to *actually* give equal concern to persons in all situations does not make a difference to the principle of equal concern's status as an ideal. Like other fact-insensitive ideals, the principle of equal concern has an evaluative function: we need a reference point in order to measure the extent to which we fall short of realising the ideal, and that reference point does not change just because we have not achieved or cannot achieve it.

It is clear that the principle of equal concern is a very broadly construed ideal. It is not inherently restricted in its application to questions of *democratic enfranchisement in a particular polity*: it could easily apply within other social structures, such as the family or the university.[39] Of course, when the principle of equal concern *is* applied in the context of democratic enfranchisement, its originally broad scope will likely be restricted in a number of ways: the AAP, for instance, only requires equal concern for persons *whose interests are affected in a relevant way*.[40] This point, however, does not imply that we have to commit ourselves to the idea that persons who are not included as relevant interest-holders in the AAP are not our moral equals. It simply means that non-interest-holders do not have a claim to the rights that the AAP specifies. The principle of equal concern still holds—it is just a broader principle.

Procedural fairness, in turn, is also best construed as a fact-insensitive ideal on my view. It is worth pointing out, however, that alternative views are not necessarily implausible. One may, for instance, argue that in order to articulate an ideal of procedural fairness, we need to first have knowledge about

supplemented by principles of substantive justice that constrain democratic decision-making *outcomes* in particular ways.

[39] I bracket these kinds of applications in this thesis, but they seem like promising directions for further research.

[40] Of course, what 'relevantly affected' means needs to be specified further. See "Economic Participation Rights and the AAP".

certain *facts*, such as the question of whether democratic procedures are actually in place in a given status quo, and if so, what kinds of procedures. If one accepts this claim, one would have to endorse a fact-dependent conception of procedural fairness. Alternatively, however, one could simply define procedural fairness in conditional terms: *iff* certain facts obtain—such as, 'democratic procedures (X, Y, Z) are in place in a given polity during a given time'—*then* the ideal of procedural fairness applies to any relevant context—such as, 'treat all cases that are like each other and that are subject to (X, Y, Z) alike'.[41] On this latter view, which I endorse, the normative content of procedural fairness is still construed as a fact-insensitive ideal, although its real *application*—or rather, applicability—will of course require the presence of certain empirical facts (namely, the existence democratic procedures). What motivates this view is the thought that we can still articulate, at least in broad terms, what the ideal of procedural fairness would require—such as, treating like cases alike—without knowing when and where this ideal will in fact apply.[42]

Having clarified why these two ideals are best construed as fact-insensitive principles on my view, let us now consider how exactly they relate to AAP. My view is that these two fact-insensitive principles *underpin* any

[41] In fact, the principle of equal concern is also most plausibly phrased in conditional form: I elaborate on this thought in more detail in section IV, where I discuss the normative *foundations* of the principle of equal concern in more detail, since the rationale for phrasing the principle conditionally is not only related to the issue of fact-insensitivity, but also to the questions of what those foundations are.

[42] My aim here is not to *reject* the alternative fact-dependent conception of procedural fairness and to *defend* my rival stance, but rather to *state* that there are multiple plausible approaches to this issue, including my approach based on the notion that one can plausibly acknowledge that facts *matter* for procedural fairness (in the sense that facts the scope of the ideal's applicability), without denying the ideal's inherent fact-insensitive nature. While I explicitly endorse the fact-insensitive picture of procedural fairness, I do not think that those sympathetic to the fact-dependent view of procedural fairness will necessarily have to reject my downstream arguments about what AAP is and what is demands, i.e. the arguments which are the main focus of this thesis. The distinction between the fact-dependent account of procedural fairness and the fact-independent, but conditionally phrased, account of procedural fairness is a rather fine-grained one, and while further discussions of this distinction may open up interesting higher-order metaethical debates, a commitment to either of these views is unlikely to have any *decisive* implications for the normative question of to which sort of view *about AAP* one has to commit oneself.

plausible version of the AAP:[43] in my view, AAP is the most promising contender for a plausible normative principle that captures these fact-insensitive ideals *in the context of democratic enfranchisement*. AAP, then, operates at a lower theoretical level than these two fact-insensitive ideals: it articulates normative requirements concerning the question of who has participation rights on the grounds that someone's morally weighty interests are relevantly affected. These ideal normative requirements may have various versions, such as a first-best, a second-best, a third-best and so forth: a first-best slogan, for instance, might be 'It is morally desirable to distribute democratic participation rights to all relevantly affected persons in such-and-such ways', whereas a second-best slogan might be a conditional slogan like 'If you cannot realise the first-best, distribute democratic participation rights to some relevantly affected persons and democratic representation rights to all other relevantly affected persons'.

All of these normative requirements articulate variations of AAP, ordered in terms of their respective proximity to the fact-insensitive ideals of equal concern and procedural fairness. But unlike those fact-insensitive ideals, they are sensitive to facts in the sense that they allow for considerations of feasibility alongside considerations of desirability. This suggests that AAP itself is most plausibly construed as—in Cohen's terms—a fact-sensitive normative principle of regulation, as defined above. My strategy here is to reflect, first, on the question of what makes AAP morally desirable, and on the question of which *version* of AAP is the most desirable. Only then can we ask whether this most desirable version of AAP—coupled with its associated second-best and third-best version—is infeasible. This is a pressing question because critics of

[43] Indeed, they may also underpin entirely different—that is, non-AAP—principles of democratic enfranchisement. However, in the context of those other principles, they may well lead to different conclusions than the ones reached by endorsing AAP, depending on what other principles are endorsed alongside them.

AAP might well claim that AAP is infeasible, while acknowledging that it is desirable. If it turns out that AAP is not indeed infeasible, we can embark on a comparative assessment of just how feasible AAP is in comparison to rival principles of democratic enfranchisement, and weigh those considerations up against considerations concerning AAP's desirability. Of course, even if it were to turn out that AAP is indeed infeasible—because it is subject to particular types of hard feasibility constraints that cannot be overcome no matter how hard we try—my endorsement of Cohen's stance on ideal theory implies that we would have to judge a state of affairs in which we fall short of the ideals of equal concern and procedural fairness as morally deficient, even if nobody is to blame.[44] As Cohen says, "it follows from my position that justice is an unachievable (although a nevertheless governing) ideal".[45] Here, it becomes clear why it is important and useful to disaggregate the normative question of what we ought to do, which obviously depends on what we *can* do, from the evaluative question of what an ideal state of affairs would look like. We want to be able to say that something is *lost* when we fail to realise that state of affairs—such as realising the principle of equal concern and procedural fairness fully—irrespective of what we think about what we should do to work towards achieving that state of affairs.

This conclusion is obviously controversial: Cohen sceptics may find this methodological approach counterintuitive and therefore unappealing, and favour a more realist mode of theorising instead. This kind of scepticism, however, is not a *sufficient* reason to dismiss the account of *AAP* that I develop in the papers included in this thesis: just because my methodological

[44] For discussion of objections to Cohen's account on these grounds, see Stemplowska and Swift, who point out that "we are left with the conceptual possibility of an unjust society in which nobody is doing anything wrong. [... This creates] a gap between the idea of injustice, on the one hand, and the idea that some are treating others unjustly, on the other. Some will find that too high a price to pay." Stemplowska and Swift, "Ideal and Nonideal Theory", 385.
[45] Cohen, *Rescuing Justice and Equality*, 254.

assumption is that Cohen's view is broadly plausible, and thus provides an attractive starting point for developing a plausible version of AAP, that does not mean that Cohen sceptics necessarily have to reject the *conclusions* that I draw concerning AAP. A realist may deny, for instance, that the principle of equal concern is appropriately construed as fact-insensitive—but she may accept that the principle of equal concern is nevertheless sufficiently *morally weighty* to justify why affected persons have democratic participation rights.

I will not attempt to defend Cohenite ideal theorising in further detail here: I simply wish to *state*, at this juncture, that this is the methodological framework that undergirds my approach because it matches my intuitions, and because it is in my view naturally aligned with my aim of developing AAP as a principle that relies on a commitment to ideals that I view as fact-insensitive.

IV. Preliminary Assumptions

1. Basic Equality and the Principle of Equal Concern

a. Basic Equality as Equal Moral Status

The concept of equality is usually discussed on two levels in contemporary political philosophy: on the one hand, on the policy level—we might ask, for instance, 'what sort of distribution of benefits and burdens best approximates social and economic equality?'—and on the other hand, on the more foundational level—'which beings have equal status, morally speaking?'. My focus in this section is the latter meaning: *basic equality*.

When we say that all persons are equal, we typically do not mean that all persons are the *same*, meaning that they have exactly the same levels of

intelligence or strength, for example.[46] As Bernard Williams and many others have argued, that interpretation of basic equality would simply be empirically false, and thus lack normative force.[47] My stance is that by 'all persons are equal', we mean that all persons possess an *equal moral status*. The phrase equal moral status makes it clear that what I mean by basic equality in this context is not that every person is *descriptively* equal with respect to her rational or moral capacities, or that every person possesses equal *rights*, or that every person is entitled to an equal share of goods. Basic equality is the concept that we use for determining who is equally worthy of moral consideration in the first place, and this a necessary step before we can determine how a person's interests ought to be considered, or what kinds of rights she ought to have.

The question of *why* beings have basic equality is notoriously hard to pin down, of course.[48] Any account of basic equality must identify a distinctive trait—such as rational or moral capacities—which a set of persons possess, and which justifies why they are morally equal. The challenge, however, is that humans possess any of the traits that have been proposed as possible contenders in this regard to varying degrees, and that some non-human animals also possess such traits. This raises a number of hard questions: do we have to exclude some humans from the community of moral equals, such as small children or severely cognitively disabled persons—or include some non-human animals?[49] And even if we settle this question, and identify a plausible threshold

[46] Here, I follow the standard literature in my use of the term "persons" instead of "beings". What I have in mind here is the set of beings that possess *moral personhood*: I do not mean to imply that the community of moral equals must necessarily be restricted to *human persons* only.

[47] Bernard Williams, *Problems of the Self: Philosophical Papers, 1956-1972* (Cambridge: Cambridge University Press, 1973), 230-249.

[48] For a fatalist account, arguing that the most well-known justifications of basic equality fail, see Richard J. Arneson, "Basic Equality: Neither Acceptable Nor Rejectable," in *Do All Persons Have Equal Moral Worth? On 'Basic Equality' and Equal Respect and Concern*, ed. Uwe Steinhoff (Oxford: Oxford University Press, 2015), 30-52.

[49] For a range of views on marginal cases in the context of basic equality, compare Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1991); Peter Singer, "Speciesism and Moral Status," *Metaphilosophy* 40, no. 3-4 (2009): 567-581; Jeremy Waldron, *One Another's Equals: The Basis of Human Equality* (Cambridge, MA: Belknap Press, 2017).

for basic equality, do we have to make distinctions *above* that threshold, such that the especially rational or the especially moral possess higher moral status?

It is not my ambition in this thesis to respond to the complex and deeply controversial debate on basic equality by developing and defending my own account of what sort of traits a being must possess in order to pass the threshold of basic equality, and to thus qualify as a (moral) person of equal moral status. Instead, I simply *assume* at this juncture that humans, and perhaps some other beings, possess equal moral status. There are two reasons for this strategy. First, defending my own account of basic equality would simply be beyond the scope of this thesis. Why? The question of basic equality belongs to a different domain within political philosophy than the question of democratic enfranchisement. It is part of the set of foundational questions that *precede* theories of democracy in the sense that they are located at a higher-order level of theorising about what we owe to each other. Second, what really matters in the context of this thesis is the *democratic application* of the principle of equal concern in the context of democratic decision-making: what sort of treatment do we owe to members of the community of moral equals?[50] Several competing conceptions of basic equality are likely to be compatible with the principle of equal concern: it is not necessary to endorse a *specific* account of basic equality in order to endorse the principle of equal concern, which underpins the AAP. As long as one has *a* broadly plausible account of basic equality, this account can be plugged into the democratic argument developed here. My argument thus takes the following conditional form:

[50] For a roughly similar view, see Thomas Christiano, "Rationality, Equal Status, and Egalitarianism," in *Do All Persons Have Equal Moral Worth? On 'Basic Equality' and Equal Respect and Concern*, ed. Uwe Steinhoff (Oxford: Oxford University Press, 2015), 61: "A fundamental conception takes moral status as a kind of *ground of appropriate treatment* and therefore of the moral principles regulating the treatment of the thing. By virtue of possessing certain morally salient features, an entity is due certain treatment. Fundamental conceptions of status imply both that some entities are to be accorded equal treatment whereas other entities are to receive different treatment because of their distinct statuses." [emphasis added]

> '*iff* a being has a particular moral status, *then* we have to give equal concern to its interests vis-à-vis the interests of other beings of the same moral status'.

b. Why Should We Care About Interests At All?

If one accepts the view that persons have equal moral status (based on whatever justification of equal moral status one prefers), one must also think that we are required to give some consideration to what is objectively in a person's interest.[51] The reason for this is that the equal moral status interpretation of basic equality imposes a constraint on the *content* of the moral rights that we accord to the community of moral equals. As Arneson persuasively puts it,

> in order fully to characterize basic equality one cannot say merely that basic equality requires that everyone possesses the same basic moral rights, because one could agree with this and hold that, for example, one basic moral right gives people with blue blood in their veins [...] special entitlements. The basic equality idea constrains the content of moral principles and cannot be read simply as a formal constraint stipulating that whatever rights there are, they are held by all persons.[52]

So all constraints that the concept of basic equality places on moral rights must at least be consistent with, but ideally also promote, basic equality, and arguably they must also be just. But laws or policies that *completely* ignore what is in the interests of people who are governed by them cannot be said to achieve any of that, which is why at this point we can conclude that there is a moral requirement to consider people's interests at least in *some* way.[53]

[51] For further discussion, see "Economic Participation Rights and the AAP".
[52] Arneson, "Basic Equality," 31.
[53] This, of course, does not imply that if we accept the Principle of Equal Concern, we must necessarily endorse a majoritarian *interest aggregation* account of democratic decision-making. Interests can and should be considered in other ways as well, for instance, during deliberative procedures, which may or may not be combined with majoritarian decision models, depending on the context.

Of course, considering the interests of those who are our moral equals may not be sufficient for achieving the goal of *treating* them as equals—and ensuring that we treat persons as equals is clearly an important goal for anyone committed to some account of basic equality.[54] Both in philosophical discussions of basic equality and real political movements, the notion of basic equality is often taken to mean that we accord *respect* to people and recognize their status as our moral equals. The characteristic feature of the feminist movement's or the Civil Rights Movement's political claims is not (only) the demand to be given equal *concern* in democratic decision-making; rather, their claims for basic equality involved claims for respect of their standing in society.[55] The intuition that basic equality is best understood as equal respect for one's moral status (or, abbreviated, equal moral status) is also apparent in philosophical discussions: Rawls, for example, argues that

> [e]quality as it applies to the respect which is owed to persons irrespective of their social position [...] is fundamental. It is defined by the first principle of justice and by such natural duties as that of mutual respect; it is owed to human beings as moral persons.[56]

A similar view is also expressed in his discussion of the *duty of mutual respect*, which he defines as "the duty to show a person the respect which is due to him as a moral being, that is, as a being with a sense of justice and a conception of the good".[57]

The key point in the context of this thesis is that if equal concern is not all there is to treating persons as equals, implementing a plausible principle of

[54] Some philosophers attempt to *ground* basic equality in a principle of respect—see, for instance, Ian Carter, "Respect and the Basis of Equality," *Ethics* 121, no. 3 (2011): 538-571. As Christiano (in my view, convincingly) points out, however, a respect principle can only justify the claim that we ought to treat persons as equals, but it cannot justify the view that persons possess equal moral status. See Christiano, "Rationality, Equal Status, and Egalitarianism," 58.
[55] See, for instance, Martin Luther King Jr., "The Ethical Demands for Integration," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King Jr.*, ed. James Melvin Washington (San Francisco, CA: Harper Collins, 1991), 118-119.
[56] John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Belknap Press, 1999), 440.
[57] Rawls, *A Theory of Justice*, 297.

democratic enfranchisement underpinned by the principle of equal concern—such as AAP—may well not be sufficient for achieving a truly egalitarian society. Therefore, it is important to reflect on the *limitations* of AAP, in order to identify the ways in which AAP must be supplemented by additional principles of substantive—not only procedural—justice.[58]

c. *The Significance of the Principle of Equal Concern for Democratic Enfranchisement*

A commitment to basic equality does not only give us a reason for why we ought to consider people's interests at all, it also gives us a reason why we ought to give these interests *equal* concern.

It is of course possible to, on the one hand, deny basic equality but defend a principle of equal concern: for example, one may think that there is no shared intrinsic criterion that can justify people's equal moral status, and thus abandon the notion of basic equality altogether, but still think that the state should adopt the *political* principle of giving equal concern to the interests of each person. On the other hand, it is also possible to accept basic equality, while rejecting the principle of equal concern.

But are either of these options plausible? I think not, for a commitment to a plausible conception of (substantive) basic equality clearly seems to entail a commitment to formal (procedural) equality. The reason for this is that equal moral status is *de facto* worth nothing if we do not also accept the idea that all holders of equal moral status are entitled to equal consideration in our democratic decision making. Otherwise, a commitment to equal moral status would remain entirely inconsequential within our democratic procedures. The most plausible position, in my view, is to say that the principle of equal concern

[58] See "What AAP Is, and How (Not) to Fight It".

is already conceptually built into the notion of basic equality: it is *in virtue of* our basic equality that our interests count the same in political decision-making.

While basic equality is not conceptually restricted to any local context, such as the domestic one, the principle of equal concern[59] applies primarily within a polity, for equal concern implies that somebody *gives* concern to some element X, such as interests. Of course, that polity need not be a state, although states are usually the kinds of entities that have the power to apply and enforce the equal concern principle; but the general point is that there needs to be some—ideally politically legitimate—entity that considers the interests that are at stake.

Two of the most influential philosophical accounts of the principle of equal concern are John Rawls's critical discussion of the limitations of the principle of equal concern in *A Theory of Justice*,[60] and H. L. A. Hart's account of the like cases maxim in *The Concept of Law*.[61] Drawing on these accounts, I define the principle as follows:

> **Principle of Equal Concern**: Giving equal concern to persons means giving an equal level of consideration to the interests of all persons who possess equal moral status.

To clarify, the requirement of giving an equal level of consideration to interests does not entail a commitment to the view that these interests must be judged

[59] Some use the term 'equal consideration' instead of 'equal concern'. I use the two terms interchangeably.

[60] Rawls, *A Theory of Justice*, 444. Rawls's account of the principle of equal concern is mostly critical, but it would be too quick to interpret this as a *rejection* of the principle. Rather, Rawls highlights the point that adherence to the principle of equal concern alone is insufficient for establishing basic equality, for "equal treatment" or "equality of concern" may well lead to large-scale substantive inequalities.

[61] H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961) develops an account of formal justice based on the principle that like cases must be treated alike (159). While substantive justice is the criterion we use to assess the *content* of specific laws, formal justice is constituted by justly applying laws irrespective of their content (160). While Rawls reminds us that the Principle of Equal Concern *alone* is an insufficient normative foundation in our pursuit of substantive equality and justice, Hart highlights that equal concern is a *necessary* element of that pursuit.

to be equally morally weighty. The Principle of Equal Concern is compatible with the view that person A's interest in x may be morally weightier than person B's interest in x. What matters is just that when we ask what is in A's and B's interest, and how weighty their respective interests are, we treat our consideration of A as equally important to our consideration of B.

2. Abstract and Concrete Rights: A Threshold View of Democratic Enfranchisement

Most contributors to the philosophical debate on the democratic boundary problem do not indicate exactly what kinds of rights are being distributed when we enfranchise persons. The concept of democratic participation rights is a fairly unspecified one: when we say that 'A has the right to participate in a democratic decision', we do not automatically know what A is permitted to actually *do*. The most obvious interpretation of democratic participation, of course, is this: 'A has the right to *vote* in a local or federal election'. But we could also mean, amongst other things, that 'A has the right to join a civic association that advocates for a particular interest group', or that 'A has the right to participate in a public demonstration against a particular policy', or that 'A has the right to run for political office'. Hence, democratic participation can instantiate itself in many different forms.

To capture this intuition, I draw on Ronald Dworkin's distinction between abstract and concrete rights.[62] Assume that we have identified a plausible principle of democratic enfranchisement. This principle justifies why each member of a set of persons—A and B—has an abstract democratic participation right. For A, this abstract right instantiates itself in the form of the concrete right to join civic associations. For B, however, the same abstract right

[62] Ronald Dworkin, *Taking Rights Seriously* (London: Bloomsbury Academic, 2013), 119.

instantiates itself in a wider set of concrete rights: say, the right to join civic associations *and* the right to vote.

On this view, a principle of democratic enfranchisement like AAP must then be a *threshold conception*: it must articulate what kinds of conditions are sufficient for justifying the conferral of an abstract democratic participation right. Once we know who has that abstract right, we can determine whether there ought to be any distinctions above that threshold in terms of how concrete rights are to be distributed.

3. The Demos: A Few Background Considerations

In order to delineate the conditions for counting as 'relevantly affected', we must know the context in which these conditions apply. Hence, before we can begin to determine when and why exactly a person A's interests are affected in such a way that A is entitled to democratic participation rights in a demos, we need to ask: who or what is the entity that *affects* people's interests *in a way that entitles them to democratic participation rights* in the first place?[63] And what happens to those whose interests are affected and who thus hold participation rights—do they necessarily become *demos members*?

a. Who or What Affects People?

Regarding the first issue, I define the entity that relevantly affects people's interests as a demos. A demos is a political unit which can correspond to the group of political agents of a national state, but does not have to—relatively cohesive sub-national and transnational political units can constitute demoi, too. Although the focus of the philosophical debate on the democratic boundary problem usually lies on those whose interests are affected, and not

[63] Of course, what I have in mind here is an entity that affects people's interests specifically *in a way that entitles them to participation rights*.

on who or what affects them to begin with, this is an important initial consideration.

This thought is helpful for circumscribing the problem that is at stake here: the goal of my argument is not to construct a general moral theory about why individuals have an entitlement to all kinds of different rights if another individual or group affects their interests in any given situation. While it may very well be possible to generalise the argument from affected interests in such a way, my argument here is concerned solely with the much more modest and specific question of which democratic participation rights individuals have within one demos, or several demoi.

It may seem obvious to point out that the appropriate locus of democratic participation rights, i.e. the context in which such rights are exercised, is the demos. But this claim has interesting, less obvious implications that are worth pointing out directly: first, democratic participation rights are inherently relational in the sense that they are rights that we have *in relation to* a demos and its members, and that are, in practice, conferred to us *by* a demos. Second, given that the locus of democratic participation rights conferred under AAP is restricted, this also implies that the types of issues which rights-holders can decide on is restricted too: namely, to the types of issues that are normally considered to be part of the *decisional domain* of a demos, such as decisions about electing political representatives, about (re-)distributing resources and about how to use taxpayer money, about implementing policies to ensure the protection of a clean environment and other public goods, about healthcare and basic security provisions, about the provision about public services and infrastructure, and about issues related to security, defence, and humanitarian intervention. By contrast, issues that are typically not up for democratic debate are decisions like who should marry whom, who should study which subject at university or who should choose what kind of profession. Also included in this

latter category are range of issues related to personal privacy and bodily integrity, such as the right to decide whether to accept a blood transfusion, whether to undergo an operation, or which gender to identify with. Making the latter set of issues eligible for democratic decision-making would infringe on important personal liberties which should be protected from the interference of others no matter what kind of democratic enfranchisement principle we choose. Most people, I assume, would find it intuitively inappropriate to hold a vote on any of the aforementioned issues, so AAP—and any other democratic enfranchisement principle—must be understood to not be applicable to issues which are relatively uncontroversially not part of the democratic decisional domain. In some cases, it may be hard to clearly delineate the boundary between issues that are open to democratic adjudication and those that are not, of course. Consider, for instance, the question of whether individuals are permitted to wear religious symbols and garments in public places, particularly when these individuals hold public office or when they work in an educational setting.[64] Another example of a 'grey zone' case might be the question of whether persons are permitted to raise and educate young children in alignment with a particular comprehensive moral doctrine, given that the children are too young to consent. In cases like these, reasonable people may disagree about whether the state and its members have a right to interfere with individual autonomous choices. It is therefore unclear whether those issues are appropriately construed as part of the *democratic* decisional domain. Of course, my aim here is not to develop a comprehensive and systematic account of *all* issues that are part of this grey zone: I doubt that doing so would be possible. My only point is that we can acknowledge that there is reasonable disagreement about whether a particular subset of issues—of which I have named a few paradigmatic examples—is an appropriate subject of democratic

[64] For discussion, see Cécile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy* (Oxford: Oxford University Press, 2008).

decision-making, while at the same time acknowledging that there is a significant set of issues where such reasonable disagreement does currently *not* seem to exist, and where we can therefore make a clear, useful judgment about the appropriate scope of the democratic decisional domain or not. This judgment would then restrict the scope of issues where AAP—or any other democratic enfranchisement—can be appropriately applied.

b. Are All Holders of Democratic Participation Rights Also Members of the Demos?

However, the claim that people's interests are relevantly affected by a demos does not necessarily entail that holders of participation rights must themselves be members of the demos. This brings me to my second point. The aim of the argument from affected interests is to justify participation rights for two groups of people: on the one hand, demos members, i.e. relevantly affected citizens as well as relevantly affected non-citizens, such as long-term resident non-citizens, who are affected by all or most issues that are subject to democratic decisions; and on the other hand, other persons who are relevantly affected regarding a *particular* and morally significant issue and who are thus entitled to participation rights in democratic decisions regarding that issue. There is an important conceptual difference between belonging to a demos and having participation rights in a demos, and although the two often overlap, they should not be conflated.

While AAP justifies the conferral of democratic participation rights to members of both groups, only members of the former group can plausibly be labelled 'demos members'. The upshot of this view is that my account is not automatically committed to a 'fluid demos' model of single-issue

enfranchisement concerning all possible democratic decisions:[65] my account is compatible with the view that in many cases, particular demoi may enfranchise a group of demos members that remains relatively consistent over a particular span of time, while still allowing for flexibility around the edges.

V. Contents: Four Papers about the All-Affected Principle

In the first paper (**"Narrow Possibilism about Democratic Enfranchisement: Proportionality, Risk, and Fair Political Equality"**), I construct an argument about *how* concrete democratic participation rights ought to be distributed to persons whose interests are affected: I call my view 'narrow possibilism'. I begin by critically intervening in the recent literature on possibilism about democratic enfranchisement on the basis of affected interests, and argue that possibilism must be risk-sensitive in order to avoid treating unlike cases alike, which would be procedurally unfair. I show why narrow possibilism demands an unequal-but-fair distribution of concrete democratic participation rights in a way that is proportionate to the degree to which a person's interests are affected, and why a version of AAP that builds the narrow possibilist fairness requirement *directly* into its account of democratic enfranchisement is more plausible than a version that does not. I then explore the implications of this view for the concept of political equality: whilst there is widespread support for the view that political equality necessarily requires adherence to the slogan 'one person—one vote' when it comes to the distribution of concrete democratic participation rights, I argue that an account

[65] See Shapiro, *The Moral Foundations of Politics*, 220-222, for the claim that the AAP *does* imply a fluid demos.

of political equality that requires adherence to that slogan *only if* interests are indeed affected to an equal degree is superior (*'Fair Political Equality'*).

In the second paper (**"Economic Participation Rights and the All-Affected Principle"**), I begin by examining the more foundational question of what kinds of affected interests are morally weighty enough to justify the conferral of an abstract right to democratic participation, before turning to a more applied question: how does the way in which a person's interests are affected influence the way in which this right instantiates itself in different concrete forms? As I argue here, AAP supporters have so far not paid sufficient attention to a specific cluster of concrete democratic participation rights: *economic participation rights*. I argue that if one commits oneself to AAP, one must also commit oneself to the view that standard political participation rights like the right to vote are not necessarily the only way, and not necessarily the best way, to protect morally weighty interests. Thus, AAP demands the conferral of economic participation rights alongside more standard political participation rights. However, I also argue that economic participation rights raise unique worries about democratic accountability, which is why their exercise is constrained by specific duties.

The first two papers are connected in the sense that they jointly develop the two main aspects of a plausible version of AAP: the second paper articulates, amongst other things, a *General Statement* of AAP—an argument about who passes the threshold of abstract democratic participation rights—while the first paper articulates the *evaluative criteria* which determine the correct distribution of concrete democratic participation rights (*Narrow Possibilism*). While AAP supporters could of course endorse one of those arguments but not the other, my view is that the most plausible version of AAP must rest on an endorsement of both arguments.

The third paper (**"What AAP Is, and How (Not) to Fight It"**) explores how a plausible version of AAP fares in light of a range of possible objections from desirability and from feasibility. As it turns out, most critiques of the All-Affected Principle—whether they question its normative desirability or its political feasibility—stem from a higher-order disagreement about the appropriate function of democratic principles in a broader framework of values for a reasonably just society with well-functioning institutions. On my view, the most plausible version of AAP is much more restricted than AAP sceptics seem to think, which is why most currently existing critiques miss their target: for instance, AAP cannot, and indeed need not, provide an *all-things-considered* account of what we are morally required to do when realising democracy in accordance with AAP conflicts with other values, such as justice and stability. For that matter, AAP is not even all there is to *democracy* itself: a full theory of democracy will require a robust account of democratic authority, as well as higher-order principles about how to settle conflicts between different kinds of democratic rights. The upshot is that, given that refined accounts of AAP are able to rebut a range of popular objections, AAP cannot be dismissed as easily as many AAP sceptics may have thought. These reflections are thus useful not only for AAP supporters, but also for AAP sceptics, because they help clarify exactly what *kind* of objection one would have to put forward in order to cast serious doubt on AAP.

In the fourth paper (**"Criminal Disenfranchisement, Political Wrongdoing, and Affected Interests"**), I examine the implications of my account of AAP for an applied policy question: the disenfranchisement of criminals. The underlying question here is this: if one endorses the view that democratic participation rights ought to be distributed to those who are affected by the democratic decisions of a demos, is one *necessarily* also committed to a particular view about whether those rights can be forfeited? Against democratic

theorists who have recently argued that democratic values like the right to self-determination are sufficient for justifying the disenfranchisement of criminals, I argue that such justifications are not only insufficient, but also incompatible with AAP. My response thus highlights AAP's limitations as a *standalone* democratic justification of criminal disenfranchisement. However, I show that AAP, when endorsed *in combination with* a plausible theory of punishment, is compatible with the criminal disenfranchisement of a narrow set of criminal wrongdoers: those guilty of what I call 'political wrongdoing'. I then offer a systematic account of the concept of political wrongdoing, which I define as the subset of public wrongs that are wrong *primarily* because they undermine the kinds of democratic institutions that facilitate the protection of relevantly affected interests for private gain. Political wrongdoing includes, amongst other practices, large-scale electioneering, corruption, or collusion with foreign powers. The upshot is that widespread current practices of criminal disenfranchisement, which are often based on a blanket policy of disenfranchising criminals irrespective of the *nature* of their wrongdoing, are incompatible with AAP.

Bibliography

Abizadeh, Arash. "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." *Political Theory* 36, no. 1 (2008): 37-65.
———. "On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem." *American Political Science Review* 106, no. 4 (2012): 867-882.

Arneson, Richard J. "Basic Equality: Neither Acceptable Nor Rejectable." In *Do All Persons Have Equal Moral Worth? On 'Basic Equality' and Equal Respect and Concern*, edited by Uwe Steinhoff, 30-52. Oxford: Oxford University Press, 2015.

Bauböck, Rainer. "Expansive Citizenship: Voting Beyond Territory and Membership." *PS: Political Science and Politics* 38, no. 4 (2005): 683-687.

Carens, Joseph H. "The Integration of Immigrants." *Journal of Moral Philosophy* 2, no. 1 (2005): 29-46.

Carter, Ian. "Respect and the Basis of Equality." *Ethics* 121, no. 3 (2011): 538-571.

Christiano, Thomas. "Rationality, Equal Status, and Egalitarianism." In *Do All Persons Have Equal Moral Worth? On 'Basic Equality' and Equal Respect and Concern*, edited by Uwe Steinhoff, 53-75. Oxford: Oxford University Press, 2015.

Cohen, G. A. "Facts and Principles." *Philosophy & Public Affairs* 31, no. 3 (2003): 211-245.
———. *Rescuing Justice and Equality*. Cambridge, MA: Harvard University Press, 2008.
———. "How to Do Political Philosophy." In G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, edited by Michael Otsuka, 225-235. Princeton, NJ: Princeton University Press, 2012.

Cole, Phillip. *Philosophies of Exclusion: Liberal Political Theory and Immigration.* Edinburgh: Edinburgh University Press, 2000.

Dworkin, Ronald. *Taking Rights Seriously*. London: Bloomsbury Academic, 2013.

Fine, Sarah. "Democracy, Citizenship and the Bits in Between." *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 623-640.

Galston, William. "Realism in Political Theory." *European Journal of Political Theory* 9 (2010): 385-411.

Geuss, Raymond. *Philosophy and Real Politics*. Princeton, NJ: Princeton University Press, 2008.

Goodin, Robert E. "Enfranchising All Affected Interests, and Its Alternatives." *Philosophy & Public Affairs* 35, no. 1 (2007): 40-68.

Hall, Edward. "How to Do Realistic Political Theory (and Why You Might Want To)." *European Journal of Political Theory* 16, no. 3 (2017): 283-303.

Hart, H. L. A. *The Concept of Law*. Oxford: Clarendon Press, 1961.

Jubb, Robert. "Recover It from the Facts As We Know Them." *Journal of Moral Philosophy* 13, no. 1 (2016): 77-99.

King, Martin Luther, Jr. "The Ethical Demands for Integration." In *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King Jr.*, edited by James Melvin Washington, 117-125. San Francisco, CA: Harper Collins, 1991).

López-Guerra, Claudio. "Should Expatriates Vote?" *The Journal of Political Philosophy* 13, no. 2 (2005): 216-234.

Margalit, Avishai, and Joseph Raz. "National Self-Determination." *The Journal of Philosophy* 87, no. 9 (1990): 439-461.

Miller, David. "Democracy's Domain." *Philosophy & Public Affairs* 37, no. 3 (2009): 201-228.

Müller, Herta. *The Hunger Angel*. Translated by Philip Boehm. London: Portobello Books, 2013.

Nagel, Thomas. *Mortal Questions*. Cambridge: Cambridge University Press, 1991.

Owen, David. "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights." *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 641-663.

Rawls, John. *The Law of Peoples*. Cambridge, MA: Harvard University Press, 1999.
——. *A Theory of Justice*. Revised edition. Cambridge, MA: Belknap Press, 1999.

Rossi, Enzo. "Facts, Principles, and (Real) Politics." *Ethical Theory and Moral Practice* 19, no. 2 (2016): 505-520.

Rubio-Marín, Ruth. *Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States*. Cambridge: Cambridge University Press, 2000.

Shapiro, Ian. *The Moral Foundations of Politics*. New Haven, CT: Yale University Press, 2003.

Singer, Peter. "Speciesism and Moral Status." *Metaphilosophy* 40, no. 3-4 (2009): 567–581.

Sleat, Matt. *Liberal Realism: A Realist Theory of Liberal Politics.* Manchester: Manchester University Press, 2013.
——. "Realism, Liberalism and Non-Ideal Theory Or, Are there Two Ways to Do Realistic Political Theory?" *Political Studies* 64, no. 1 (2016): 27-41.

Song, Sarah. "The Boundary Problem in Democratic Theory: Why the Demos Should be Bounded by the State." *International Theory* 4, no. 1 (2012): 39–68.

Stemplowska, Zofia, and Adam Swift. "Ideal and Nonideal Theory." In *The Oxford Handbook of Political Philosophy*, edited by David Estlund, 373-389. Oxford: Oxford University Press, 2012.

Stilz, Anna. "Occupancy Rights and the Wrong of Removal," *Philosophy & Public Affairs* 41, no. 4 (2013): 324-356.
——. "Settlement, Expulsion and Return," *Politics, Philosophy & Economics* 16, no. 4 (2017): 351-374.

Valentini, Laura. "Ideal vs. Non-ideal Theory: A Conceptual Map." *Philosophy Compass* 7, no. 9 (2012): 654-664.

Waldron, Jeremy. *One Another's Equals: The Basis of Human Equality*. Cambridge, MA: Belknap Press, 2017.

Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York, NY: Basic Books, 1983.

Whelan, Frederick G. "Prologue: Democratic Theory and the Boundary Problem." In *Liberal Democracy, Nomos 25*, edited by J. Roland Pennock and John W. Chapman, 13-47. New York, NY: New York University Press, 1983.

Williams, Bernard. *Problems of the Self : Philosophical Papers, 1956-1972*. Cambridge: Cambridge University Press, 1973.
——. *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, edited by Geoffrey Hawthorn. Princeton, NJ: Princeton University Press, 2005.

Ypi, Lea. "What's Wrong with Colonialism." *Philosophy & Public Affairs* 41, no. 2 (2013): 158-191.

Narrow Possibilism about Democratic Enfranchisement

Proportionality, Risk, and Fair Political Equality

Abstract: As Goodin and others have argued, the all-affected principle (AAP) is best understood in possibilist, rather than actualist, terms: all persons who are possibly affected by a democratic decision have the right to participate in that decision. Possibilism is attractive because it accommodates the intuition that although a person may not actually end up being affected by a decision (depending on what that decision turns out to be), she may still bear a morally weighty risk of being affected, and that risk itself may be sufficient for justifying democratic enfranchisement. But in spite of this advantage, the currently existing version of possibilism is not the most plausible version of AAP. An unconstrained ('wide') possibilist account is consistent with the view—although it does not necessarily require it—that all persons who are sufficiently affected to varying degrees beyond a certain threshold ought to be enfranchised in an equal way: the account allows for unfairly treating unlike cases alike. I argue that AAP supporters ought to endorse a modified version of possibilism that retains the attractive features of wide possibilism, while explicitly building constraints into the account which block possibilism's compatibility with unfair implications. I call my view 'narrow possibilism': the view that each person who is sufficiently affected beyond a certain threshold ought to be enfranchised in a way that is *proportionate* to her respective risk of being affected. While narrow possibilism demands equal concern for the interests of unequally-but-relevantly affected persons, it does not demand the conferral of participation rights that are equal in content and scope. One might worry that proportionate enfranchisement in accordance with narrow possibilism violates standard notions of 'one person—one vote' political equality, and that this constitutes a decisive reason for rejecting narrow possibilism. But, as I argue here, narrow possibilism is not in fact incompatible with the standard view. Rather, it simply denies that standard political equality is applicable to cases of unequal affectedness: fairness requires conferring equal democratic participation rights to equally affected persons, *and* it requires conferring unequal democratic participation rights to unequally (but nevertheless relevantly) affected persons in proportion to the moral weight of their respective risk of being affected.

[W]e could try to find a decision procedure that gives people power in proportion to their stake in any particular decision, for instance by giving some more votes than others. This path leads into a morass of problems.[1]

One of the most controversial and interesting recent attempts to solve the democratic boundary problem (the question of who has participation rights in a given demos, and why) is a principle that disentangles access to democratic participation rights completely from citizenship: the All-Affected Principle (AAP), according to which each citizen or non-citizen whose morally weighty interests are affected by the decisions of a demos has participation rights in that demos.

Robert Goodin has proposed an influential—and radically inclusionist—version of the AAP, according to which not only every person who is actually affected right now by the decisions of a demos has participation rights, but also every person who is possibly affected.[2] This possibilist version of the AAP provides an alternative to actualist accounts,[3] which are—in my view correctly—considered both empirically infeasible and morally implausible by many. Possibilism is attractive because it takes seriously the idea that although a person may not actually end up being affected by a decision depending on what the outcome of that decision turns out to be, she may still bear a morally relevant risk of being affected, and that it would be wrong not to enfranchise

[1] David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 216-217.

[2] Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 40-68.

[3] Most actualists do not explicitly state that their accounts are actualist, but the way in which they are presented give us strong reasons to think that they are indeed actualist accounts. For accounts that I would consider actualist see, for example, Sarah Fine, "Democracy, Citizenship and the Bits in Between," *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 623-640, and Ian Shapiro, *The Moral Foundations of Politics* (New Haven, CT: Yale University Press, 2003).

her whenever this is the case. As Goodin argues, possibilism is the most (morally) desirable option for democratic enfranchisement in accordance with AAP,[4] although—like the actualist AAP—it also faces serious feasibility issues. This claim is interesting because it is widely shared even amongst AAP sceptics: many critical participants in the debate on the democratic boundary problem actually agree that ideally, participation rights should be distributed to everyone whose interests are affected in a morally significant way.[5] Most of the substantive disagreement in the debate focuses on the question whether this is realisable politically, and if not, whether this means that the underlying principle—the ideal of possibilist enfranchisement—should be abandoned altogether. Possibilists like Goodin argue that it should not: in their view, the principle is still the most plausible option ideally speaking. They conclude that when it comes to the appropriate realisation of the principle, real-world institutions should approximate it via ex post compensation, or via mechanisms of representation instead of participation.

In this paper, I defend the view that while it is true that possibilism is more plausible than competing actualist accounts, the version of possibilism that currently exists in the philosophical debate is *not* in fact the most plausible ideal principle overall for distributing participation rights. Barring non-ideal feasibility issues, the central problem with the kind of possibilism defended by Goodin is that, unless it is explicitly accompanied by constraining principles, possibilism is compatible with the view (although it does not necessarily require

[4] "If (as I believe to be the case) 'the all affected interests' principle is *the best principled basis* upon which to constitute the demos, and if (as I have argued) *the best interpretation of that principle is the expansive 'possibilist' form*, then it does indeed provide good grounds for thinking that (at least in principle) we should give virtually everyone a vote on virtually everything in the world." Goodin, "Enfranchising All Affected Interests," 64 [emphases added].

[5] See, for instance, Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," in *Liberal Democracy*, *Nomos 25*, eds. J. Roland Pennock and John W. Chapman (New York, NY: New York University Press, 1983), 16. See also Robert A. Dahl, *After the Revolution: Authority in a Good Society*, revised edition (New Haven, CT: Yale University Press, 1990), 49: "[t]he Principle of Affected Interests is very likely the best general principle of inclusion that you are likely to find."

it) that each person who is sufficiently affected to *different* degrees beyond a certain threshold ought to be enfranchised in an *equal* way. Call this view 'wide possibilism'. While wide possibilism is plausible in cases where persons are affected roughly equally, it cannot respond adequately to cases in which a set of persons is relevantly affected beyond a certain threshold, but unequally so. In this latter case, unconstrained wide possibilism allows treating unlike cases alike, which is unfair. I argue that AAP supporters ought to endorse a modified version of possibilism that retains the attractive features of wide possibilism, while explicitly introducing constraints that preclude possibilism from being applied in an unfair way. I call this view 'narrow possibilism': the view that each person who is sufficiently affected beyond a certain threshold ought to be enfranchised in a way that is *fair* in the sense that it is *proportionate* to her respective risk of being affected. While narrow possibilism demands equal concern for the interests of unequally-but-relevantly affected persons, it does not demand the conferral of participation rights equal in content and scope.

I begin developing this argument by explaining why unconstrained ('wide') possibilism is compatible with an unfair ex ante distribution of participation rights on an ideal theory level (section I). I argue that the unfairness consists in the fact that wide possibilism is consistent with the conferral of the *same* kinds of rights for persons who bear morally significant *different* levels of risk of being affected.

Subsequently, in section II, I argue that if we accept the claim that possibilism ought not to allow for *unfair* ex ante distributions of participation rights, we should also accept the claim that it can only do so if it demands a *proportionate* distribution of rights. More specifically, I defend the view that, while there are strong reasons to favour possibilism over competing versions of AAP, we should endorse possibilism only if it is able to integrate an explicit requirement to distribute participation rights *fairly* to all persons who pass the

initial threshold of having morally weighty affected interests. Variations above that threshold—that is, how *strong* participation rights are in comparison to the participation rights of others, and what *kinds* of participation rights are being conferred—must be justified internally within a possibilist framework in order to avoid some of the counterintuitive implications of wide possibilism.

In section III, I discuss why the risk of one's morally significant interests being affected by the decisions of a polity has moral weight in the context of AAP—even if a risk of being affected does not actually eventuate, and even if the risk bearer would not be *adversely* affected by a decision. Specifically, I argue that considering how risk impositions affect morally significant interests involves more complex moral considerations than a mere evaluation of probability. For that reason, the appropriate formula for measuring and ranking the moral weight of risk impositions is to consider both probability and severity. Here, I draw on the emerging debate on the ethics of risk in order to show how the concept of risk is undertheorised in the debate on democratic theory. By connecting these two debates, I argue that a plausible possibilist account of democratic enfranchisement must rely on a clear analysis of risk in order to articulate what sort of rights distribution would be proportionate.

In section IV, I introduce three criteria for evaluating the moral weight of different kinds of risk impositions. While risk is a useful concept for determining fair and proportionate rights distributions under the narrow possibilist framework, it cannot be used as a simple aggregative tool, because the moral weight of risk impositions is influenced by a range of additional variables that complicate the straightforward probability/severity calculus introduced before. I conclude that acknowledging these nuances may render narrow possibilism harder to implement in practice. The added complexity is nevertheless useful because it clarifies what a truly proportionate rights distribution would ideally look like.

Lastly, I outline the implications of narrow possibilism for different models of political equality in section V. Here, I address the potential worry that proportionate enfranchisement in accordance with narrow possibilism violates standard notions of 'one person—one vote' political equality, which reject proportionate enfranchisement. I argue that this in itself is not a decisive reason to abandon the narrow possibilist version of AAP. Narrow possibilism is not in fact incompatible with standard political equality (SPE)—rather, it simply denies that strict political equality is applicable to cases of unequal affectedness. This claim is part of a broader conception of *Fair Political Equality* (FPE): fairness requires conferring equal rights of democratic participation, compatible with SPE, to people who bear an equal risk of being affected, *and* it requires conferring unequal rights of democratic participation to unequally-but-relevantly affected people in proportion to the extent to which they bear a risk of being affected.

I. Actualism, Possibilism, and the Problem of Risk

Defenders of the actualist version of the AAP are committed to the view that participation rights ought to be accorded only to those who actually end up being affected by a decision. One reason to restrict AAP to its actualist version is that there are serious epistemic challenges attached to the project of taking possibly affected interests into account, and to grant participation rights on that basis: often, we cannot be certain about who will actually be affected by a given democratic decision, and if so, to what extent. Hence, it seems more plausible to evaluate relevant affectedness ex post: actualists include only those interests as relevant for democratic enfranchisement which have already been affected. But this kind of ex post reasoning gives rise to a circularity problem. As Whelan puts it,

> in many cases [...] the question of who is affected by a given law or policy depends on which law or policy is enacted from among the available alternatives; [...] [t]hus to say that those who will be affected by a given decision are the ones who should participate in making it is to attempt to [...] propose what is a logical as well as procedural impossibility.[6]

To avoid this kind of circularity, possibilists rely on ex ante judgments, which include everyone who is possibly affected by a particular decision.[7] Of course, the aforementioned epistemic challenges remain, and possibilists have to grapple with them.[8]

Let us turn to the question what kinds of problems are *unique* to actualism. What about persons who will *foreseeably* be affected, but who have so far never been affected, and who are not part of an existing constituency of reliably and similarly affected holders of roughly equal stakes?[9] Contemporary democracies face this problem increasingly often: global migration and trade, as well as increasingly entrenched—and potentially conflicting—systems of trans- and supranational jurisdiction, generate *latent* democratic constituencies.[10]

---

[6] Whelan, "Prologue," 17.

[7] For discussion of my stance on the circularity objection to different versions of AAP, see "What AAP Is, and How (Not) to Fight It".

[8] I will argue later that possibilists can only grapple with these challenges adequately by building a commitment to proportionality into their account.

[9] For discussion of this issue, see Shapiro, *The Moral Foundations of Politics*, 221-222; Archon Fung, "The Principle of Affected Interests and Inclusion in Democratic Governance," *Representation: Elections and Beyond*, eds. Jack H. Nagel and Rogers M. Smith (Philadelphia, PA: University of Pennsylvania Press, 2013), 251-254. Christiano also discusses this problem, but acknowledges that whenever we do not find reliably equal stakes, equal rights distributions would be unfair: Thomas Christiano, "A Democratic Theory of Territory and Some Puzzles About Global Democracy," *Journal of Social Philosophy* 37, no. 1 (2006): 101. However, unlike me, Christiano seems to see the fact that stakes are often unequal beyond the boundaries of the nation state as a reason to *reject* AAP: see Thomas Christiano, *The Constitution of Equality: Democratic Authority And Its Limits* (Oxford: Oxford University Press, 2008), 83. In my view, a rejection of AAP on these grounds is premature. First, we must determine if it is possible to construct a version of AAP that accounts for the empirical reality of transnationally distributed unequal stakes in a fair way; and if so, we do not have a reason to reject AAP on these grounds alone.

[10] On latent constituencies in the context of democratic exclusion, see Mark E. Warren, "Citizen Participation and Democratic Deficits: Considerations from the Perspective of Democratic Theory," in *Activating the Citizen: Dilemmas of Participation in Europe and Canada*, eds. Joan DeBardeleben and Jon H. Pammett (Basingstoke: Palgrave Macmillan, 2009), 17-40.

These latent constituencies may simply not map onto the established model of states as permanently bounded constituencies in which every member is reliably affected in roughly the same way, and they are more often than not characterised by significantly unequal stakes in particular democratic decisions. Consider now the following case:

> ***Muddy Waters***: Demos A typically does not actually affect persons in its neighbouring demos B. So far, A is a closed constituency of affected interest-holders, and has thus been justified in not enfranchising persons in B. But now, A is planning to adopt a new environmental policy, which it *knows* will foreseeably affect persons in B: the policy will pollute B's rivers. The interests of persons living in B will therefore be affected by an increased risk of harm related to pollution. A chooses to implement the policy without enfranchising persons from B, because persons in B are not *actually* affected by the consequences of that decision—yet. A will, however, consider enfranchising them once they are indeed affected by the effects of the new policy.

Arguably, persons in A and B form, for the first time, a new latent constituency with respect to the decision to implement the new policy. Strict actualists must agree that Muddy Waters is morally unproblematic: after all, persons in B are not actually affected yet. From an actualist perspective, enfranchising them afterwards, once the risk of harm—or the actual harm—has already eventuated, is sufficient. But there is something deeply counterintuitive to this view: is ex post enfranchisement of foreseeably affected persons not too little, too late?[11] If we take seriously the general view that affected interests carry significant moral weight, and that they carry *enough* moral weight to justify rights as important and powerful as democratic participation rights because affected interests render people vulnerable to the outcomes of democratic decisions,

[11] Many contributors to the debate on the AAP discuss the issue of appropriate ex post compensation at t2 if enfranchisement is not available at t1. While that is an important debate, I wish to bracket it here, because I do not think that we need to take it as given that enfranchisement is *impossible* in the cases under discussion here. In fact, the latter claim is exactly the premise which I wish to challenge at this juncture.

then taking the stance that we simply have to *wait* until people's interests are actually affected seems to fail to live up to the spirit of the AAP.

This seems particularly objectionable whenever decisions affect the morally relevant interests of persons not only foreseeably, but also deliberately. But the point also applies to foreseeably, but not deliberately affected persons. Consider

> ***Oops, Muddy Waters***: A chooses to implement the same policy, and could reasonably foresee that persons in B will be affected by that policy if they were to investigate potential effects on B. Unfortunately, the people in A have chosen to elect negligent decision-makers, who investigate the potential effects of the policy on A only, but do not bother to consult available evidence of potential effects beyond A (i.e. on B). While the decision-makers would not deliberately impose harm on persons in B, they do end up doing so. As it turns out, the policy affects people in B. Once A notices these effects of the policy, A is happy to enfranchise persons in B once their interests are actually affected by the policy.

Again, strict actualists cannot explain why there is anything objectionable about not enfranchising persons in B at t1, when the decision to implement the environmental policy is about to be taken, and instead simply waiting until t2, when the decision has been made and when its effects are being felt. But we do seem to be missing something important when 'actual affectedness' is the only relevant factor for determining who has the right to participate in a decision, and who does not. Again—the 'just wait and see' attitude implied by actualism, which allows for the democratic exclusion of the holders of affected interests in B purely because of the fact that they are not affected yet, is counterintuitive. The fact that A did not deliberately impose any harms is not decisive here, because the risk of harm was reasonably foreseeable. If we could reasonably foresee that people will actually be affected, it seems morally wrong to wait to give them the opportunity to have a say in how or to what extent they will be affected until they have *actually* been affected already. Of course,

enfranchisement would not necessarily help prevent their future harm. But it would express a public commitment to the view that all relevantly affected persons are owed equal concern, irrespective of the time-slice in which they are liable to be harmed, and that they are therefore all eligible for receiving a chance to participate in democratic decisions in proportion to their respective stakes.

In light of the problems with actualism's 'wait and see' attitude, possibilism seems like a more promising contender for the most plausible ideal principle of democratic enfranchisement: unlike actualists, possibilists can account for the important issue of foreseeably affected persons and thus avoid actualism's counterintuitive implications. Therefore, possibilism does not make any undue restrictions regarding the question which interest-holders ought to be eligible for ex ante enfranchisement.

But what possibilism does not tell us—at least not by itself, in its general formulation—is how, and to what extent, we ought to compare and evaluate different claims of enfranchisement by people who are possibly affected. Why are such comparisons important? Consider a case where Anna and Beth are both possibly affected by a decision to φ, but we know that the chance that Anna will actually be affected by φ-ing is very high (say, 90%), while the probability that Beth will be actually affected is extremely low (say, 1%). As possibilists, we do not wish to exclude Beth from the group of potential rights-holders, given that her morally relevant interests are possibly affected. Doing so helps us avoid the counterintuitive actualist conclusion outlined above, namely the view that we ought to wait and see if Beth actually does end up being affected. So far, so good—but committing ourselves to possibilism still does not tell us what kinds of participation rights we ought to confer to Anna and Beth, and whether Anna perhaps ought to get weightier, more expansive participation rights, in proportion to her risk of being affected. Intuitively, this latter question

seems important—but the kind of ('wide') possibilism developed by Goodin and others does not help us address this question directly.[12]

Of course, defenders of wide possibilism may argue that the question regarding the proper content, scope, and weight of participation rights conferred to possibly affected persons cannot be resolved within possibilism itself. We might need additional principles—such as principles of distributive justice, perhaps—to address that question. If that is the case, then possibilism can remain wide in the sense that it simply determines the set of persons who are eligible in principle as holders of participation rights—*any* kinds of participation rights. In this sense, wide possibilism is a threshold principle: any person who passes that threshold (because her morally relevant interests are possibly affected) ought to be enfranchised. Determining what happens once that threshold is passed—whether we ought to have an egalitarian distribution of rights, or perhaps a prioritarian one which distributes rights proportionately—is a normative task for a separate principle.

However, I am not convinced that this move is the best response possibilists can give. If wide possibilists outsource the question of how we should distribute concrete participation rights to moral principles *external* to possibilism, then wide possibilism itself seems to be completely insensitive to proportionality. But that would create a tension between wide possibilism and the original aims of AAP: ensuring procedural fairness combined with a commitment to the principle of equal concern. After all, one of the key reasons for why one might want to endorse AAP in the first place, both in its actualist or possibilist forms, is because AAP is intuitively compatible with a scalar notion of democratic enfranchisement: the view that if you have a *higher* stake in a decision, you ought to get *more* of a say in it than others. More precisely,

[12] I will elaborate on how best to address these issues in sections II-III.

AAP supporters might say that if you find yourself in a position of distinctive *vulnerability* because a decision that affects your morally weighty interests is going to be made, and if having the right to participate in that decision helps you democratically enforce the consideration of your interests going forward, then we ought to confer participation rights to you. But if we simultaneously were to confer the *same* extent of participation rights to someone who is much less vulnerable to the potential outcomes of that decision, but who is nevertheless actually or possibly affected, then it may become impossible for you to enforce the protection of your interests in a meaningful way. Having democratic participation rights that are equal in scope to those of the less vulnerable disproportionately, and thus unfairly, disadvantages you. Thus, if affected interests justify democratic participation rights, then the extent of participation rights ought to be proportionate to the extent of affectedness. Of course, although AAP is intuitively scalar in this way, endorsing proportionate enfranchisement does not force AAP supporters to abandon the AAP's commitment to *considering* relevantly affected interests equally. Rather, it supports it: a plausible version of AAP must remain committed to giving equal concern to all relevantly affected persons, and it is exactly *because* we give equal concern to everyone that we come to realise that when we insist on equal treatment—giving everyone the *same* set of rights—regardless of important differences between persons, we actually undermine the goal of treating everyone as an equal.[13] This can only be done if we commit to a notion of

[13] I elaborate on this thought later. Brighouse and Fleurbaey have made an analogous point about the compatibility of proportionate enfranchisement with the principle of equal *respect*: "[t]he proportionality principle [...] is actually a better implementation of the idea of equal respect than egalitarian rules. Let us take for granted that the obligation of equal respect supports an obligation to ensure that the institutions we share with others are basically democratic and give equal consideration to their interests. The standard argument that goes from equal respect to equal power generally considers a context in which, implicitly, stakes are roughly equal, as for general issues of political organization. In situations where stakes are blatantly unequal, the argument becomes much less compelling. It is then an equal allocation of power which appears disrespectful to those who are thereby unduly submitted to the will of the unconcerned or the less concerned." Harry Brighouse and Marc Fleurbaey, "Democracy and Proportionality," *The Journal of Political Philosophy* 18, no. 2 (2010): 141.

procedural fairness: we cannot determine how to translate the principle of equal concern into a policy of enfranchisement that treats all affected persons as equals without having a clear, procedurally fair account of measuring the *extent* to which these persons are affected.

Can wide possibilists accommodate these thoughts? To be clear, I am not claiming that wide possibilism is *incompatible* with a proportionate distribution of participation rights. On the contrary: wide possibilism is indeed compatible with a proportionate distribution of rights to all persons who pass the initial threshold of having morally relevant affected interests. But it is also compatible with a distribution of equal participation rights to persons who are all possibly affected, but in a drastically unequal way. Wide possibilism does not require, but does *permit*, treating unlike cases alike. Treating unlike cases alike in this way is *unfair*. My claim in this paper is that, contrary to what possibilists have argued, *wide possibilism* is not in fact the most plausible version of AAP (at least on an ideal level) if it allows for unfair distributions of participation rights.

If we do want to hold on to the idea—and I think that we should—that a form of possibilism is still in principle the most promising candidate for a plausible ideal version of AAP, then we must reconsider wide possibilism specifically. We need to identify a fair, proportionate version of possibilism—call such a view 'narrow possibilism'. Instead of outsourcing the problems outlined above, a more plausible version of possibilism should develop an internal account of what happens above the possibilist threshold: who gets what kinds of participation rights in proportion to their risk of being affected, and in comparison to other holders of possibly affected interests? Integrating this concern for proportionality directly into possibilism enables possibilists to eschew the potential unfair implications of the wide possibilist account as it currently stands.

II. Fairness and Proportionality

1. Fairness

The view that fairness is a key desideratum when it comes to the ideal distribution of material benefits and burdens is well-established in contemporary liberal political philosophy. What I suggest here is that fairness is *also* a key desideratum for any plausible principle concerning the distribution of democratic participation rights: it would be counterintuitive to articulate an ideal ex ante distribution of participation rights that allows for an unfair rights distribution. The conception of fairness that I have in mind here is fairness as *procedural*, not substantive, justice: every holder of affected interests is given equal consideration in the sense that all affected persons are in principle eligible to have democratic participation rights. Above that threshold, democratic participation rights are allocated in a way that treats like cases alike.[14] Here, I endorse Broome's influential account of fairness:

> [w]hat, then, *does* fairness require? It requires, I suggest, that *claims should be satisfied in proportion to their strength*. [...] equal claims require equal satisfaction, [...] stronger claims require more satisfaction than weaker ones, and [...] weaker claims require some satisfaction. Weaker claims must not simply be overridden by stronger ones. This suggestion merely extends and tightens up a principle that is often taken for granted: that people identically situated should be treated identically.[15]

If possibilism can be modified in such a way that unfair implications are avoided, this gives us a *prima facie* reason to endorse the modified version (narrow possibilism) over the original version (wide possibilism). Of course, the question of whether such a modified version is also more plausible than the

[14] For what is arguably the most influential account of the like cases maxim in contemporary legal and political philosophy, see H. L. A. Hart, *The Concept of Law*, third edition (Oxford: Oxford University Press, 2012), 155-184.
[15] John Broome, "Fairness," *Proceedings of the Aristotelian Society* 91, no. 1 (1990): 95.

original version *all things considered* depends on whether such modifications are costly for the theory in other ways that are not related to procedural fairness. It may, for example, be the case that narrow possibilism is harder to realise in practice, or that it is more likely to produce bad—though not necessarily procedurally unfair—outcomes. But even if that were the case, it would not constitute a reason to reject my core claim in this paper that narrow possibilism is procedurally fair while wide possibilism is not (always) procedurally fair. It is not my aim in this paper to develop a *full* defence of narrow possibilism as the best *all-things-considered* principle of democratic enfranchisement, for that kind of defence would require articulating narrow possibilism's stance towards non-proceduralist concerns, such as instrumentalist justifications of democratic enfranchisement. This would be necessary because narrow possibilism's commitment to procedural fairness tells us nothing about whether it is a *purely* proceduralist justification of democratic enfranchisement, or whether narrow possibilism implies a *moderate* proceduralism of the kind that Christiano articulates,[16] thus accommodating some instrumentalist concerns without collapsing into pure instrumentalism.[17]

Of course, even if one accepts the point that we have a prima facie reason to endorse narrow possibilism if narrow possibilism successfully avoids procedural unfairness while wide possibilism does not, one may wonder why it is so important to build fairness *directly into* narrow possibilism, and indeed any other plausible account of democratic enfranchisement: why do democratic enfranchisement and fairness need to come as a package deal?

> **Only As A Package Deal**: Procedural fairness must be built into any plausible principle of democratic enfranchisement because

[16] Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy* 12, no. 3 (2004): 266-290.
[17] As I argue in "What AAP Is, and How (Not) to Fight It", the most plausible version of AAP is indeed the one that is committed to moderate proceduralism.

> compatibility with unfairness would undermine the principle of equal concern.

In other words, wide possibilists may ask: why can we not say that democratic principles have to be traded off against independent considerations of procedural fairness, the latter of which may sometimes come into conflict with these democratic principles? Technically, wide possibilists could stick to their account, and then simply endorse external principles that help constrain the account in the event that it delivers unfair results. But outsourcing does not *guarantee* that democratic participation rights will be distributed fairly and proportionately *in all possible cases*: it only ensures a fair and proportionate rights distribution in which we *actually* apply possibilism. More troublingly, the outsourcing strategy involves simply *accepting* that wide possibilism is compatible with unfairness, while at the same time endorsing fairness-related constraints. But why would any principle that aspires to be the more plausible ideal articulation of a view about democratic enfranchisement rely on accepting this possibility? The more appealing alternative strategy would be to state that any distribution of democratic participation rights must live up to a minimal fairness requirement in all cases, and this is exactly what narrow possibilism does.

Aside from this critical point, there is also a more constructive point to be made: even if outsourcing was not objectionable for the reason mentioned above, the problem is that wide possibilists simply have not articulated yet what sorts of constraints we might endorse in combination with wide possibilism. This is an urgent gap in the literature on possibilism. However, wide possibilism's failure to address this gap does not necessarily mean, of course, that wide possibilists must *reject* any alternative account—such as my own—that constrains possibilism in order to take the gap into account: a wide possibilist may well end up agreeing, after all, that she ought to endorse the constraints

concerning fairness and proportionality that I articulate in this paper. In that sense, my contribution here is not only critical, but also serves the constructive aim of highlighting a gap in wide possibilism in order to refine and strengthen the possibilist position more generally.

Before moving on to consider why, and in what sense, a *proportionate* distribution of rights would avoid *unfairness,* it helps to consider what such a distribution of democratic participation rights would *not* do.

First, distributing participation rights proportionally ex ante does not guarantee a fair distribution of ex post political *impact*, nor does it guarantee a fair distribution of ex post political *influence*. Drawing on Dworkin's account of impact and influence in the context of political equality, I define 'impact' as "the difference [a person] can make, just on [her] own, by voting for or choosing one decision rather than another", and 'influence' as "the difference [a person] can make not just on [her] own but also by leading or inducing others to believe or vote or choose as [she] does".[18] Even if we implement a fair ex ante distribution of democratic participation rights perfectly, that distribution does not on its own impose any constraints on how rights-holders decide to use, or not use, their rights. Therefore, individual impact will not necessarily be fair and proportionate because rights-holders are free not to use their democratic participation rights. Furthermore, whenever majoritarian decision-making procedures are used, the individual impact of rights-holders who do exercise their democratic participation rights may not be reflected proportionately in the actual outcomes of decisions if they end up being

[18] Ronald Dworkin, "What Is Equality? Part 4: Political Equality," in *Philosophy and Democracy: An Anthology*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003), 122. For a more extensive overview over different factors that could enable a person to induce others to use their democratic participation rights in a certain way, see Brighouse and Fleurbaey, "Democracy and Proportionality," 147, where they list, amongst others, "charisma and reputation", "political skill", "manipulative skill", the strength of associations and special interest groups, and the "ability to give [persuasive] reasons".

overruled by individual rights-holders who are part of a majority. Influence, in turn, is not necessarily fair and proportionate in spite of a proportionate ex ante distribution of democratic participation rights because of the nature of deliberative processes which typically precede formal decision-making via the exercise of participatory rights. During the initial stage of public deliberation, individual rights-holders or groups of rights-holders may choose to coordinate in an effort to influence public opinion, and thus to persuade other rights-holders to use their own democratic participation rights in a particular way. This is in itself not an objectionable feature of democratic life—unless of course the *means* of exercising disproportionate ex post influence are themselves objectionable, like bribery, gerrymandering, vote-buying, or logrolling.[19] But in any case, a plausible principle of fair ex ante enfranchisement need not at the same time regulate ex post impact and influence in a way that makes the latter fair and proportionate. Instead, if one is prepared to accept a principle of fair ex ante enfranchisement, one may also want to accept additional, and separate, principles concerning the fair distribution of ex post impact and influence. However, it would be wrong to assume that endorsing the former would *automatically* imply an endorsement of the latter.

Second, a proportionate distribution of democratic participation rights does not guarantee that the substantive *outcomes* of democratic decisions will necessarily be fair in the sense that they are substantively fair.[20] This point is different from the point about ex post impact and influence because even if the former were indeed fair, the actual decision being reached during a democratic decision-making process could still violate principles of substantive fairness. Dworkin's distinction between participatory and distributive consequences of

[19] As I show in "Criminal Disenfranchisement, Political Wrongdoing, and Affected Interests," there is a class of public wrongdoing which is primarily wrong because it undermines democratic institutions ('political wrongdoing'). I argue that criminal disenfranchisement for political wrongdoers is compatible with AAP.

[20] I develop this thought in "What AAP Is, and How (Not) to Fight It".

democratic decision processes is instructive here.[21] Fair ex post impact and influence is best classified as a participatory consequence, whereas substantive outcomes of decisions—for instance, the decision to redistribute material benefits and burdens in society in accordance with luck egalitarian principles—are best construed as a genuinely distributive consequence, which Dworkin defines as "the distinctly substantive goals of an egalitarian political process: [...] about the distribution of resources and opportunities into private ownership, about the use of collective power and resource in public programs and foreign policy, about saving and conservation".[22]

2. Proportionality

Having developed the view of procedural fairness as proportionate claims satisfaction as a key desideratum for plausible democratic enfranchisement principles, let us now turn to the question of *how* exactly narrow possibilism realises a commitment to proportionality.

Identifying a *general* proportionality principle for determining precisely which set of participation rights corresponds to the degree to which a person A's interests are affected is difficult, primarily because it is unclear whether the morally relevant interests of all affected persons, and their respective risk of being affected, are translatable into one singular metric. There are three distinct versions of this worry:

> **Incomparability**: We do not have a singular metric for the moral weight of affected interests of all risk-bearers because at least some affected interests are incomparable: we can neither reasonably say that they are more or less weighty than other interests, nor can we say that they are equally weighty.[23] But a singular metric for the moral weight of

[21] Dworkin, "What Is Equality? Part 4: Political Equality," 118-121 and 128-135.
[22] Ibid., 131.
[23] I am paraphrasing, and endorsing, Raz's well-known account of incomparability here: see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 342. There is significant philosophical debate about whether this definition covers all possible meanings of incomparability. See, for instance, Chang's account: Chang argues that a fourth criterion—

> *all* affected interests is necessary for determining what kind of overall distribution of democratic participation rights would be proportionate. Therefore, the narrow possibilist AAP cannot articulate a general principle of proportionate enfranchisement.

Consider, for instance, a person's morally weighty interest in physical health, and her morally weighty interest in meaningful social relationships. All we can say is that both interests possess some moral weight, and that they are non-trivial. But we cannot say which one is *more* important. As Chang expresses this view, "two items are incomparable if there is no positive value relation that holds between them. [...] [I]f items are incomparable, one can say what their relation is not and perhaps what their relation is to other items. But nothing can be said about what relation holds between them".[24]

This worry is reasonable. Given that some interests are incomparable, attempting to formulate a general proportionality principle[25]—that is, a principle that is supposed to apply *universally*, thus capturing all possible cases—is futile. It is plausible to think that incomparability constitutes an ineradicable problem,

parity—ought to be added, which describes cases in which a value is neither higher nor lower nor equal to another, but also not comparable. See Ruth Chang, *Making Comparisons Count* (London: Routledge, 2002), 2.

[24] Chang, *Making Comparisons Count*, 1.

[25] For a recent attempt to formulate a *general* proportionality principle regarding the democratic representation of affected interests in proportion to a person's stakes, and a subsequent defence of particular types of weighted voting, see Brighouse and Fleurbaey, "Democracy and Proportionality," 143-144: "We present a very simple theorem which illustrates this statement in a clear-cut way. Theorem: Consider a prioritarian criterion maximizing the sum of f(Ii(x)) over all i, where f is a concave function and Ii(x) measures the situation of individual i's interests with option x. Suppose that the options are ranked by application of the weighted majority rule over every pair of options, individual weights being specific to every pair of options and being computed as the absolute value of the difference in f-transformed individual interests between the two options in a pair (i.e. $|f(Ii(x))-f(Ii(y))|$ is the weight of individual i for application of the majority rule to the decision between x and y). Then, assuming that every individual always votes according to his interests, the options are ranked in agreement with the prioritarian criterion." Brighouse and Fleurbaey present this theorem as a way of avoiding a range of classic voting paradoxes, which—according to the authors—arise due to the presence of unequal stakes during majoritarian decision-making procedures. By contrast, my own argument about proportionality does not rely on any claims that proportionate enfranchisement would help avoid voting paradoxes: my position is that proportionality is a desideratum for a plausible account of democratic enfranchisement for reasons of fairness, regardless of whether it helps resolve voting paradoxes or not.

which is why no such principle will in fact be able to capture all relevant interests.

But the difficulties surrounding the task of identifying a general proportionality principle for democratic enfranchisement are not a fatal problem in the context of this paper, because my aim here is not to develop such a general principle of proportionality. Instead, we simply need a conceptual framework for making one-on-one comparisons between the affected interests that are *not* subject to the problem of incomparability. In other words, my point is simply *that* proportionality matters for fairness, and that narrow possibilism can account for proportionality in a satisfactory way—via one-on-one comparisons—whereas wide possibilism cannot. Now, we simply need a distinct concept that allows us to *translate* the relevantly affected interests that are not incomparable into a proportionate distribution of democratic participation *rights*. My aim in the rest of this paper is to show that the concept of risk plausibly fulfils this intermediary role, which is why we can construct a proportionate account without full comparability.

> **Reasonable Disagreement**: Reasonable agents may disagree about the comparative moral weight of at least some affected interests. Therefore, the narrow possibilist AAP cannot articulate a general principle of proportionate enfranchisement.

Again, I agree that this is indeed a reason to be sceptical of constructing a general proportionality principle to underpin the narrow possibilist AAP. There are multiple reasons why agents may reasonably disagree about the moral weight of affected interests. First, even if affected interests are not *in fact* incomparable, reasonable agents may perceive them as incomparable due to publicly known or unknown epistemic gaps concerning the true *nature* of at least some of those interests, or epistemic gaps concerning the *empirical conditions* in which they are affected.

Second, interests may be comparable, and reasonable agents may perceive them as comparable, but they may nevertheless disagree about which interests to prioritise. However, it is worth noting that exactly the same problem applies to non-proportionate accounts of democratic enfranchisement, which are built on the premise that democracy requires the conferral of participation rights to holders of roughly equal interests *only*. Here, reasonable disagreement is likely to arise about whether interests are in fact roughly equally affected. Therefore, reasonable disagreement constitutes a problem for any account of democratic enfranchisement that relies on claims about affected interests, not just the narrow possibilist AAP.

Consider now, finally,

> **Power Inequality**: Each contemporary democracy is characterised by pervasive inequalities of social and political power. Even if the narrow possibilist AAP articulates a plausible general proportionality principle, elites are likely to distort any proportionality ranking in their favour.

The corrosive effects of power inequalities on the integrity of democratic institutions, and the proper implementation of the narrow possibilist AAP, is indeed a significant worry. But it is not my goal in this paper to offer a *complete* practical account of how actual democratic polities characterised by deep power inequalities can feasibly make appropriate decisions (despite such inequalities) about which persons and groups should get more of a democratic say on the grounds that they are disproportionately highly affected. Nevertheless, it is worth pointing out at this juncture that the worry about power inequality offers strong reasons in *favour* of adopting a principle such as the narrow possibilist AAP, since narrow possibilism would offer the normative resources to *condemn* unfair implementations of proportionate enfranchisement mechanisms.

Even without a *general* proportionality principle, proportionate rights distributions can be achieved or approximated institutionally in different ways: for instance, one could distribute participation rights with different *weight*, or distribute *veto* rights. Such arrangements would imply a quantitative conception of proportionate enfranchisement: if one is more strongly affected, one gets the opportunity to have a stronger impact by exercising a weightier right.

Of course, plural voting has a deeply troubling historical track record, given that it was implemented in way that reinforced classism, racism, and sexism. But, as Fleurbaey and Brighouse point out, "[Mill's scheme of] plural voting is indeed unacceptable. Obviously, however, the fact that one scheme of plural voting is unacceptable does not imply that all such schemes must be rejected".[26] I agree with this point, because I think that it is possible for proportionate models of enfranchisement to avoid reinforcing existing injustices, and instead to combat them. The relevant challenge is to determine which social groups ought to have proportionately stronger participation rights—and clearly, it should not (only, or primarily) be the members of groups who are *already* advantaged in society, and particularly not those who are *unfairly* advantaged—such as wealthy, educated, male land-owners on the Millian model.[27]

[26] Brighouse and Fleurbaey, "Democracy and Proportionality," 141.

[27] For Mill's account, see John Stuart Mill, "Of the Extension of the Suffrage," in John Stuart Mill, *Considerations on Representative Government*, chapter 8 (New York: Harper, 1862). One may wonder at this juncture what the narrow possibilist AAP would say about a privileged, non-vulnerable minority which seems genuinely more strongly affected by a particular decision than less advantaged social groups. Consider, for instance, a policy proposal regarding tax cuts for billionaires. Proportionate enfranchisement seems counterintuitive in this case. And indeed, the narrow possibilist AAP would not demand giving billionaires a proportionately stronger say in that decision because, in comparison to the less advantaged, they are not affected more strongly *in a way that makes a difference* for our proportionality considerations. While billionaires stand to benefit materially from a tax policy change in terms of the amount of money that they might gain, a tax cut would make only a *marginal* difference to their respective basic *interest in well-being*, objectively construed (see "Economic Participation Rights and the AAP" for what kinds of interests must be affected in order to trigger AAP). By contrast, AAP *would* demand a proportionately higher say for potential beneficiaries who stand to benefit not only in terms of their material resources, but whose morally weighty interests are significantly affected in a way that makes a difference for the kinds of proportionality considerations that I

Alternatively, one could also distribute concrete participation rights of *equal* weight, but as part of bundles of concrete participation rights of a different *kind* (e.g. the right to vote, the right to run for office, or the right to participate in civic associations), if such bundles are constructed in such a way that proportionality is accounted for.

Which one of these concrete models of proportionate enfranchisement is more plausible, and more compatible with widely shared notions of political equality, is a secondary question here, and I will address it in section V of this paper. My point here is simply that proportionality must be part of the ideal level of any plausible possibilist account in order to justify any of these models.

III. Risks and Affected Interests: Beyond Probabilism

If we accept the claim that a plausible version of possibilism must be sensitive to considerations of proportionality and fairness, we need to return to a careful examination of wide possibilism: to what extent does wide possibilism, as defended by Goodin, fall short of these considerations? As it turns out, Goodin does not construct his wide possibilist account *entirely* without giving any consideration to the moral importance of proportionality and fairness. Indeed, Goodin does explicitly reflect on the possibility of endorsing 'probabilism' over standard possibilism. Anticipating objections that his

discuss here. An example of this would be a group of workers earning the minimum wage who participate in a decision that aims to increase the minimum wage to account for inflation. The more general upshot here is that being *adversely* affected is neither necessary nor sufficient for democratic enfranchisement on my account: AAP is compatible with the proportionate enfranchisement of prospective *beneficiaries*, provided—amongst other things—that their interests are actually affected in a way that plausibly makes a difference for proportionality considerations. (I say 'amongst other things' because I have not commented on the additional, more specific case of *wrongful* beneficiaries here, which I discuss in all other papers. As I point out there, this is another case in which AAP does *not* demand the conferral of some or all democratic participation rights.).

standard possibilist account radically expands the demos, Goodin discusses a range of more constrained alternatives, and argues that a plausible version of probabilism would tackle "the question of whether the interest in question would actually be affected (by any of the possible decisions arising out of any of the possible agendas)".[28] This, according to Goodin, would be the only type of non-circular probabilism: probabilistic reasoning cannot be applied to other factors—such as probable outcomes or probable agendas—because the question of which outcomes and agendas are probable depends on who has democratic participation rights in the first place. He then concludes that "most of the time, we ought indeed judge that sort of issue on the basis of probabilities rather than possibilities alone".[29] This leads Goodin to explicitly endorse the probabilistic version of his account:

> [w]hen henceforth I refer to my preferred 'possibilist' version of the 'all affected interests' principle, it is to this revised version that I shall be referring [...] Membership in the demos, on that revised [probabilist] account, ought extend to every interest that would *probably* be affected by any possible decision arising out of any possible agenda.[30]

Reacting to critiques that his original possibilist account expands the demos too much, Goodin states that the revised, and more restricted probabilistic version of his account would be similarly, if not equally, expansive as the original account: "'any possible decision' and 'any possible agenda' still seem likely to expand the demos very substantially indeed".[31] That may well be true, yet I will bracket the issue of expansiveness here,[32] because I do not think that expansiveness is decisive for my central question: whether wide possibilism is fair.

[28] Goodin, "Enfranchising All Affected Interests," 61.
[29] Ibid.
[30] Ibid., 62 (footnote 45), and 61 [emphasis added].
[31] Ibid., 62.
[32] For my stance on the (ostensible) expansiveness problem, see "What AAP Is, and How (Not) to Fight It".

Goodin does not elaborate on how wide possibilism can be made responsive to different degrees of probability, yet this does not appear at first sight to be a *fatal* flaw of his account: after all, it is possible that wide possibilism could be developed further, or combined with additional principles, to account for probability, without changing core features of this account. Goodin does elaborate, however, on a feature of his account which is important for my discussion here: whether there should be a minimum threshold of possibility or probability (or some other relevant criterion) built into the account. Goodin seems to want to introduce at least a minimum bar for *possibility*: "what is or is not 'possible' for purposes of [...] my 'all possibly affected interests' principle, we ought to think in terms of some 'threshold' defined in terms of degrees of similarity in certain relevant respects to our actual world".[33]

There are many features of Goodin's account that I agree with. First, I agree with the seemingly simple insight that probability *matters* in the context of affected interests. Although Goodin only introduces the probabilistic version of wide possibilism in order to anticipate objections from expansiveness, which do not concern me here, I endorse the general view that probability is one of the factors that a plausible possibilist account ought to consider. My reasons for endorsing this claim are simply different than Goodin's: my view is that possibilism must be sensitive to probability because fairness requires it. Second, I agree that plausible versions of AAP must avoid circularity, and that relying on probabilistic reasoning concerning outcomes and agendas would indeed render the probabilist account circular, while probabilistic reasoning concerning affected interests does not. Third, I agree with the importance of a minimum threshold, though I would argue that a minimum possibility threshold is not sufficient. There must also be a non-triviality threshold: trivial

[33] Goodin, "Enfranchising All Affected Interests," 60 (footnote 39).

interests are not weighty enough to be relevant for a principle that justifies a distribution of democratic participation rights.[34]

The two central problems with Goodin's revised possibilist ('probabilist') account, however, are as follows: firstly, introducing probability-sensitivity into the account does not *necessarily* entail a proportionate distribution of democratic participation rights. As I have argued in the previous section, this means that Goodin's account would be compatible with procedural unfairness.

Secondly, and more troublingly, even if Goodin's 'probabilism' *were* to include a proportionality principle, it would not achieve fairness. Why? The risk of being affected cannot be measured exclusively with the metric of probability, because the moral *weight* of risk impositions is not determined exclusively by the likelihood of the risks eventuating. In addition, we must take into account the qualitative dimension of risk, meaning the severity of possible harms and wrongs associated with the risk of being affected by the decisions of a demos.

This claim reflects important and widely shared intuitions about the nature of risk: a very high probability of harm is not always more morally urgent than a lower probability of harm, if the magnitude of the very likely harm is much lower than the magnitude of the less likely harm. To illustrate, consider how we would weigh a 95% risk of infecting every resident of town A with the flu by transferring A's population to a flu-afflicted hurricane shelter against a 20% risk of letting A's entire population die by failing to evacuate them in the face of an imminent hurricane. Clearly, the risk with the lower probability of eventuating carries more moral weight due to its comparatively devastating

[34] I explain which interests are trivial, and which interests are relevant (and thus non-trivial) from the perspective of AAP, in "Economic Participation Rights and the All-Affected Principle".

severity, and we would be right to prioritise it over the higher-probability risk in our moral calculus: it would be deeply counterintuitive to say that the right thing to do in this case would be to avoid giving A's residents the flu by choosing not to transfer them to the hurricane shelter. As Judith Thomson put it one of the central philosophical treatments of the concept of risk to date, "What counts as a low or high risk of this or that harm is presumably a function not merely of the probability of the harm, but also of the nature of the harm. (Just as the question in what conditions it is all right to cause a harm turns not merely on the conditions, but on the nature of the harm)".[35] But an account like Goodin's, which is sensitive only to probability but not to severity, will inevitably arrive at a proportionality ranking which does not reflect this intuition: it will have to give priority to persons who bear a risk with a higher probability of eventuating in harm over those bearing risks with a lower probability, even in cases where doing so would be deeply counterintuitive.

Furthermore, two risk impositions with an *equally* high probability of eventuating may well differ qualitatively with respect to their magnitude: a person A's 30% risk of dying from cancer, for instance, is clearly more morally weighty than A's 30% risk of getting the flu. Neither risk of harm is trivial, but the potential severity of harm of the former risk imposition is more morally weighty. But a probabilist account that is probability-sensitive but not severity-sensitive cannot rank the moral weight of these two risks. Since severity of harm would not be a factor in such an account's proportionality ranking, it would unfairly equate risks of equal probability but of unequal severity.

For these two reasons, Goodin's concession that probability matters for possibilism does not save his account from being (what I call) a wide possibilist account: a version of possibilism that does not build a necessary commitment

[35] Judith Jarvis Thomson, *Rights, Restitution, and Risk: Essays in Moral Theory* (Cambridge, MA: Harvard University Press, 1986), 181.

to procedural fairness as proportionate claims satisfaction directly into the account.

So what does the better alternative look like? In order to distribute democratic participation rights fairly, narrow possibilism must proceed from a clear analysis of the concept of risk, measured—as many contributors to the debate on risk both in economics and in law have pointed out—as probability *multiplied by* severity of harm.[36] This formula does in principle allow us to calculate the respective moral weight of each risk imposition, and to place it on one and the same continuum in order to rank it.

One obvious caveat are known unknowns (and indeed, unknown unknowns) about the reasonably foreseeable probability or severity of particular risks, which cannot be included in this calculus. One might be tempted to argue that wide possibilism is superior to narrow possibilism in this regard: wide possibilism is able to include (un-)known unknowns if we can be reasonably certain, at least, that these (un-)known unknowns are *possible*.[37] But this commits wide possibilism to trading off interests which are certainly or probably at risk of being affected against potentially ultimately insignificant (un-)known unknowns. This is unfair, because it implies treating (un-)known unknowns *as if* they were certain. In response, wide possibilists may argue that it is also unfair to simply bracket (un-)known unknowns as if they do not exist. But this is not precisely what narrow possibilism is committed to: (un-)known

[36] For some of the most significant conceptual foundations of the debate on risk in economics (particularly decision theory), see Frank H. Knight, *Risk, Uncertainty and Profit* (Boston: Houghton Mifflin, 1921); Maurice Allais, "Le Comportement de l'Homme Rationnel devant le Risque: Critique des Postulats et Axiomes de l'Ecole Américaine", *Econometrica* 21, no. 4 (1953): 503-546. For some of the major contributions to the conceptual debate on risk in law (particularly in the philosophy of tort law), see Guido Calabresi, "Some Thoughts on Risk Distribution and the Law of Torts," *The Yale Law Journal* 70, no. 4 (1961): 499-553; John Gardner, "What is Tort Law For? Part 2: The Place of Distributive Justice," in *Philosophical Foundations of the Law of Torts*, ed. John Oberdiek (Oxford: Oxford University Press, 2014), 335-353.

[37] Goodin does not consider this point explicitly, but it is a potential worry that flows naturally from the wide possibilist position.

unknowns are simply a *defined blind spot* of narrow possibilism, and not a set of ostensibly irrelevant cases that the account simply ignores. Hence, our inability to measure and compare (un-)known unknowns is not a reason to be sceptical of narrow possibilism, for the alternative is even worse.

One may now wonder whether there is not a contradiction between my earlier claim (in section II) that we need not take on the difficult, and perhaps impossible, task of identifying a *general* proportionality principle, and my claim here that we can measure and rank risks with the general probability/severity formula. There is not. Having a general formula for calculating the moral weight of risks is but the first step in constructing a principle of proportionate enfranchisement. Taking this first step does not automatically imply that we also need a general principle of proportionality. Such a general principle would require additional claims about how to *translate* our earlier risk ranking directly into particular sets of democratic participation rights *in all possible cases*. As I have clarified in section II, this is not always possible, because this issue is too complex to fit into a one-size-fits-all account of proportionality.

In sum, possibilism must consider risk *first* before coming up with a plausible distribution of democratic participation rights. This approach may seem somewhat unusual. Although there is a rapidly growing philosophical literature on the ethics of risk in general,[38] there is barely any engagement between that literature and the literature on democratic theory, and in

[38] This subject has recently generated discussion both in applied ethics and in Bayesian epistemology. For contributions to the former category, see Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Belknap Press, 2011); Johann Frick, "Contractualism and Social Risk," *Philosophy & Public Affairs* 43, no. 3 (2015): 175-223; Sven Ove Hansson, "The Harmful Influence of Decision Theory on Ethics," *Ethical Theory and Moral Practice*, 13, no. 5 (2010): 585-593; Rahul Kumar, "Risking and Wronging," *Philosophy & Public Affairs* 43, no. 1 (2015): 27–51; Seth Lazar, "Deontological Decision Theory and Agent-Centred Options," *Ethics* 127, no. 3 (2017): 579-609; Seth Lazar, "Responsibility, Risk, and Killing in Self-Defense," *Ethics* 119, no. 4 (2009): 699-728; John Oberdiek, *Imposing Risk: A Normative Framework* (Oxford: Oxford University Press, 2017). For the latter, see Lara Buchak, *Risk and Rationality* (Oxford: Oxford University Press, 2013); Mark Colyvan, Damian Cox, and Katie Steele, "Modelling the Moral Dimension of Decisions," *Noûs* 44, no. 3 (2010): 503-529.

particular, there have to my knowledge not been any contributions that defend risk-sensitive solutions to the democratic boundary problem. As I have argued here, connecting these two separate literatures is not only useful, but indeed necessary for constructing a more plausible version of the possibilist AAP—for two reasons: firstly, unfair risk distributions in society are often themselves a democratic problem, particularly if they undermine the equal status of democratic agents. Unfair risk distributions include an unfair distribution of the risk of having one's democratic rights infringed upon, but also unfair distributions of material risks of harm to a person's interests. But secondly, even if risks are distributed fairly in status quo S(1), we need to distribute the rights of democratic agents (such as democratic participation rights) in a way that is proportionate to a plausible ex ante risk calculus in order to achieve and maintain fairness in subsequent status quos S(2...n).

IV. Three Criteria for Evaluating Risk Impositions

So far, I have argued that we must consider both the probability and the severity of possible harms associated with risk impositions in order to compare the strengths of different rights claims *above* and *below* the threshold for enfranchisement introduced by narrow possibilism. However, before we can move on to determine what a proportionate distribution of participation rights would look like, we ought to take a closer look at *why and how* risks actually affect the morally weighty interests of persons. Simply identifying a risk does not tell us why bearing that risk entitles an individual to *rights*—and to democratic participation rights in particular. First, we need to know what is morally wrong with disenfranchisement when risks are present. In other words: why are risks not morally innocuous?

This is not a purely rhetorical question. One might well think, after all, that it would be unjustifiably premature to confer something as important and powerful as democratic participation rights to people purely on the basis of something that might or might not happen. As I pointed out in Section I, this is precisely the perspective that actualists would take. In order to develop narrow possibilism fully as a plausible principle of democratic enfranchisement, the onus is on narrow possibilists to not only explain why narrow possibilism is superior to wide possibilism in the sense that it avoids unfairness; but also to show why risks carry sufficient moral weight to motivate its ex ante perspective on democratic enfranchisement in the first place.

The next logical step after having ranked risks in accordance with the probability/severity calculus, then, is to ask whether all risks in that ranking are morally non-innocuous *in the same way*. The view that I will develop in this section is that they are not. In what follows, I present three different criteria for evaluating the multifaceted nature of risk impositions: (a) pure vs. impure risk impositions, (b) intentional vs. unintentional risk impositions, and (c) consensual vs. non-consensual risk impositions.[39] These three variables are independent from each other, and orthogonal to the probability/severity ranking. Therefore, they may not always feed directly into that ranking: it is impossible to come up with a *general* formula that states that intentional risk impositions are always more morally weighty than unintentional ones, that non-consensual risk impositions are more weighty than consensual ones, and that consent always outranks intentions, for instance. These criteria are not meant to be *combined* so as to aggregate the moral weights of risk impositions, and to model them on one and the same continuum. Rather, they are meant to capture nuances of risk in a way that matches commonly held intuitions, even

[39] This list is not exhaustive: there may well be other plausible ways of evaluating risks. But I focus on these three variables because, in my view, they cover the most important and obvious distinctions that can be made with regard to the nature of risk impositions.

if that complicates the ranking. Thus, they help refine the probability/severity model for the purpose of making plausible one-on-one comparisons between individual risk-bearers, which in turn is necessary for determining what exactly a truly proportionate distribution of democratic participation rights would ideally look like.

1. Pure and Impure Risk Impositions

So far, I have primarily discussed cases of harm that occurs if a risk imposed on a person or group actually eventuates. Following Thomson, I call these cases 'impure risk impositions'.[40] But what about risks that do not eventuate, and thus do not lead to any kind of harm? It is worth considering whether it is possible to wrong someone just by imposing a risk on them. Intuitively, we can easily see why this might be the case. For instance, consider

> ***Russian Roulette***: Anna places a single round in a revolver, spins the cylinder, points the revolver at Beth, and pulls the trigger. No bullet is fired—Beth survives. 'No harm, no foul,' says Anna.

But that would clearly be disingenuous of Anna. 'No harm—yes foul!' would be a perfectly legitimate response from Beth's point of view: it was morally wrong of Anna to impose this lethal risk on her,[41] and while it would have been worse if Beth had actually gotten shot, that does not make the risk imposition itself wholly morally unobjectionable.

I suspect that most people would agree with that intuition. Nevertheless, it is worth considering what *exactly* makes pure risk impositions *wrong*. Dworkin and Oberdiek argue (independently) that this is the case when risk impositions constrain a person's autonomy.[42] In addition, pure risk impositions

[40] Thomson, *Rights, Restitution, and Risk*, 173.
[41] I am assuming that Beth did not consent to playing Russian Roulette, although I also think that consent would not resolve all of the moral issues at stake in this example—see my discussion of consent below.
[42] Dworkin, *Justice for Hedgehogs*, 306; Oberdiek, *Imposing Risk*, 84-91.

may also affect people's wellbeing. For instance, if I live in a democratic society that deliberately imposes a non-trivial risk on me, that might undermine my self-respect as an equal democratic agent—even if the risk of harm never eventuates, and thus remains a pure risk. Consider stop-and-search policies, which have been shown to perpetuate and exacerbate racial and religious bias in society, thus disproportionately distributing a risk of having one's privacy rights arbitrarily infringed upon to members of racial and religious minorities. Even if that risk never eventuates for some members of those minorities, they are arguably still bearing a wrongful pure risk imposition.[43]

One potential worry about my account of why pure risk impositions are wrong might be that it is not obvious how it can explain the wrongfulness of pure risk impositions in cases where the risk-bearer is unaware of the risk. Consider

> ***Stealthy Russian Roulette***: Anna knows that Beth would never consent to playing Russian Roulette. Anna installs a revolver, loaded with one round, in her living room. The revolver is set up to fire automatically once anyone sits down on Anna's sofa. Anna hides the revolver behind a screen, and invites Beth to take a seat on her sofa. The revolver fires, there is no bullet—Beth survives.

If Beth was unaware of this risk, how can narrow possibilists still argue that her morally significant interest in autonomy was affected by this pure risk imposition? In my view, Beth's autonomy was constrained in the sense that vital information regarding the fact that her morally weighty interests were affected was deliberately withheld from her, and that she would have made different choices—such as not spending time with Anna anymore and thus not sitting down on Anna's sofa again—had she known about this risk of harm.

[43] Here, I am assuming that it is uncontroversial that imposing policies which perpetuate and exacerbate racial and religious bias on members of racial and religious minorities is morally wrongful.

While claiming that 'the moral wrong would be entirely resolved had Beth only been part of the decision to install the Russian Roulette Apparatus' would clearly be too strong,[44] having a say in this decision would have given Beth the opportunity to protect her morally weighty interests better. This example translates to larger-scale hidden pure risk impositions as well: if the members of one existing demos A decide to impose morally significant risks on other persons in demos B, but deliberately do not inform them about this risk, then this affects the interests in autonomy and wellbeing of people in B even if the risk never eventuates. It affects these interests in the sense that in the counterfactual case in which people in B would have known about the risk, they might well have taken special precautions to protect their interests, or entered into negotiations or even conflicts with A to enforce the protection of their interests. Concealing the presence of the risk constrains B's choices by making it significantly less likely that people in B would actually adopt any of these reasonable strategies in the factual case, even though they would ordinarily want to do so. Possibilists are therefore (plausibly) committed to argue that, ideally, people in B ought to have been enfranchised in the original decision concerning the pure risk imposition in A, because their morally significant interests in autonomy and wellbeing were objectively affected in spite of them not (subjectively) knowing about the risk.

In sum, persons or groups whose interests can reasonably be said to be at risk of being affected either now or in the future thus count at relevantly affected on my narrow possibilist version of the AAP *not only* when a risk imposition results in actual *harm* for the risk-bearer (impure risk imposition),

[44] Beth may still decide in favour of an option that is not actually in her interests. In addition, in a scenario where more than two people take part in a decision, Beth may find that she is in a minority, and that the decision being taken does end up wronging her. In order to deal with ex post wrongs of this kind, additional principles of justice are needed—narrow possibilism, which is concerned exclusively with the correct ex ante distribution of participation rights, need not resolve this issue.

but *also* when a risk imposition itself infringes upon the morally weighty interests in autonomy and wellbeing of risk-bearers in a morally *wrongful* way,[45] even if it does not eventuate in harm (pure risk imposition), and even if the risk-bearer herself is unaware of the risk.

2. Intentional and Unintentional Risk Impositions

I draw a second conceptual distinction between intentional and unintentional risk impositions. There are at least three different ways of imposing risks which may be construed as unintentional risk impositions, and these cases have very different moral implications. Consider first

> **Negligence**: a risk of harm is reasonably foreseeable, but the person or entity which imposes the risk ignores this fact. The risk of harm eventuates. The risk-imposer did not intentionally impose the risk of harm, but they intentionally disregarded the reasonably foreseeable nature of the risk of harm.

This is the type of case that I introduced in section I (*Oops, Muddy Waters*), which I contrasted to the *intentional* risk imposition *Muddy Waters*—but there, I used those cases to discuss a range of problems with the actualist perspective. Now, let us turn to the question what narrow possibilism would imply concerning cases of negligence like *Oops, Muddy Waters*.

Negligence is not a morally neutral way of affecting a person's interests in a beneficial or burdensome way: it is itself a wrongful act, regardless of whether it affects a person's interests positively or negatively (though it usually affects the risk-bearer's interests negatively). Therefore, conferring democratic participation rights to relevantly affected risk-bearers may often not be a sufficient response to negligence: additional principles of ex post compensation

[45] Pure risk impositions can affect a person's interests in a *wrongful* way without that person being *adversely* affected. Consider, for instance, exploitation cases in which an exploitee benefits on balance from the exploitative arrangement. See "Economic Participation Rights and the AAP" for discussion.

may need to be adopted in order to redistribute wrongs and harms caused by negligent acts. Again, as I have pointed out in section II, making narrow possibilism sensitive to different degrees of intentionality in a way that includes, amongst other cases, negligence, does not commit narrow possibilism to the view that a proportionate rights distribution is *sufficient* for achieving full substantive fairness ex post.

Consider now another type of reasonably foreseeable, unintentional risk imposition:

> **Accidents**: a risk of harm is reasonably foreseeable, and the risk imposer is not negligent, i.e. takes appropriate precautions to prevent the risk from eventuating, but fails to actually do so. The risk of harm eventuates. The risk-imposer did not intentionally impose the risk of harm.

Moving along further on the spectrum from intentional to unintentional risk impositions, we can see that not all reasonably foreseeable risk impositions carry the same intuitive moral weight: unlike negligence cases, accidents are not themselves wrongful ways of imposing risks on persons. But similarly to negligence cases, accidents may require the implementation of additional ex post compensation principles alongside narrow possibilism, although the nature and justification of compensatory measures would clearly be different in this case.

> **Unforeseeable Risks**: a risk of harm is not reasonably foreseeable, for instance due to unpredictably changing empirical circumstances (natural disasters, break-through technological innovations). The risk of harm eventuates. The risk-imposer did not intentionally impose the risk of harm.

Unforeseeable risks are at the far end of the spectrum of unintentional risk impositions. They are exactly the types of unknown unknowns which, as I have argued in section III, constitute a defined blind spot of narrow possibilism. We

cannot justify an ex ante distribution of democratic participation rights on the basis of something that we cannot reasonably foresee. Unforeseeable risks therefore cannot be used to fine-tune the risk ranking. Nevertheless, it is useful to acknowledge that they exist, and to define exactly what distinguishes them conceptually from other types of risk impositions.

3. Consensual and Non-Consensual Risk Impositions

Volenti non fit iniuria—'no wrong is done to one who consents'—is one of the central principles concerning the role of risk impositions in the context of tort law. If a person voluntarily assumes a particular risk, the principle goes, then that person cannot justifiably claim damages later for injuries incurred when the voluntarily assumed risk eventuates in harm. To illustrate, consider the following recent case:

> ***Burned Man At Burning Man***: Burning Man is a well-known annual music festival in the Black Rock Desert in Nevada, and the festival culminates in the burning of a towering effigy ('the Burning Man', about 18 meters tall). Attendees often approach the figure to throw objects and letters into the fire. While attending this ceremony, Anthony Beninati tripped over the wires holding up the burning effigy, fell, and burned his hands. Beninati sued for damages, but the Court in this case ruled that Beninati, by being present *at* Burning Man and by approaching *the* Burning Man, had voluntarily assumed the risk of being burned *by* Burning Man. Hence, the festival organisers owed him no duty of care, and thus did not have to pay any damages to Beninati.[46]

One might be tempted to apply analogous reasoning to cases that are more obviously relevant for the democratic boundary problem. For instance, one might think that immigrants who consent to migrating to state A have voluntarily assumed the risk of being affected by A, and if they do end up being

[46] *Beninati v. Black Rock City, LLC*, 175 Cal. App. 4th 650 (2009), available at https://caselaw.findlaw.com/ca-court-of-appeal/1431355.html (accessed: May 24, 2018).

relevantly affected[47]—from the perspective of the narrow possibilist AAP—by A, A is under no duty to confer democratic participation rights to them. On this view, while the interests of immigrants might normally count as affected from the perspective of AAP, the presence of consent means that they are not relevantly affected for the purposes of the AAP, that is, affected in a way that justifies participation rights. Let us call this view *Consent (To Risk Impositions) Negates Relevant Affectedness*. Supporters of this view might then contrast that case with cases of persons who have not consented to migrating to A specifically, but who will nevertheless end up in A because they are refugees, because they are illegally trafficked to A, or because they are deported to A from a third state B.[48] These groups did not voluntarily assume the risk of being affected by A. Thus, one might say, if the risk should eventuate in the sense that those groups of persons are indeed relevantly affected by A, A cannot invoke the migrants' consent as a reason not to confer democratic participation rights to them, because no (relevant) consent was present.

It seems intuitively plausible to think that non-consensual risk impositions are relevantly different from consensual risk-impositions. But that does not make the issue of consensual risk impositions entirely morally unproblematic from the perspective of the narrow possibilist AAP. While I agree that the presence of consent is a morally significant consideration for determining to what extent a person is entitled to democratic participation rights, it is not the case that someone consents to a *harm* resulting from a risk

[47] I say 'end up being affected' to impure risk impositions in this paragraph, but analogous claims could potentially also be made about pure risk impositions, that is, cases where the risk of harm does not eventuate in harm.

[48] This latter risk factor is especially salient within the EU, whose member states (with the exception of Denmark) are party to the Dublin III Regulation (2013). The regulation stipulates that the member state in which an asylum-seeker's fingerprints are stored for the first time bears the responsibility for that person's asylum. Thus, EU states may—but do not have to, hence the risk—decide to deport asylum seekers to secure 'third member states', i.e. the state of initial entry. See "Regulation (EU) No 604/2013 of the European Parliament, 26 June 2013," *Official Journal of the European Union* L 180 (2013): 31-53, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF (accessed: May 24, 2018).

imposition just because she consented to the *risk imposition* itself. To see the intuitive force of this claim, consider Thomson's influential *Unpleasant Way* example: just because someone consents to walk home alone at night on a dimly lit road, and thus consents to bearing the *risk* of being mugged, one does not consent to the *harm* of actually being mugged.[49] Furthermore, a person might consent to a wrongful *pure* risk imposition, for example, because all other available options are worse—but that does not necessarily mean that the person consented to being *wronged*.

We can apply this thought to the cases of voluntary migration discussed above: even if a person consents to migrating to state A, and thus consents to bearing risks of harms and wrongs associated with being affected by A, that person does not necessarily consent to those harms and wrongs themselves. If that is true, then those harms and wrongs remain relevant in the narrow possibilist AAP's calculus, in the sense that consent to risk impositions alone does not automatically imply that relevantly affected persons who have consented to risks do not have democratic participation rights due to their earlier consent. Hence, and against *Consent Negates Relevant Affectedness*, it is more plausible for narrow possibilism not to exclude cases of consensual risk imposition outright, and instead to accommodate the intuition that consent matters by considering whether the bearers of consensual risks might be entitled to a smaller range of concrete participation rights, depending on what other circumstances obtain.[50]

One additional strength of this view is that it can account for the fact that the boundary between voluntary and non-voluntary migration is subject to pervasive political and academic contestation. Many recent contributions to this

[49] Thomson, *Rights, Restitution, and Risk*, 190.

[50] Here, I am not committing myself to the view that voluntary migrants *always* have a smaller range of concrete democratic participation rights. I am merely allowing for the possibility that this might be appropriate in some cases.

debate therefore argue that the voluntariness of migration is best construed as a spectrum rather than a clear-cut dichotomy.[51] If it is hard to determine whether a particular immigrant has indeed consented to bearing the risk of being or becoming relevantly affected, an enfranchisement principle that errs on the safe side by allowing for the democratic inclusion of immigrants in spite of their—uncertain or (ostensibly) certain—consent to being affected by a risk imposition, is superior to a principle like *Consent Negates Relevant Affectedness*, which cannot accommodate the academically well-established insight that the voluntariness of a decision to migrate may be part of a spectrum.

To see how the boundary between voluntary and non-voluntary migration can become blurry, consider that bad socio-economic conditions in sender states often induce parts of their population to choose to emigrate to wealthier, more stable recipient states. This choice might seem like a voluntary one, given that would-be immigrants have the freedom to choose from at least two options: migrating or remaining. But if the available alternatives are sufficiently bad to be unacceptable,[52] such as when life quality conditions in the sender state fall below a decent minimum, then we have strong reasons *not* to classify that choice as truly voluntary. As Olsaretti argues,

> a choice is voluntary if and only if it is not made because there is no acceptable alternative to it. [...] First, a choice is voluntary when there is an acceptable alternative; secondly, a choice is voluntary when there is no acceptable alternative, but one (or even, the only one) option which

[51] It is impossible to do the extensive literature on this topic justice, but some important contributions include Marta Bivand Erdal and Ceri Oeppen, "Forced to Leave? The Discursive and Analytical Significance of Describing Migration as Forced and Voluntary," *Journal of Ethnic and Migration Studies* 44, no. 6 (2018): 981-998; Stephen Castles, Hein De Haas, and Mark J. Miller, *The Age of Migration*, fifth edition (Basingstoke: Palgrave Macmillan, 2014); Josh DeWind, "Response to Hathaway," *Journal of Refugee Studies* 20, no. 3 (2007): 381-385; Matthew J. Gibney, "Deportation, Crime, and the Changing Character of Membership in the United Kingdom," in *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*, eds. Katja Franko Aas and Mary Bosworth (Oxford: Oxford University Press, 2013), 218-236; Valeria Ottonelli and Tiziana Torresi, "When is Migration Voluntary?" *International Migration Review* 47, no. 4 (2013): 783–813.

[52] For a more extensive discussion of the importance of acceptable alternatives for voluntary consent, see G. A. Cohen, *History, Labour, and Freedom: Themes from Marx* (Oxford: Clarendon Press, 1988), 245-246, and 280-283.

> is available is one which the agent likes so much that he chooses it because of that, and not because he has no acceptable alternative.[53]

I endorse this conception of voluntariness here because it successfully captures the notion that a freedom to φ (e.g. to migrate) is not *sufficient* for establishing voluntary consent to φ-ing.

A similar kind of reasoning applies to persons who have the freedom to migrate, but choose *not* to do so, because migration would worsen their condition. Supporters of *Consent Negates Relevant Affectedness* might think that a person who is free to move away in order to avoid being affected by a state A, but chooses not to move, has consented to being affected in relevant ways and therefore should not have participation rights in A. And again, this view might seem plausible at first glance when we consider cases like

> ***Voluntary Non-Migration***: B is a wealthy Mexican entrepreneur who is based in London. B could easily move to Berlin, at no cost to his business opportunities or life quality. In fact, moving to Berlin might even improve his prospects. Nevertheless, B chooses to stay in London. B is relevantly affected by the UK's decisions, but has no democratic participation rights in UK. 'If you don't like it, move,' his British friends say. 'You consented to being affected by our decisions by moving here.'

Here, B has valuable exit options: he is free to move to Berlin. Intuitively, his voluntary decision not to move and thus his consent to being affected by the UK, but to claim participation rights in the UK, seems to matter for how we should evaluate his claim to democratic participation rights in the UK. But again, what does the normative work that underpins this intuition is not consent alone, but the presence of valuable alternative options. To see this, contrast *Voluntary Non-Migration* to the following example, borrowed from Olsaretti:

[53] Serena Olsaretti, "Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness," *The Journal of Political Philosophy* 6, no. 1 (1998): 71-72.

> ***Non-Voluntary Non-Migration***: "C is the inhabitant of [state A], located in the middle of a desert, which she is free to leave. However C, who would wish to leave, knows with absolute certainty that if she leaves [state A] she will not be able to survive the hardship of the desert and she will die. Her choice to remain in [A] is not a voluntary one".[54]

Here, although C is technically free to move, it would be wrong to equate C's situation to B's, because C lacks *valuable* exit options, whereas B does not. Hence, while B's possession of valuable alternatives may give us reasons to classify him as 'less relevantly affected' for the purposes of AAP, and thus confer a proportionately more restricted set of concrete participation rights to him, we cannot employ the same reasoning in C's case.

To sum up, consent to risk impositions makes an *intuitive* difference to a person's justifiable claim to democratic participation rights in proportion to the degree to which their interests are affected; but what explains this intuitive difference is not, by itself, the presence of a person's consent to bear risks. Whether consent to risk impositions makes a difference to relevant affectedness under the narrow possibilist AAP depends on whether the risk-bearer has valuable alternative options.

What is the overall upshot of this three-pronged framework—(im-)pure risks, (un-)intentional risks, and (non-)consensual risks—for evaluating the moral weight of risk impositions for the narrow possibilist AAP? While risk is a useful concept for determining a fair, proportionate ex ante distribution of democratic participation rights, it cannot simply be reduced to a singular criterion. After ranking risks with the straightforwardly aggregative probability/severity calculus outlined in the previous section (III), we ought to—ideally—fine-tune that ranking by considering the three variables presented in this section (IV). Since the harms and wrongs associated with risk impositions

[54] Olsaretti, "Freedom, Force and Choice," 71.

are multifaceted, we would *ideally* have to compare the nature and scope of each risk imposition faced by a possibly relevantly affected individual to the risk imposition faced by each other possibly relevantly affected individual: taking into account the three variables does not allow for an aggregative ranking, because these variables cut *across* the probability/severity calculus.

Making one-on-one comparisons of this kind is obviously not always, and not even often, feasible. But this is not a decisive reason to reject narrow possibilism: if its alternatives also face significant feasibility constraints, and if those alternatives are also less plausible on an ideal level—for instance, because they permit unfair rights distributions—then narrow possibilism is the most attractive ideal account of democratic enfranchisement all things considered. And even a suboptimal implementation of narrow possibilism that does not take the three variables into account *fully* would be more plausible than alternative versions of AAP in my view. Narrow possibilism as a plausible ideal principle articulates not only what kinds of moral considerations matter for determining the correct proportionate distribution of democratic participation rights, it also shows us *why, and in what sense exactly,* we can *fail* to achieve a proportionate rights distribution.

Hence, while I acknowledge that the three-pronged evaluative framework complicates narrow possibilism, it ultimately improves the account because it adds much-needed nuance to our analysis of risk. To borrow Miller's phrasing, developing a principle of proportionate enfranchisement does indeed seem to open up a "morass of problems".[55] But it is the *right* morass: one must face the conceptual complexity of risk if one agrees with the view that procedural fairness matters for democratic enfranchisement that I have developed in this paper so far.

[55] Miller, "Democracy's Domain," 217.

V. Fair Political Equality: A Proportionate, Risk-Sensitive Rights Distribution

1. Political Equality: Beyond the Standard Account

Sidney Verba argues that political equality requires all three of the following: equal participation rights, equal capacity to exercise those rights, and an equal voice, i.e. the actual use of one's opportunity to participate.[56] I endorse this account, as it seems to cover the most important elements of political equality, while bracketing issues of de facto inequality, such as unequal public attention directed towards someone voicing unpopular political positions, in comparison to those articulating more widely supported ones.

Political equality is different from basic equality. Put simply, basic equality denotes the equality of *moral* status, which *political* equality does not necessarily require. The reason for this is that the political equality of persons and beings of unequal status could, at least theoretically, be achieved through the conferral of equal participation rights and through political representation. I do not intend to commit myself to a view here about whether this would be desirable and feasible. I merely wish to point out that the two concepts are distinct. Furthermore, the reverse is also true: basic equality does not necessarily require political equality. After all, one may well think that a group of persons possesses basic equality in the sense that each group member has an equal moral status, but deny that this necessarily implies that each group member should also be politically equal.

[56] Sidney Verba, "Political Equality: What is it? Why do we want it?", *Review paper for the Russell Sage Foundation* (2001), 2, https://www.russellsage.org/sites/all/files/u4/Verba.pdf (accessed: May 24, 2018).

Before considering whether narrow possibilism about affected interests violates political equality, let us consider briefly why we should care about political equality at all. Political equality may be thought of as having an intrinsic value or an instrumental one.[57] I take the view that political equality is both intrinsically and instrumentally valuable, but it is not necessary to endorse this particular claim in order to find my subsequent claims about proportionate enfranchisement persuasive.[58]

Political equality is intrinsically valuable because it publicly expresses equal concern for each person whose morally relevant interests are affected. It is instrumentally valuable because it allows persons whose interests are relevantly affected to communicate politically what their policy preferences are, given that their interests are affected in particular ways. This improves the epistemic quality of public discourse: it enables holders of political offices to perform the representative duties attached to their office as well as possible,[59] and it makes it more likely that democratic procedures actually entail good

[57] Similar—but not exactly equivalent—distinctions are often drawn in the literature on political equality. See, for example Dworkin's discussion of detached and dependent conceptions of political equality: the detached conception seems to rely on a view of the intrinsic value of democratic procedures, whereas the detached conception is more naturally aligned with an instrumentalist stance (Dworkin, "What Is Equality? Part 4: Political Equality," 117-121). It is important to bear in mind, however, that combinations of these two positions are possible; Dworkin, for instance, discusses a mixed detached conception as one of several plausible accounts of political equality.

[58] The same thought applies not only to the value of political equality, but also to the value of fairness and proportionality. Irrespective of whether one thinks that fairness is valuable for instrumental or for intrinsic reasons, one can still agree that a lack of fairness is bad. Arguably, an analogous point could be made about proportionality: "the proportionality approach to democracy is supported by procedural considerations—respect for persons and for their autonomy—as well as by consequentialist considerations—the maximization of a prioritarian social objective. It radically reduces the tension between democracy and justice by incorporating the evaluation of individual interests and social priorities into its fabric." (Brighouse and Fleurbaey, "Democracy and Proportionality," 155).

[59] Verba makes a similar, albeit more general argument about the instrumental value of political equality: "If representatives are to do their job of representing the preferences and interests of their constituents, they need information about those preferences and interests and there must be inducements to make them carry out their representative functions. Acts of political participation are crucial to this process. They convey information about the public (or at least the participant part of the public) and/or convey inducements that might motivate the recipient of the message to respond to those preferences and interests." See Verba, "Political Equality," 9.

outcomes, that is, outcomes which do in fact protect and promote the interests of affected persons.

The relevant question in the context of this paper, of course, is this: can the intrinsic and instrumental value of political equality be realised *only* by adhering to standard models of political equality (SPE), which involve a strict commitment to the view that one person ought to have one vote, and one vote only? Or is a departure from that standard account actually necessary—at least in some situations—in order to safeguard the value of political equality?[60] As I have argued in section II of this paper, a commitment to giving equal consideration to affected interests entails a commitment to enfranchising the holders of those interests in a procedurally fair way, that is, in proportion to way in which their respective interests are at risk of being affected. This view is compatible both with the view that political equality is intrinsically valuable, and the view that it is instrumentally valuable.

Only a fair principle of democratic enfranchisement can public express a commitment to public equality, because fairness is a prerequisite for treating people as equals—instead of merely treating them (descriptively) equally, in the sense of giving them exactly the same rights or benefits.

From the instrumentalist perspective, in turn, fair democratic enfranchisement is compatible with political equality because it advocates for a distribution of opportunities to improve the epistemic quality of democratic decision-making that prioritises the most urgently affected. This is not to say that those who bear the morally weightiest risks of being relevantly affected necessarily possess more knowledge or expertise regarding the substance of the

[60] The more general view on which I am relying here is Dworkin's point that we can distinguish equal treatment from treatment as an equal, and that we may sometimes have to depart from the former to achieve the latter. Ronald Dworkin, *Taking Rights Seriously* (London: Bloomsbury Academic, 2013), 273.

democratic decision at hand—although that may often be the case. In any case, I do not wish to commit myself to a firm view in this paper about the comparative epistemic expertise of relevantly affected persons. What matters for the epistemic version of the instrumentalist argument about political equality is whether giving a proportionately higher say to more strongly affected persons will improve the epistemic quality of democratic decision-making. It is plausible to think that it will, for two reasons: first, proportionate enfranchisement would act as a public marker of the kinds of issues that ought to be prioritised in decision-making by elected representatives, thus making it *easier* for representatives to make the right decisions.[61] Second, giving stronger democratic enforcement mechanisms to more strongly affected persons may increase the *likelihood* of democratically elected representatives actually prioritising the proportionate protection of morally weightier interests.

In sum, those who endorse the narrow possibilist of AAP are thus committed to SPE *only if* this commitment does not undermine the overarching aim of AAP: the fair consideration of affected interests. Whenever SPE does undermine this aim, narrow possibilists ought to endorse fair political equality[62] (FPE) instead.

Fair Political Equality (FPE):

(P1) It is possible that not all relevantly affected persons are affected to an equal degree: not every affected person is 'alike' in terms of affectedness.

(P2) It is unfair to treat unlike cases alike.

[61] Of course, making the *right* decision may require more than proportionate enfranchisement. Considerations about the respective moral weight of affected interests may be trumped by other concerns—such as those related to substantive justice, or to feasibility—in actual decision-making.

[62] For a different model of fair political equality, see Charles Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton, NJ: Princeton University Press, 1989), 79-120. Beitz defends a contractualist account of political equality, which seems to extend to citizens only—for that reason, Beitz's account is significantly different from my own.

(P3) Procedural fairness requires a proportionate satisfaction of claims.

(P4) ('Only As A Package Deal') A principle of democratic enfranchisement that requires adherence to procedural fairness in accordance with (P2) is more desirable than a principle of democratic enfranchisement that is merely compatible, but does not require, procedural fairness, because the latter principle undermines a commitment to the higher-order principle of equal concern.

(C1) Any plausible principle of democratic enfranchisement must avoid treating unlike cases alike, and instead include a commitment to procedural fairness as proportionate claims satisfaction when it comes to the distribution of democratic participation rights.

(P5) Conferring equal rights to unequally affected persons would be unfair.

(C2) Fairness requires conferring equal rights of democratic participation to people who are affected to an equal extent, *and* it requires conferring unequal rights of democratic participation to unequally-but-relevantly affected people in proportion to the extent to which they are affected.

Narrow possibilism is therefore not in fact *incompatible* with standard political equality (SPE). Rather, it simply denies that SPE is applicable to cases of *unequal* affectedness; but given that there are many important cases of unequal affectedness, SPE does not offer us a complete picture of political equality. In light of this, we urgently need an account that tells us how we can realise political equality whenever persons are unequally unaffected. FPE does just that, and narrow possibilism is the democratic enfranchisement principle that realises a distribution of participation rights in accordance with FPE.

Thus, if one is tempted to reject narrow possibilism solely on the grounds that it violates SPE's commitment to 'one person—one vote', one must show why *always* adhering to 'one person—one vote' is morally desirable in spite of the fact that doing so would at least sometimes violate the intrinsic or the instrumental value of political equality.

2. Which Distribution of Participation Rights Realises Fair Political Equality?

Realising FPE does not necessarily imply plural voting, which would be a straightforwardly quantitative realisation of proportionate enfranchisement.[63] Alternatively, FPE could be realised by distributing different kinds of participation rights—such as the right to vote, the right to run for office, the right to serve in a jury, or the right to participate in and fund civic associations—in *packages* that differ in terms of their qualitative scope and composition, not in terms of their quantitative strength. On that model of FPE, one holder of affected interests (A) could have the right to participate in civic associations, whereas another person (B) could have the right to participate in civic associations (equal in weight to A's right) *and* the right to vote *and* the right to run for office—if that kind of layered distribution would serve to proportionately approximate A's and B's respective level of affectedness. On this distribution model, provided that B's interests are affected more strongly than A's interests, B gets more opportunities to have a political impact by exercising different rights, but each of those opportunities to exercise a right to φ is equal in weight to the opportunity that each other holder of that particular right to φ has.

It is true that a layered distribution of democratic participation rights gives people unequal amounts of opportunities to participate in different ways. But when we compare each holder of a particular concrete right with all other holders of this right, we find that each rights-holder has an *equal* say. For that reason, this model of FPE may be more acceptable to strict supporters of SPE,

[63] I do not mean to argue that we should reject plural voting entirely. I merely wish to investigate the merits of a different, more underexplored model of FPE at this juncture.

since it does not depart from 'one person—one vote' in the same way as alternative, quantitative models of FPE would.

Of course, just because a person has a comparatively small bundle of participation rights in one polity, this does not necessarily mean that she will have a small bundle of such rights all things considered. After all, if her interests are relevantly affected by multiple demoi, she may well have a larger set of different kinds of participation rights in those other demoi. The only obvious exceptions are cases in which one would have the *same* type of concrete participation right regarding the *same* issue in a supranational democratic process—this is why double voting by the same individual in different EU member states is prohibited during EU elections, for example.

In sum, the *qualitatively* proportionate model of FPE outlined above entails a commitment to *both* of the following two principles:

> **Inter-Inequality**: Fair Political Equality is compatible with an arrangement in which persons hold different bundles of concrete participation rights, if the size of each bundle is proportionate to each person's affected interests.

And

> **Intra-Equality**: Each holder of one type of concrete democratic participation right has an opportunity to participate in democratic decisions that is equal in content and scope to all other persons' opportunities associated with this particular right.

By contrast, the alternative, quantitative realisation of FPE—for instance, via plural voting—would demand a rejection of intra-equality, but would not necessarily have to take any stance on inter-inequality. Developing a full argument about which particular realisation of FPE is the most suitable in practice is beyond the scope of this paper; the modest contribution of this section is to merely *identify* the respective implications of both accounts for the ideal value of political equality.

Conclusion

I have argued that wide possibilism is not the most plausible ideal articulation of the AAP, because it allows for the possibility of treating unlike cases alike when it comes to distributing democratic participation rights. Giving equal democratic participation rights to persons whose interests are relevantly but unequally affected, I have argued, would be unfair in a way that undermines AAP's commitment to the principle of equal concern. So, while wide possibilism's ex ante perspective on democratic enfranchisement is more plausible than alternative actualist accounts, wide possibilism implausibly allows for unfair distributions of democratic participation rights—unless it is appropriately *constrained* by principles blocking unfair applications of wide possibilism in all cases. In order to understand what kinds of constraints are required, we need to examine what kind of commitment to fairness and proportionality we ought to build directly into possibilism. Goodin's proposal of integrating probabilistic reasoning into wide possibilism is a plausible starting point, but it does not go far enough. Instead, a plausible ex ante evaluation of the risk of a person's morally significant interests being affected must rely on a judgment about the *probability* of a risk eventuating in harm *in combination with* a judgment about the *severity* of that harm. This accounts for widely shared intuitions about the moral significance of risks which are undertheorised in the debate about possibilism so far. As I have shown, once we evaluate risks in such a way, we can compare which sufficiently affected interest-holders—that is, those persons who pass the threshold for democratic enfranchisement—are more or less affected. Refining the probability/severity calculus further, I have moved on to a multifaceted investigation of the different morally relevant dimensions of risk which may affect a person's interests. This investigation culminates in a new, more robust version of possibilism: risk-sensitive ('narrow') possibilism. This account is a better ideal articulation of the AAP

than wide possibilism because it is constrained in a way that enables narrow possibilism to avoid wide possibilism's pitfalls. I have concluded by examining the implications of narrow possibilism for political equality. As I have argued, the fact that narrow possibilism violates standard 'one person—one vote' political equality (SPE) in some cases is not a reason to reject narrow possibilism. Narrow possibilists can endorse a broader account of Fair Political Equality (FPE), which encompasses SPE whenever this is fair, but supplements SPE by an account of proportionate enfranchisement in instances where SPE would undermine the fair consideration of interests.

Bibliography

Allais, Maurice. "Le Comportement de l'Homme Rationnel devant le Risque: Critique des Postulats et Axiomes de l'Ecole Américaine." *Econometrica* 21, no. 4 (1953): 503-546.

Beitz, Charles. *Political Equality: An Essay in Democratic Theory*. Princeton, NJ: Princeton University Press, 1989.

Beninati v. Black Rock City, LLC, 175 Cal. App. 4th 650 (2009). Published online. https://caselaw.findlaw.com/ca-court-of-appeal/1431355.html. Accessed: May 24, 2018.

Brighouse, Harry, and Marc Fleurbaey. "Democracy and Proportionality." *The Journal of Political Philosophy* 18, no. 2 (2010): 137-155.

Broome, John. "Fairness." *Proceedings of the Aristotelian Society* 91, no. 1 (1990): 87-101.

Buchak, Lara. *Risk and Rationality*. Oxford: Oxford University Press, 2013.

Calabresi, Guido. "Some Thoughts on Risk Distribution and the Law of Torts." *The Yale Law Journal* 70, no. 4 (1961): 499-553.

Castles, Stephen, Hein De Haas, and Mark J. Miller. *The Age of Migration*. Fifth edition. Basingstoke: Palgrave Macmillan, 2014.

Chang, Ruth. *Making Comparisons Count*. London: Routledge, 2002.

Christiano, Thomas. "The Authority of Democracy." *The Journal of Political Philosophy* 12, no. 3 (2004): 266-290.
———. "A Democratic Theory of Territory and Some Puzzles About Global Democracy." *Journal of Social Philosophy* 37, no. 1 (2006): 81-107.
———. *The Constitution of Equality: Democratic Authority And Its Limits*. Oxford: Oxford University Press, 2008.

Cohen, G. A. *History, Labour, and Freedom: Themes from Marx.* Oxford: Clarendon Press, 1988.

Colyvan, Mark, Damian Cox, and Katie Steele. "Modelling the Moral Dimension of Decisions." *Noûs* 44, no. 3 (2010): 503-529.

Dahl, Robert A. *After the Revolution: Authority in a Good Society*. Revised edition. New Haven, CT: Yale University Press, 1990.

DeWind, Josh. "Response to Hathaway." *Journal of Refugee Studies* 20, no. 3 (2007): 381-385.

Dworkin, Ronald. "What Is Equality? Part 4: Political Equality." In *Philosophy and Democracy: An Anthology*, edited by Thomas Christiano, 116-137. Oxford: Oxford University Press, 2003.
———. *Justice for Hedgehogs*. Cambridge, MA: Belknap Press, 2011.
———. *Taking Rights Seriously*. London: Bloomsbury Academic, 2013.

Erdal, Marta Bivand, and Ceri Oeppen. "Forced to Leave? The Discursive and Analytical Significance of Describing Migration as Forced and Voluntary." *Journal of Ethnic and Migration Studies* 44, no. 6 (2018): 981-998.

European Parliament. "Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013." *Official Journal of the European Union* L 180 (2013): 31-53. Published online (June 26, 2013). https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF. Accessed: May 24, 2018.

Fine, Sarah. "Democracy, Citizenship and the Bits in Between." *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 623-640.

Frick, Johann. "Contractualism and Social Risk." *Philosophy & Public Affairs* 43, no. 3 (2015): 175-223.

Fung, Archon. "The Principle of Affected Interests and Inclusion in Democratic Governance." In *Representation: Elections and Beyond*, edited by Jack H. Nagel and Rogers M. Smith, 236-268. Philadelphia, PA: University of Pennsylvania Press, 2013.

Gardner, John. "What is Tort Law For? Part 2: The Place of Distributive Justice." In *Philosophical Foundations of the Law of Torts*, edited by John Oberdiek, 335-353. Oxford: Oxford University Press, 2014.

Gibney, Matthew J. "Deportation, Crime, and the Changing Character of Membership in the United Kingdom." In *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*, edited by Katja Franko Aas and Mary Bosworth, 218-236. Oxford: Oxford University Press, 2013.

Goodin, Robert E. "Enfranchising All Affected Interests, and Its Alternatives." *Philosophy & Public Affairs* 35, no. 1 (2007): 40-68.

Hansson, Sven Ove. "The Harmful Influence of Decision Theory on Ethics." *Ethical Theory and Moral Practice*, 13, no. 5 (2010): 585-593.

Hart, H. L. A. *The Concept of Law*. Third edition. Oxford: Oxford University Press, 2012.

Knight, Frank H. *Risk, Uncertainty and Profit*. Boston: Houghton Mifflin, 1921.

Kumar, Rahul. "Risking and Wronging." *Philosophy & Public Affairs* 43, no. 1 (2015): 27–51.

Lazar, Seth. "Responsibility, Risk, and Killing in Self-Defense." *Ethics* 119, no. 4 (2009): 699-728.
———. "Deontological Decision Theory and Agent-Centred Options," *Ethics* 127, no. 3 (2017): 579-609.

Mill, John Stuart. *Considerations on Representative Government*. New York: Harper, 1862.

Miller, David. "Democracy's Domain." *Philosophy & Public Affairs* 37, no. 3 (2009): 201-228.

Oberdiek, John. *Imposing Risk: A Normative Framework*. Oxford: Oxford University Press, 2017.

Olsaretti, Serena. "Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness." *The Journal of Political Philosophy* 6, no. 1 (1998): 53-78.

Ottonelli, Valeria, and Tiziana Torresi, "When is Migration Voluntary?" *International Migration Review* 47, no. 4 (2013): 783–813.

Raz, Joseph. *The Morality of Freedom*. Oxford: Clarendon Press, 1986.

Shapiro, Ian. *The Moral Foundations of Politics*. New Haven, CT: Yale University Press, 2003.

Thomson, Judith Jarvis. *Rights, Restitution, and Risk: Essays in Moral Theory*. Cambridge, MA: Harvard University Press, 1986.

Verba, Sidney. "Political Equality: What is it? Why do we want it?" *Review paper for the Russell Sage Foundation*. Published online (2001). https://www.russellsage.org/sites/all/files/u4/Verba.pdf. Accessed: May 24, 2018.

Warren, Mark E. "Citizen Participation and Democratic Deficits: Considerations from the Perspective of Democratic Theory." In *Activating the Citizen: Dilemmas of Participation in Europe and Canada*, edited by Joan DeBardeleben and Jon H. Pammett, 17-40. Basingstoke: Palgrave Macmillan, 2009.

Whelan, Frederick G. "Prologue: Democratic Theory and the Boundary Problem." In *Liberal Democracy*, *Nomos 25*, edited by J. Roland Pennock and John W. Chapman, 13-47. New York, NY: New York University Press, 1983.

Economic Participation Rights and the All-Affected Principle

Abstract: While AAP is a promising candidate for a plausible principle of democratic enfranchisement, its supporters have so far not paid sufficient attention to economic participation rights. This is puzzling, given that one important way in which people's morally weighty interests are affected is by and within economic relationships. I argue that if one commits oneself to AAP, one must also commit oneself to the view that political participation rights are not necessarily the only way, and not necessarily the best way, to democratically enforce the protection of morally weighty interests. Democratic participation rights thus encompass both political participation rights and economic participation rights.

But before we can address the question of what kinds of *concrete* democratic participation rights affected persons have, we need a sufficiently nuanced foundational account of why affected interests justify an *abstract* right to democratic participation in the first place: who passes the threshold for democratic enfranchisement, and why? Therefore, I begin by developing a General Statement of the all-affected principle (AAP), which clearly states what kinds of interests are morally relevant for AAP, and what it means to 'be affected'. Here, I argue that the interests that are relevant for AAP are the morally weighty interests in autonomy and wellbeing, and that the morally weighty interests of persons are relevantly affected if persons are subject to actual or possible coercion, if they are parties to exploitative relationships, or if they participate in reciprocal projects.

Subsequently, I turn to the question how the abstract right to democratic participation instantiates itself in various concrete forms. Here, I identify and define the undertheorised conceptual category of economic participation rights. I proceed by analysing how these rights substitute, supplement, and constrain political participation rights. I conclude that the exercise of concrete economic participation rights raises important *worries* about low accountability and the intentional misuse of such rights, which is why AAP supporters ought to reflect explicitly on the question of how a range of general duties constrain the exercise of such rights *in particular*.

Who has democratic participation rights in a given polity, and why? This question is known as the democratic boundary problem. One possible solution to this problem is the all-affected principle (AAP), according to which a polity ought to enfranchise all persons whose interests are affected by the polity's decisions in a morally significant way: A's interests being affected in relevant ways is a sufficient condition for granting A participation rights. Since AAP implies that polities[1] ought to enfranchise *non-citizens* if their interests are affected, the justification of democratic participation rights conferred under AAP is thus citizenship-independent: whether a person possesses a particular legal status is simply not decisive for the question of whether she ought to have a voice in a democratic decision.

My core claim in this paper is that while AAP offers a plausible principle of democratic enfranchisement if it specifies clearly which affected interests are sufficiently morally weighty to justify participation rights, its supporters have so far not paid sufficient attention to participatory practices that depart from the standard picture of political participation (voting, running for office, peaceful demonstrations). In particular, they have paid barely any attention to economic participation rights. This is particularly troubling in light of the fact that many of the ways in which a citizen or non-citizen can be affected occur within economic relationships. After developing this position in the first two sections of this paper, I subsequently go on to argue that, if one commits oneself to AAP, one must also commit oneself to the view that political participation rights (X_P) are not necessarily the *only*, and not necessarily the *best* way, to protect morally weighty interests. Whenever this is the case, AAP will often demand the conferral of economic participation rights (X_E), which I

[1] For the purposes of this paper, I use AAP to address the question who has democratic participation rights in existing polities, and thus take the presence of discernible polities as given. However, AAP could also be used as a heuristic device in order to determine latent constituencies which ought to form new polities.

define as the set of rights which enable their holder A to participate in democratic decisions either by using economic resources to voice political preferences of any kind (e.g. boycotts, campaign funding); or by voicing political preferences specifically about the use of economic resources, either within an economic relationship (e.g. strikes in a corporation) or within a political forum (e.g. participatory budgeting in a public assembly). While one might not always find empirical examples for the *transnational* conferral of all of these rights—that is, the conferral of X_E to non-citizens who are also non-residents—my view is that if one is committed to AAP, one must also think that the transnational conferral of X_E is morally required ideally speaking, as long as other central conditions of AAP obtain. The lack of empirical examples for some of these modes of transnational democratic inclusion is thus not in itself a reason to reject AAP; in fact, they highlight AAP's usefulness as a heuristic device for identifying urgent priorities for policy change.[2]

I conclude by pointing out how X_E raise unique worries about the potentially unforeseeable and unaccountable political impact of economic participation, which may undermine AAP's goal of protecting the morally weighty interests of rights-holders. Hence, AAP supporters must endorse not only the view that AAP demands the conferral of X_E, but also the view that holders of X_E have duties which constrain the scope of X_E in a way that prevents internal inconsistency within AAP: a duty of accountable public justification, and a duty not to intentionally and foreseeably misuse X_E in an unjust or exploitative way.

[2] Whether an ideal transnational distribution of XE would be *feasible* given currently existing state institutions is a separate question, and one which I will bracket here.

I. Which Affected Interests Are Relevant for AAP?

1. Morally Weighty Interests in Autonomy and Wellbeing

AAP is deeply controversial: why would anyone think that a person A has participation rights *because* her interests are affected? Clearly, not just anything that is in A's interest qualifies as morally weighty enough to justify the conferral of rights to have a say in decisions that significantly shape the lives of others. Trivial and unreasonable subjective preferences cannot count as relevant for any plausible reading of AAP. So which interests *are* morally weighty enough to count for AAP? As other contributors to the debate on AAP have proposed,[3] it is plausible to think that the class of morally weighty interests encompasses both the interest in wellbeing and the interest in autonomy.

Regarding the former, it is tempting to define the interest in wellbeing as narrowly as possible in order to highlight its moral weight. This could be done, for instance, by restricting the interest in wellbeing to a basic needs account. But while basic needs constitute an important part of a person A's morally weighty interest in wellbeing, there are many cases in which A is affected in a morally significant way while her basic needs remain satisfied, such as when B exploits A by taking unfair advantage of A's skills, but does not

[3] Both Carol Gould and Mark Warren define fundamental interests in the context of AAP as our interest in self-determination—which plausibly encompasses the interest in autonomy—and our interest in self-development—which plausibly includes at least our interest in basic wellbeing. See Mark E. Warren, "The All Affected Interests Principle in Democratic Theory and Practice," *IHS Political Science Series Working Paper 145* (June 2017): 3, http://irihs.ihs.ac.at/4306/15/Warren%20-%20All%20Affected%20Interests%20Principle.pdf (accessed: May 24, 2018); Carol C. Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), 197. As Gould clarifies, "a person is [...] importantly affected [...] not [...] only if the decision deprives people of civil rights or threatens their person but also [...] if it would deprive them of the opportunity to gain means of subsistence" (ibid., 212). The view that self-development encompasses—amongst other things—our interest in basic wellbeing has also been articulated directly by Iris Young: "[s]elf-development [...] certainly entails meeting people's needs for food, shelter, health care, and so on." See Iris M. Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), 32.

prevent her from accessing food and shelter. It is obvious that A's interest in wellbeing is still (adversely) affected here because A has a diminished ability to pursue her conception of wellbeing on her own terms. In section II, I will elaborate further on different types of cases in which persons count as relevantly affected under AAP *without* the satisfaction of their basic needs being at stake. For now, I define the interest in wellbeing as an interest that encompasses both the satisfaction of A's basic needs, and A's ability to pursue her own conception of wellbeing.[4]

Similarly, the morally weighty interest in autonomy ought not to be construed too narrowly either: meaningful autonomy requires more than simply choosing from a set of available options; it also requires the ability to develop and pursue one's own conception of the good. As Raz argues, an "adequate range of options"[5] is only one of three conditions for having autonomy. One must also be independent from coercion and manipulation,[6] and one must possess "appropriate mental abilities".[7] If we restrict a person's autonomy—or her ability to make autonomous decisions—without an appropriate justification, we morally wrong her pro tanto (although perhaps not all things considered), even if we do not harm her physically or mentally.

By this, I do not mean that A's interests are affected *in a way that is relevant to AAP*—that is, in a way that is sufficient for justifying the conferral of participation rights to A—if A does, or does not, succeed in obtaining *outcomes* or achieving goals that A herself has autonomously articulated as subjectively desirable. This claim would be too broad, as it implies the—implausibly

[4] I am not claiming that a person's interest in wellbeing consists in actually *achieving* whatever wellbeing-related outcome she, from her subjective perspective, wants to achieve (beyond the satisfaction of her basic needs). I am merely arguing that having the *ability* to pursue her subjective conception of wellbeing is in her interest, whether she exercises this ability or not.
[5] Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 372.
[6] Ibid., 377-378.
[7] Ibid., 372.

inclusive—view that A's interest in autonomy is *always* relevantly affected by any law or policy that impedes A's ability to achieve her subjective preferences. The more precise and plausible view is the one that I have set out here: in the context of the democratic boundary problem, 'it is in A's interest to be autonomous' means that A's autonomy-related interests are relevantly affected only (i) if a demos interferes with A's *ability* to make autonomous decisions, e.g. by brainwashing or propaganda, or by placing A in a relationship of domination or exploitation; or (ii) if a demos coerces A without giving A a say in decisions about who holds legitimate coercive power and what the appropriate decisional domain of state coercion is.

In sum, people's objective interests—not their preferences, or their subjective assessments of what is in their interests—are what justifies democratic enfranchisement under AAP.[8] But when people get democratic participation rights, they are obviously free to express and pursue their subjective preferences, and to hold democratic representatives accountable for making decisions contrary to their interests. This does not guarantee that their interests will in fact be protected ex post, but enfranchisement is a necessary feature of any account of *democratic* interest protection. If securing particular outcomes was all that mattered, we could not object to the rule of a benevolent dictator who may well be able and willing to protect morally significant interests. But this would not be sufficient from the perspective of a democratic argument such as AAP. AAP's primary purpose as a principle of democratic enfranchisement

[8] To be clear, I reject *subjectivism about interests*: the view that "[t]he person to whom interests are ascribed is the final arbiter of his interests in the sense that they are not ultimately determined by certain ideals of justifiability, right, good" (see Christine Swanton, "The Concept of Interests," *Political Theory* 8, no. 1 (1980): 84). Instead, I endorse *objectivism about interests*: the view that "A person's interests promote, in some sense, his 'good' or 'advantage'" (ibid.); however, offering my own defence of this view would be beyond the scope of this paper. For some influential objectivist accounts, see Richard J. Arneson, "Human Flourishing Versus Desire Satisfaction," *Social Philosophy and Policy* 16, no. 1 (1999): 113-142; James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance* (Oxford: Clarendon Press, 1986), 40-55; Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 70-100.

is to realise the democratic value of procedural fairness when it comes to the consideration and protection of morally weighty interests. This claim is compatible with the view that achieving just outcomes may require much more: a democratic principle alone, such as AAP, cannot possibly—and does not need to—*guarantee* just outcomes.

2. Interests, Rights, and the Detriment Test

Most existing accounts of AAP do not explicitly draw on the interest theory of rights in order to justify why affected interests justify participation rights. This is surprising, since that theory offers a helpful—albeit controversial[9]—normative framework regarding precisely this question. Raz's influential definition of the interest theory states that "'X has a right' if and only if X can have rights, and, other things being equal, an aspect of X's wellbeing (his interest) is a sufficient reason for holding some other person(s) to be under a duty".[10] While this thought is a natural starting point for AAP supporters, it is not immediately obvious why exactly a person's relevantly affected interests are sufficient for justifying that person's democratic enfranchisement, and thus, why a demos might be in breach of a duty by failing to confer democratic participation rights to that person. In other words, what is *lost* when we fail to confer democratic participation rights to people whose morally weighty interests are affected? In response to the question of why interests justify the conferral of rights, and in an attempt to refine the interest theory of rights, Matthew Kramer has introduced the following test for the significance of an interest:

> "If and only if at least one minimally sufficient set of facts includes the undergoing of a *detriment* by some person Q at the hands of some

[9] A full defence of the interest theory of rights is beyond the scope of this paper. For the classic defence of the view, see Raz, *The Morality of Freedom*, 165-192.
[10] Ibid., 166.

> other person R who bears a duty under the contract or norm, Q holds a right—correlative to that duty—under the contract or norm".[11]

Since Kramer is offering a general account here, he leaves the notion of 'detriment' deliberately broad. A detriment could include both material disadvantages, such as a loss of money or other resources resulting from a breach of a contract by another agent, and immaterial disadvantages, such as being disrespected or otherwise wronged by another agent. Obviously, if AAP supporters wish to adapt the detriment test in order to show why the presence of relevantly affected interests is sufficient for justifying democratic participation rights, and why a failure to confer those rights is to a relevantly affected person's detriment, AAP supporters will have to specify the notion of 'detriment' more clearly in order to explain why a lack of the *specific* class of *democratic participation rights* might be detrimental to a person.

But before specifying 'detriment' in such a way, it is worth explicating Kramer's own account of the detriment test in more detail. Kramer focusses primarily on legal duties and rights, although he acknowledges that a similar reasoning could be plausibly applied to moral duties and rights,[12] and that even the arguments pertaining to the legal domain necessarily have moral aspects.[13] This focus leads Kramer to define 'minimal sufficiency' in the following way:

> [a] set of facts is minimally sufficient to constitute a violation of a legal mandate if and only if (1) the set is sufficient to constitute such a violation, and (2) every element of the set is necessary for the set's sufficiency. In other words, a minimally sufficient set contains no redundant elements.[14]

The key feature of this account is the claim about redundancy: this is important because the aim of Kramer's intervention into Razian interest theory is to help

[11] Matthew H. Kramer, "Refining the Interest Theory of Rights," *The American Journal of Jurisprudence* 55, no. 1 (2010): 36-37 [emphasis added].
[12] As it would be when adapted for the purposes of AAP.
[13] Ibid., 35.
[14] Ibid., 37.

clarify how that theory can correctly delimit the group of legitimate rights-holders in situations where there are multiple interest-holders, not all of whom seem intuitively entitled to rights. To show why this is a problem, Kramer introduces an example about a person who has a right to receive her salary from her employer, and who intends to spend part of that salary at a supermarket. Clearly, it would be both to the employee's detriment, and to the supermarket's detriment, if the employee did not get paid. But does this imply that the supermarket has a right against the employer?[15] No. As Kramer argues, the only fact that we truly *need* in order to establish that the employer breaches his duty to pay his employee is the employee's detriment.[16] The supermarket's detriment, by contrast, is not part of this minimally sufficient set of facts.[17] The minimal sufficiency claim thus enables the detriment test to delineate who has rights and who does not, provided that we possess knowledge of facts concerning the nature of the relevant interests at stake, which is necessary for evaluating whether these interests are redundant in the justification of detriments. And this, indeed, is the primary purpose of Kramer's account: to correctly identify rights-holders amongst a group of interest-holders whenever we already know that a (legal) duty exists. If Kramer's account is adapted for the purposes of AAP, this assumption will have to be more specific: the relevant duty is the general moral duty not to wrong persons, combined with the claim

[15] Clearly, similar examples could be made about *economic participation rights*, which are the main focus in this paper: does a particular political party have a right against my employer that my employer pays me my salary, because that party expects regular financial contributions from me—provided, of course, that I actually receive my salary? Again, this would seem counterintuitive, which is why the relevant notion of 'detriment' needs to be specified carefully to eschew the delimitation problem.

[16] The reason why the employee's detriment is minimally sufficient in this specific case, of course, is that there exists a legal contract between the employer and the employee, which imposes a legal duty on the employer. Analogous examples could be made, of course, about moral duties.

[17] For a more detailed account of Kramer's solution to the delimitation problem in the interest theory of rights, see Matthew H. Kramer, "Getting Rights Right," in *Rights, Wrongs, and Responsibilities*, ed. Matthew H. Kramer (Basingstoke: Palgrave Macmillan, 2001), 28-95.

that the failure to confer democratic participation rights wrongs persons in a way that is to their detriment.

Further specificity is required for other aspects of the detriment test as well in order for AAP supporters to make use of the test: on Kramer's view, the notion of detriment captures the widely held, general intuition that having rights usually means that one is better off. Conversely, not having rights or losing rights usually means being worse off. Relying on the notion of 'detriment' thus helps express that something morally important is lost when certain rights are withheld from a person who ought to have those rights. To be clear, this is different, and stronger, than a claim relying on Razian interest theory: the latter would be a claim stating that the presence of particular interests is *sufficient* for justifying the conferral of particular rights to A. By contrast, Kramer's 'detriment test' aims to establish not only that the presence of particular interests is sufficient for justifying the conferral of particular rights to A, but also that a failure to confer these rights would *wrong* A in a way that is detrimental to A.

But how exactly does this very general intuition apply to the specific context of *democratic enfranchisement*: why is it detrimental to relevantly affected persons if we fail to confer *democratic participation rights* to them? Since AAP justifies participation rights, as opposed to other kinds of rights, the detriment test needs to show that, whenever certain valuable interests are affected, *participation* rights are necessary for the adequate protection of those interests.[18] In those instances, it would be to A's detriment not to have

[18] In my view, the kind of participation right justified by AAP is an *abstract* right of participation: it can instantiate itself in different forms, such as the concrete right to vote, or the concrete right to engage in peaceful protest. Which set of concrete rights specific persons who are enfranchised under AAP hold respectively depends on the particular ways in which their interests are affected.

participation rights, and the polity whose decision affects A's interests would be in breach of a duty if it denied participation rights to A.

In my view, there are three reasons why a lack of democratic participation rights would be detrimental to relevantly affected persons.[19] First, a failure to confer democratic participation rights places A in a condition of vulnerability, because A now lacks a democratic enforcement mechanism for ensuring that her morally weighty interests are being considered. Of course, actual decisions being made may well *in fact* be based on a reasonable consideration of those interests. Consider, for instance, a group of conscientious oligarchs who are sufficiently attuned to the moral importance of certain interests. Suppose that those oligarchs take democratic decisions amongst themselves, but do not let the rest of the public (A, B, ... n) participate in their decision-making. What if the oligarchs actually give equal consideration to A's, B's, ... n's morally weighty interests, and make decisions that protect those interests? The problem still remains that A has no guarantees that this will continue: she is dependent on the oligarchs' goodwill, and this itself is to her detriment.

Second, a failure to confer democratic participation rights to A means making a public statement that A is not a democratic agent of equal political status. From the perspective of AAP, this public expression of A's status inequality is itself an expressivist wrong if A's morally weighty interests are relevantly affected, especially if *other* holders of affected interests do have democratic participation rights, and thus do receive a public acknowledgement of their status as democratic agents. This status inequality is a reason for why a

[19] Importantly, it is *not* a feature of my view that people's interests need to be *adversely* affected in order for the detriment test to work—see section II of this paper. Even if my interests are affected in a way that *benefits* me on balance, if would be detrimental to me if I did not get a say in future decisions about how those interests will be affected going forward, precisely for the three reasons outlined here.

failure to confer participation rights to A is to A's detriment that is separate from the first reason concerning the lack of a democratic enforcement mechanism for the consideration of A's interests. Nevertheless, what both reasons have in common is that they show that something is *lost* when relevantly affected persons like A do not have democratic participation rights.

Third, a failure to confer democratic participation rights to A is detrimental to A to the extent that it would deny other agents of the opportunity to acquire knowledge of the *nature* of A's interests and preferences. While A might not always have a complete picture of what would be (objectively) in her interest, and which decisions would best advance those interests, she possesses expert knowledge about *what it feels like to be A*. A is thus particularly well-positioned to articulate A's political concerns and preferences, and A's public articulation of what A takes to be in her (objective) interest may well be closer to the truth than an educated guess by others who experience life entirely differently than A, and who may be unconsciously biased in a way that prevents them from fully understanding A's perspective. When A lacks democratic participation rights, A also lacks the ability to contribute to improving the epistemic quality of democratic deliberations by furthering other agents' knowledge about her perspective. Insofar as lower-quality democratic deliberations make it harder to reach high-quality democratic decision *outcomes*—that is, decision outcomes that are based on an understanding of the full range of interests at stake (as articulated by the interest-holders themselves) that is as complete as possible—this would be detrimental to A.

We can now state the AAP's use of the detriment test formally as follows:

(P1) We have a pro tanto duty not to wrong persons.

(P2) A has a claim right to B's φ-ing iff A's detriment is sufficient to establish B's breach of a duty to φ.

(P3) If a demos does not confer participation rights to persons when particular interests of theirs are at stake in a particular way, it wrongs those persons.

(P4) Being wronged in this way is detrimental to relevantly affected persons for the following reasons:[20]

(i) *instrumentalist reasons*: a failure to confer democratic participation rights places A in a condition of vulnerability, such that A lacks a democratic enforcement mechanism for obtaining the outcome of adequate interest protection.

(ii) *expressivist wrongs*: a failure to confer democratic participation rights constitutes an expressivist wrong against affected persons, who are owed a public acknowledgement of their equal status in a democratic state.

(iii) *epistemic concerns*: a failure to confer democratic participation rights is detrimental to A because A's inclusion in democratic procedures would improve other democratic agents' knowledge about the nature of A's interests and preferences, thus improving the quality of democratic deliberations.

(P5) If the presence of an interest-holder A's detriment establishes a breach of a duty by the demos, interest-holders have a claim right against the demos.

(P6) That claim right is a right against the demos that the demos fulfil its duty to confer the abstract right to democratic participation.

(C) The demos is in breach of a duty if it fails to confer participation rights to a relevantly affected person A. A's relevantly affected interests are sufficient for justifying why A has an abstract right to democratic participation.

20 I elaborate further on these three reasons in my paper "What AAP Is, and How (Not) To Fight It".

II. What Does It Mean to 'Be Affected'?

What does 'being affected' mean in the context of AAP? As I will argue, actual and possible coercion,[21] exploitation, and reciprocity form a set of cases in which a person A is relevantly affected by a polity in the context of AAP, such that each one of these cases is *sufficient* for establishing that A is relevantly affected. Those cases pass the detriment test, because all of them are cases in which participation rights are necessary for protecting A's relevant interests, and the failure to confer participation rights is sufficient to establish the breach of a moral duty.

In this section, I show why, in order for A to have participation rights, A's interests in autonomy or wellbeing must not only be affected, but they must also be affected in a certain way. My arguments also show that many relevant types of 'being affected' occur within *economic* relationships.

1. Actual Coercion

When B coerces A, B restricts A's autonomy—while not necessarily restricting the *amount* of A's options[22]—in such a way that A complies with B's

[21] By incorporating coercion cases, AAP is able to subsume all cases included by a rival solution to the democratic boundary problem: the all-subjected principle (ASP). In contrast to ASP, however, AAP supporters can show that there are cases in which non-coercively affected interests justify participation rights. For influential discussions of ASP, see Arash Abizadeh, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory* 36, no. 1 (2008): 37–65; Robert E. Goodin, "Enfranchising All Subjected, Worldwide," *International Theory* 8, no. 3 (2016): 365-389, Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," *International Theory* 4, no. 1 (2012): 39-68; Laura Valentini, "No Global Demos, No Global Democracy? A Systematization and Critique," *Perspectives on Politics* 12, no. 4 (2014): 789–807.

[22] My view that simply changing the coercee's options by attaching threats to certain options is sufficient for coercion is somewhat similar to Feinberg's view, who argues that coercion occurs when the coercer "has actively intervened in [the coercee's] option-network, to acquire control of the relevant option-switches". Joel Feinberg, *The Moral Limits of the Criminal Law Volume 3: Harm to Self* (Oxford: Oxford University Press, 1986), 198. By contrast, other influential accounts of the concept of coercion defend the narrower view that coercion must make the coercee worse off by restricting the amount of options they have. See, for example, Alan Wertheimer, *Coercion* (Princeton, NJ: Princeton University Press, 1987), 204-206. See also David Zimmerman, "Coercive Wage Offers," *Philosophy & Public Affairs* 10, no. 2 (1981):

directives even though A would not have freely chosen to do so. In my view, B is able to do so if B communicates a credible and non-trivial threat[23] to A to, in Feinberg's words, "cause or fail to prevent some consequences that [A] finds unwelcome".[24]

I say 'while not necessarily restricting the amount of A's options' here because while some coercive threats may eliminate certain options altogether (for example, the option of entering a room when the coercer physically prevents the coercee from entering), other coercive threats do not. They simply make certain options costly for the coercee, or even prohibitively costly. Imagine that Wandering Will goes out for a walk, where he encounters Violent Victoria at a crossroads. Victoria tells Will that he can either turn left and continue his walk unharmed, or he can turn right, and she will beat him up. Here, Victoria makes turning right a tremendously unattractive option for Will, but strictly speaking, she has not *eliminated* this option. Of course, one might say that Victoria has restricted Will's options at least in one way in this case: the option of choosing freely which way to turn. But that claim is consistent with the definition of autonomy which I introduced before: as I stated above, coercion necessarily restricts Will's autonomy—that is, his ability to choose freely between options—but not necessarily his *range* of options—that is, going left or going right. The 'option' to choose freely is, if anything, a higher-order option than the option to go left and the option to go right; and if Victoria restricts that higher-order option, that does not mean that she has also restricted the range of Will's possible paths of action. She has merely *changed* the pay-off of choosing one option over the other.

121-145. I endorse the broader view here because it encompasses the narrow view while allowing for the important conceptual possibility of coercion without option restrictions.

[23] For further discussion of why threats must be credible to be coercive, see Feinberg, *The Moral Limits of the Criminal Law Volume 3*, 198; and Wertheimer, *Coercion*, 203.

[24] Feinberg, *The Moral Limits of the Criminal Law Volume 3,* 198.

Let us now examine my points about the credibility of threats more closely. A threat is not credible and thus not coercive if the coercer has no means to enforce compliance or no ability to track the coercee's (non-)compliance in the first place. This may be the case, for example, in situations where states threaten to prosecute people who anonymously spread illegal material online by using sophisticated encryption methods, which makes it extremely hard to identify the exact person who has broken the law. Another example might be 'failed states' which lack enforcement powers due to the lack of a functioning police force, although it is of course not necessarily the case that the citizens of failed states are only confronted with non-credible threats. If a para-state entity succeeds in acting as a de facto government with informal enforcement powers, it can provide credible coercive threats even though the state itself is unable to do so.

The credibility criterion, however, is subject to one caveat: what we have to consider here is whether it is enough for a threat to *seem* credible in order for the threat to be coercive. Imagine that Will, who has wisely chosen to take a left at the first crossroads, encounters Tied-Up Tim at the next one. Tim is tied to a tree so that he cannot come close to Will, but Will cannot tell from afar that Tim is tied up. Tim tells Will that he will beat him up if he turns right this time. Arguably this is still a coercive threat although Tim lacks the means to enforce his threat, provided that Will cannot be *reasonably* expected to know of Tim's lack of enforcement powers.

Regarding the triviality criterion, a threat is trivial and thus non-coercive if it does not impose significant costs for noncompliance on the coercee, such as when B threatens to pinch A if A does not comply with B's directives. The non-triviality criterion is context-sensitive: some threats may be non-trivial in a specific situation (S1), but become trivial in another situation (S2). I take it that the latter is the case if compliance with B's directives is even more undesirable

for A than noncompliance including the ensuing coercive consequences. Here, I understand 'undesirable for B' broadly, meaning that undesirable can encompass cases in which A is wronged or harmed, but also cases in which A is compelled to wrong or harm—by act or by omission—another person. Consider the following examples, which illustrate the context-sensitivity of the non-triviality criterion: if Jane threatens to tickle John (which John hates because it makes him extremely uncomfortable), unless John lets Jane have the last biscuit, that is a non-trivial threat given the context. Yet if Jane threatens to tickle John unless John beats up his best friend, Jane's threat to tickle John becomes trivial, since the consequences of John's compliance (beating his best friend) would be vastly more undesirable for John in comparison to the consequences of his noncompliance (being tickled). A good test for the triviality of this particular threat is to ask how a reasonable observer would judge John's actions if he did choose to comply and beat his best friend in order to avoid being tickled. Most people would agree that one cannot reasonably say that Jane coerced John to beat his friend in this scenario.

So overall, how exactly are A's interests affected if A is coerced? Coercion, defined as the changing of the coercee's range of options via threats, does not usually render A incapable of choice, but it prevents A from choosing what she would have chosen freely in a non-coercive situation. So whenever A is coerced, this affects her morally weighty interest in autonomy. But it also affects A's interest in wellbeing. While a coercer wrongs A *predominantly* by constraining her autonomy, he may also commit a further wrong by imposing negative consequences on her. Such consequences may harm A, thus affecting her interest in wellbeing here and now, or they may affect A's ability to pursue her interest in wellbeing going forward.

Overall, coercion cases pass the detriment test because coercee A cannot be certain that the coercer will respect her morally relevant interest in

autonomy and wellbeing fully. Here, participation rights are necessary—although possibly not sufficient—for protecting A's interest in autonomy and wellbeing. In those cases, A is entitled to participation rights because having those rights gives A the opportunity to have a say in how a demos B may coercively affect her interest in autonomy and wellbeing. If a polity fails to confer participation rights to coercee A, this would be detrimental to A, which is sufficient for showing that the polity wrongfully breaches its duty.

2. Possible Coercion: Non-Enforcement and Domination

What if a demos B refrains from exercising coercion over A, but could choose to do so at any given time? A would make her decisions in such a way that takes the possibility of coercion by B into account, and A might possibly make different choices than she otherwise would. She is likely to either make decisions that do not give B a reason to start using coercive threats or force against her. She is likely to pre-emptively act in such a way that prevents or limits negative sanctions against her by B. The case of possible coercion is of course not identical to cases of actual coercion, yet both cases share crucial characteristics. Unlike in cases of actual coercion, B does not explicitly change A's range of options by communicating coercive threats to A. But in possible coercion cases, A still has to take into consideration how B might possibly change her range of options as a response to how A chooses to act. It is for that reason that A's interests are relevantly affected in a similar, though not identical, way when A is possibly coerced, compared to when A is actually coerced.

The first type of possible coercion is *non-enforcement*. This case occurs when states choose not to enforce certain laws, for example, because potential offences against law X are too insignificant to justify the cost of enforcing X. The function of legal systems that govern our conduct is not only

to coerce us; they also impose duties and exercise social power.[25] Often the presence of the latter two is sufficient for ensuring compliance, which is why coercion is only exercised selectively in some cases. In cases of possible—but not actual—coercion, we would not be inclined to say that the subjects of particular laws or policies are *not coerced* by the entity that chooses not to coercively enforce these laws in a specific case. Therefore, we must incorporate the concept of possible coercion into our understanding of what it means to be relevantly affected.[26]

The second type of possible coercion is *domination*. An entity with coercive power dominates A if it has the prerogative of *arbitrarily* deciding if, when, and how it will interfere coercively in A's affairs. This prerogative is 'arbitrary' in domination cases because the subjects have no say in how the prerogative to interfere is exercised.[27] Examples of domination which are particularly relevant for justifying participation rights under AAP include cases in which non-resident non-citizens who live at the border of a demos, or on a territory that the demos occupies or intends to occupy, are under a non-trivial threat of coercion by that demos. At this juncture, one may worry (in my view rightly) that giving a dominated group of persons who are at risk of annexation participation rights in the decisions of the dominating group will not make this instance of domination any less wrong.

AAP can easily accommodate this worry, however, because AAP is not committed to the view that enfranchisement is *sufficient* for protecting all

[25] Leslie Green, "The Forces of Law: Duty, Coercion, and Power," *Ratio Juris* 29, no. 2 (2016): 164.

[26] Of course, not *all* cases of non-enforcement qualify as forms of coercion which affect one's interest in autonomy and wellbeing in a morally significant, non-trivial way. Predictable, non-arbitrary forms of non-enforcement of the kinds of laws which are designed to impose minor sanctions for relatively small transgressions are excluded on this account, because such cases would not meet the detriment test.

[27] As Pettit puts it, "A will be dominated in a certain choice by [...] B, to the extent that B has a power of interfering in the choice that is not itself controlled by A". Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), 50.

affected interests. AAP simply determines the correct scope of democratic enfranchisement, but it cannot help us identify which other rights—such as a right of self-defence, or a right to post-annexation reparations and redistributive measures—are necessary for achieving an all-things-considered just state of affairs. In the case outlined here, potential annexation as an instance of domination would clearly remain morally wrong even if AAP was implemented and the annexed were enfranchised.

This conclusion is compatible with my modest interpretation of AAP. Not enfranchising the (potentially) annexed would simply constitute an *added* wrong on top of the already existing wrong of annexation.

3. Exploitation

Exploitation is not a straightforwardly coercive situation. Unlike coercers, exploiters typically make an offer to the exploitee rather than threatening her. In doing so, exploiters may change the payoffs of certain options,[28] or actually add new options—albeit not necessarily good ones. For that reason, such offers are, in Feinberg's words, "freedom-enhancing coercive offer[s]".[29] A well-known example of an exploitative situation involving such a coercive offer is the *Lecherous Millionaire* example:

> ***Lecherous Millionaire***: "B's child will die unless she receives expensive surgery for which the state will not pay. A, a millionaire, proposes to pay for the surgery if B will agree wo become his mistress".[30]

Some—most prominently Zimmerman—have argued that since the millionaire has not made the child sick and thus has not actively created a state of affairs in which B is dependent on his help, and since the millionaire has not

[28] Ruth J. Sample, *Exploitation: What It Is and Why It's Wrong* (Lanham, MD: Rowman & Littlefield, 2003), 11.
[29] Feinberg, *The Moral Limits of the Criminal Law Volume 3,* 233.
[30] Wertheimer, *Coercion,* 229.

threatened B with harm (beyond the harm to B's child that would occur anyway, without A's intervention) if B does not accept the offer, the millionaire is an exploiter but not a coercer.[31] However, as Feinberg (in my view rightly) points out in his discussion of the same example, the *effect* on B is still coercive.[32] From B's perspective, there may be no relevant difference between being held at gunpoint and being made an offer by the millionaire that B cannot in good conscience refuse.[33]

So if exploitation often involves coercive offers, would it be reasonable to say that exploitees' interests are relevantly affected in the same way in which the interests of people are affected when they are actually or possibly coerced? And if so, is it true that my autonomy-based justification as to why coercees are entitled to participation rights is simply transferable to exploitation cases?

Not exactly. Although I have rejected Zimmerman's view that the lecherous millionaire does not act coercively, there may still be other, non-coercive types of exploitation. I do not have to commit myself to a strict view at this point about whether exploitation is *always*, and not just often, coercive, or not. The reason why I can remain non-committal about this issue is that, regardless of its coercive or non-coercive nature, exploitation is not exclusively and not primarily wrong because it restricts the exploitee's autonomy.

So what *is* wrong with exploitation? Although there is a diverse range of philosophical accounts that define what exploitation is and what makes it wrong, most contemporary contributions to the debate seem to agree with the

[31] For a similar view, see Zimmerman, "Coercive Wage Offers," 121-145.
[32] Feinberg, *The Moral Limits of the Criminal Law Volume 3,* 248.
[33] I acknowledge, of course, that there are offers that one 'cannot refuse' which are neither coercive nor exploitative. An example of this would be: 'B has a boring, low-paid job. A offers B an extraordinarily well-paid, interesting and non-harmful job. A will not do anything harmful to B is B refuses. B cannot possibly turn down this enticing offer.'

minimal definition that exploitation constitutes unfair advantage-taking.[34] Other influential contemporary accounts of exploitation emphasise the idea that exploitation is wrongful because there is a moral norm to protect the vulnerable,[35] or that it is wrongful because it degrades the exploitee.[36] Both of the latter are useful in the sense that they add nuance to the question of why exploitation is wrongful, yet the broader definition of exploitation as unfair advantage-taking does encompass them both. After all, it would seem counterintuitive to say that we can treat someone fairly who we are simultaneously degrading—or to say that we fail to honour our moral duty to help someone who is vulnerable, but nevertheless succeed in treating that person fairly.

It is important to emphasise that 'being affected through exploitation' does not imply that A's interests are necessarily *harmed* in exploitative relationships. Rather, the exploiter shapes the way in which A can pursue plans and projects that she takes to be in her interests, and the exploiter does so in an unfair manner. Feinberg and Goodin both seem to hold similar views: Feinberg states that "exploitation [...] can occur in morally unsavory forms *without harming the exploitee's interests*",[37] and Goodin points out that "it is [not] altogether clear that the exploited party's loss is a necessary condition of exploitation".[38] I agree with their view, for it seems entirely possible for A to be exploited in a way in which A benefits on balance from her own exploitation in

[34] For further discussion, see—for instance—Robert E. Goodin, "Exploiting a Situation and Exploiting a Person," in *Modern Theories of Exploitation*, ed. Andrew Reeve (London: Sage, 1987), 166-200.
[35] Goodin, "Exploiting a Situation and Exploiting a Person," 167.
[36] As Sample puts the point, "exploitation involves interacting with another being for the sake of advantage in a way that degrades or fails to respect the inherent value in that being. It is this lack of respect that explains the badness of exploitation." Sample, *Exploitation: What It Is and Why It's Wrong*, 57.
[37] Joel Feinberg, *The Moral Limits of the Criminal Law Volume 4: Harmless Wrongdoing* (Oxford: Oxford University Press, 1988), 176 [emphasis added].
[38] Goodin, "Exploiting a Situation and Exploiting a Person," 172.

the sense that A is not harmed. Nevertheless, exploitative acts still necessarily *wrong* A due to their intrinsically unfair character.[39]

In sum, exploitation cases pass the detriment test because exploiters take unfair advantage of exploitees, so that exploitees are wronged even if being exploited benefits them.[40] Therefore, exploitees need a democratic enforcement mechanism in order to protect their interests. Since coercion is not necessary for justifying participation rights in exploitation cases, even some non-resident non-citizens who are not subject to actual or possible coercion by a particular polity ought to be enfranchised in that polity. Of course, exploitees may be owed more than just participation rights. They may also, for example, have a right to benefitting from a compensatory redistribution of goods and services in accordance with principles of fairness. Analogous to my earlier points about the wrongness of domination, however, fully *rectifying* the wrongs of exploitation all-things-considered is beyond the scope of AAP.

4. Reciprocity

Participants of reciprocal projects are often heavily invested in them, and they are not less invested just because they enter such projects voluntarily and not coercively. Their autonomy and wellbeing often depend on the

[39] Degradation theorists of exploitation, such as Sample, make an analogous move: "The consequences of [exploitation-related] disrespect are connected to, but not constitutive of, the exploitation. Some exploitative interactions, but not all, are harmful in and of themselves. Much exploitation is, paradoxically, mutually beneficial. This accommodates the fact that moral agents can fail to demonstrate respect for persons not simply in the course of harming them, but also when improving their situation (i.e., when the situation that results is an improvement compared to their overall situation were no interaction to take place). This is important because many are tempted to defend their exploitative interactions with others by appealing to mutual benefit. [But] we rightly acknowledge a higher standard of conduct with our interactors." Sample, *Exploitation: What It Is and Why It's Wrong*, 57. This suggests that even if one disagrees about what exactly makes exploitation *wrong*, one can agree that exploitation can be wrong even if nobody is harmed.

[40] For similar claims, see Feinberg, *The Moral Limits of the Criminal Law Volume 4,* 176; and Goodin, "Exploiting a Situation and Exploiting a Person," 180.

continuous, reliable success of reciprocal relationships for a foreseeable time frame.

A standard example of reciprocal relationships is the collective tax-based contribution to the provision of welfare and security measures and other public goods. While this particular type of reciprocity usually occurs within nation states, the group of reciprocal partners does not necessarily include citizens only: resident noncitizens are usually required to pay, or at least file, taxes and contribute to welfare schemes. Of course, reciprocal arrangements obtain not only within states, but also between states: for instance, between the member states of the Eurozone or the members of the NAFTA (Canada, the US and Mexico). There are also important cases involving a reciprocal use of *coercion*, for example when states agree to mutually recognise and enforce their cooperative partners' laws and policies, or when states collaborate in a project of humanitarian intervention, or when states enter into an agreement of mutual protection and defence.[41]

Let us now turn our attention specifically to *affected non-citizens* engaging in a reciprocal project with a demos and its members. The most obvious case encompasses both resident citizens and resident non-citizens, such as migrant workers, who ordinarily work, pay taxes and derive benefits such as free basic health care. Resident non-citizens may even contribute more to the sharing of burdens in society than the average citizen: according to a recent UK government study concerning the fiscal contributions of immigrants in the UK, for example, the net fiscal contribution of recently arrived EEA

[41] In such cases, both the reciprocity-based and the coercion-based justification of participation rights apply. I will elaborate on AAP's implications for such mixed cases below.

nationals during the tax year of 2013-14 alone was £2.54 billion in tax and National Insurance contributions.[42]

But consider also *non-resident* non-citizens, who may be in a reciprocal relationship with a demos B if they are members of another demos which has entered into a trade agreement with B. Furthermore, *resident* non-citizens who are not permitted to work in B and thus do not pay taxes in B, such as asylum-seekers, may still partake in the reciprocal sharing of benefits and burdens with the members of B. At first sight, it seems impossible for asylum-seekers to do so even though they may want to, given that many countries impose strict employment restrictions. In the UK, for example, asylum-seekers are normally prohibited from working until they are officially granted asylum.[43] Yet there is more to reciprocity than taking on paid work and paying taxes. Engaging in activities such as care work and volunteer work for charities, churches, or NGOs also means that one partakes in the sharing of burdens by devoting personal resources to an activity that benefits the larger public. And indeed, volunteer work is an activity that is permitted even for asylum-seekers—even in a comparatively strict immigration regime such as the UK's[44]—and that many asylum-seekers do engage in while they wait for the outcome of their application.

Why do reciprocity cases pass the detriment test? Is it not compensation enough for contributing to the sharing of burdens if A receives

[42] HM Revenue & Customs, "Statistics on recently arrived non-UK EEA nationals subject to income tax and National Insurance contributions or receiving HMRC administered benefits," https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522811/HMRC-Ad_Hoc_Stats_Release-EEA_Nationals_net_contribution_2013-2014.pdf (accessed: May 24, 2018).

[43] "Immigration Rules 2014 (United Kingdom)", §344B and §360, https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum (accessed: May 24, 2018). Asylum-seekers in the UK can apply for a work permit if they have waited more than twelve months for an initial decision on their asylum claim, and if the delay in reaching a decision is not their own fault, although they may not set up their own business or be self-employed.

[44] Ibid.

the benefits of a reciprocal relationship: why would A be entitled to *additional* participation rights, purely in virtue of her reciprocal activities? While I agree that A is indeed fairly *compensated* in cases of fair reciprocity, the function of participation rights is not compensation. Rather, it is the democratic enforcement of a continuous consideration of all relevant interests. In order for reciprocity to be entirely fair, the terms on which reciprocal relationships operate must not only be fair in the present (t1), but there must be mutual assurances that they will remain fair in the foreseeable future at t2, t3 and so on. Our interest in autonomy and wellbeing is not *adversely* affected by reciprocal relationships, but it is still affected. Reciprocal partners have a stake in deliberating and deciding together on the terms of an on-going cooperation, and especially in deciding how this cooperation may affect their fundamental interests in autonomy and wellbeing—even if the terms of the trade agreement were *initially* negotiated fairly and by legitimate institutions. Fair reciprocity thus also entails a reciprocity of public justification, and this is only possible if all reciprocal partners have participation rights. In light of this, it would be to the detriment of reciprocal partners not to have participation rights which protect their relevant interests.

Before moving on to drawing the conclusions of this section, it is worth considering two more complex types of reciprocal relationships: firstly, overlaps of reciprocity and coercion, and the implications of such cases for my argument about the entitlement to participation rights; and secondly, what one might call 'zombie reciprocity' cases, i.e. cases that seem like reciprocal projects but are actually more similar to cases of domination or exploitation.

Regarding the first issue, one example would be a non-citizen who is both coerced by a demos and engages in a reciprocal relationship with the members of that demos. This is a case that seems complex, but actually is not. If both coercion and reciprocity relevantly affect A's interests in a given

scenario, then there are two parallel justifications of A's entitlement to participation rights. Both justifications would be sufficient on their own, but it is entirely possible for them to coexist. Either type of affectedness is sufficient for justifying enfranchisement, and if several types of affectedness are present, this is not a problem for my account. In fact, it is important to identify exactly in what way a person is relevantly affected, because those affected *both* by coercion *and* reciprocity may well need a different set of concrete participation rights in order to democratically enforce the consideration of their interests than those affected *exclusively* by coercion.

Consider also a more complex situation in which reciprocal relationships are the *result* of coercion, for example when former colonies engage in the sharing of benefits and burdens with their former colonisers. Even if this is a genuinely reciprocal, non-exploitative project in the present, does it not matter morally that the reason why such a reciprocal project came into being was historical injustice in the form of colonial domination? It seems plausible to think that it does. Although reciprocity and coercion (in the form of domination) do not necessarily strictly *overlap* in cases of historical injustice, it is still necessary to take into account that coercion is not completely out of the picture. I take it that the best way to think about cases of historical injustice of this particular type is to not simply accord participation rights to all persons who are relevantly affected in virtue of reciprocity, but also—and more importantly—to provide additional compensation for the injustice done in the past, for example in the form of public apologies and material reparations.[45]

[45] AAP on its own cannot articulate an account of the proper nature and scope of such compensatory measures, for such an account would involve complex justice-based considerations that fall well beyond the scope of a democratic enfranchisement principle like AAP. For one recent systematic account of international compensatory measures in the context of historical injustice, see Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations* (Oxford: Oxford University Press, 2009).

Let us now turn to the second issue: 'zombie reciprocity' cases, which I define as cases that lack voluntary and fair cooperative arrangements and therefore are devoid of the essential characteristics of reciprocity. I do not wish to expand on this issue in great detail here, for I have already discussed the moral implications of exploitation and domination cases earlier in this paper. My only aim is to simply point out examples that are often framed as reciprocal projects of fair cooperation, but actually fit the description of unfair advantage-taking or dependency better. One example of this might be trade agreements between states which possess significantly different levels of power: if the less powerful party is too weak to ensure the wellbeing of its members on its own, then it is dependent on the continued reciprocal cooperation of the stronger party, whilst the stronger party is free to arbitrarily withdraw from the reciprocal projects without serious repercussions for itself and its members. This potential for *arbitrariness* is what likens this case to domination rather than reciprocity. But furthermore, in such asymmetrical 'zombie-reciprocal' projects, the way in which the terms of cooperation are negotiated may also be *unfair*, given the greater bargaining power of the stronger, less dependent party. This gives us yet another reason to think that such cases are not truly reciprocal. Recall my earlier point that reciprocity requires that the terms of cooperation are proposed and negotiated in a fair, symmetrical way. This is clearly not the case here. Consider also, for example, the bailout packages provided to Greece by the EU and its member states. On the one hand, Greece derives benefits from, but also contributes to, the general European project of cooperation, which *is* reciprocal overall. But on the other hand, it seems that the specific issue of bailout packages is better characterised as a coercive offer: a 'throffer'.[46] Although Greece chose to agree to the conditions attached to the bailout

[46] For an influential account of throffers see Hillel Steiner, "Individual Liberty," *Proceedings of the Aristotelian Society* 75, no. 1 (1974): 39. Steiner's example of a throffer is the following proposition: "Kill this man and you'll receive £100—fail to kill him and I'll kill you".

packages, Greece was in a vulnerable position, and could not afford to choose otherwise. For that reason, Greece did not agree to the offer in a truly *voluntary* way, so this is a case of coercion rather than reciprocity. On a side note, whether the conditions attached to the bailout were also *unfair* is a more controversial question, but evaluating their fairness is not necessary for showing that this is not a true reciprocity case. Since the initial offer had a coercive character, it is clear that this is not a case of true voluntary cooperation.

Having discussed all types of 'being affected', we can now provide a *General Statement of AAP*, as I have developed it in the previous two sections:

(P1) [Who is eligible to be a rights-holder?] All persons who have equal moral status are in principle eligible to be holders of democratic participation rights.[47]

(P2) [Which interests?] The kinds of interests that are morally weighty enough to justify the conferral of participation rights under AAP are the interest in autonomy and the interest in wellbeing. These interests must be non-trivially affected, but do not have to be adversely affected.

(P3) [What does it mean to be affected?] A person is relevantly affected only if she is affected by actual or possible coercion, exploitation, or reciprocity; or a combination of them.

(C1) [from 1, 2, 3] Everyone who possesses equal moral status and whose interests in autonomy or wellbeing are non-trivially affected and who is affected either by actual or possible coercion and/or exploitation and/or reciprocity counts as relevantly affected for the purposes of AAP.

(P5) [Why do affected interests justify rights?] Given the moral weight of relevantly affected interests, it would be to the interest-holder's detriment not to have democratic participation rights—even if she is not *adversely* affected.[48]

(C2) A person has democratic participation rights just if her interests are relevantly affected.

[47] I outline my stance on the concept of equal moral status in the Introduction to this thesis.
[48] (P5) summarises the argument articulated in the formal statement of the detriment test introduced earlier in this paper.

III. Economic Participation Rights: Substitutes, Supplements, Constraints

Having developed a justification for why relevantly affected persons have an *abstract* right to democratic participation, we can now ask: how does this right instantiate itself in various *concrete* forms for affected persons?

Existing versions of AAP focus primarily on the distribution of the concrete right to vote. To some extent, an emphasis on voting may be justified. After all, voting is a particularly tangible marker of enfranchisement: its use is confined to discrete and foreseeable moments in time, its scope is often equal for each rights-holder, and its content is relatively uncontroversial. But focussing exclusively on voting obscures the fact that democratic enfranchisement also includes a variety of other types of political participation, such as running for political office, participating in a peaceful legal protest, or engaging in civil disobedience. If AAP is supposed to provide a full account of democratic enfranchisement, it needs to explicitly incorporate a range of qualitatively different concrete instantiations of the right to participate in democratic decisions. But if we accept the general idea that AAP is compatible with different concrete instantiations of participatory rights, we also need to question whether all of these instantiations must be *political* participation rights—particularly if many kinds of relevant affectedness, such as exploitation and reciprocity, occur partially or even primarily within economic relationships. What if there are circumstances in which other forms of democratic participation, such as *economic* participation, protect the interests of all those enfranchised under AAP in a better way? In such circumstances,

AAP would demand the conferral of economic participation rights alongside, or instead of, political participation rights, depending on the specific context.[49]

The kind of economic participation that I have in mind here is a set of practices that involve the use of public and private economic resources to influence political decisions, as well as a set of practices that contribute to political decision-making regarding the distribution and use of public and private economic resources. Economic participation rights in this context are conceptually distinct from standard economic *liberties* exercised in the private realm for a private (non-political) purpose, such as "working, transacting, holding, or using [economic resources]",[50] although political decisions about the *scope* of such economic liberties may well fall into the domain of economic participation rights.

This is a deliberately broad definition of democratic economic participation. It is broader than the forms of economic participation typically discussed in the literature on economic democracy, which focuses—for instance—on workplace democracy, unionisation, or the self-management of workers in co-operatives. These kinds of participatory practices aim at democratising existing economic institutions, such as the workplace. The question in that debate is: who has the right to participate in decisions within an economic enterprise? But this question does not go far enough for anyone interested in the role of economic participation for AAP: we also need to ask how we ought to distribute economic participation rights in a given democratic polity.

[49] Carol Gould makes a similar claim when developing her own account of AAP: "I [...] propose that we take one meaning of being affected as given by human rights, where these rights include not only the mostly negative civil and political rights but also the more full-bodied social and economic rights." Gould, *Globalizing Democracy and Human Rights*, 212.

[50] James W. Nickel, "Economic Liberties," in *The Idea of a Political Liberalism: Essays on Rawls*, eds. Victoria Davion and Clark Wolf (Lanham, MD: Rowman and Littlefield, 2000), 156.

> **Economic Participation Rights**: the set of rights X_E which enable their holder A[51] to influence democratic decision-making either by using economic resources to voice political preferences of any kind (e.g. boycotts, campaign funding); or by voicing political preferences specifically about the use of economic resources, either within an economic relationship (e.g. strikes in a corporation) or within a political forum (e.g. participatory budgeting in a public assembly).[52]

One may wonder why some or all of these rights are not simply political participation rights X_P. If the exercise of economic participation rights boils down to the right to publicly voice preferences, are X_E not simply the same as the right to free speech, which seems like a standard *political* participation right? One well-known articulation of this view can be found in the US Supreme Court's majority opinion in the campaign finance (de-)regulation case *Citizens United v FEC*, which struck down restrictions on financial contributions to political campaigns on First Amendment grounds, thereby suggesting that the right to fund campaigns is merely a particular instantiation of a more general X_P to freely express one's political opinion: the Court held that "speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. [...] The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it," and that

[51] Here, I focus exclusively on individual persons as holders of XE. One may also wonder, of course, about the rights of other kinds of potential rights-holders—such as *private corporations*—in this context, which I bracket in this paper: what if a corporation's use of their economic resources somehow undermines important democratic norms? It is plausible to think that democratic polities would have the right to restrict the corporation's rights in this case, while carefully balancing those restrictions against a concern about imposing undue burdens on that corporation. For a defence of this view, see Thomas Christiano, "The Uneasy Relationship Between Democracy and Capital," *Social Philosophy & Policy* 27, no. 1 (2010): 195-217.

[52] The category of economic participation rights may well include other participatory practices, in addition to the four that I mention here. The aim of this paper is not to identify and systematise *all* possible instantiations of economic participation rights. Instead, I discuss these four paradigm cases for illustrative purposes, without committing myself to the view that my more general arguments about economic participation rights are necessarily limited to those four paradigm cases only.

"[t]he First Amendment therefore 'has its fullest and most urgent application' to speech uttered *during a campaign* for political office".[53]

But the point is that the right to fund political campaigns differs from the more general right to free speech because in the case of the former, the *means* for exercising one's voice are economic resources: what makes the right to fund campaigns an *interestingly distinct* type of participation right is that rights-holders use money to do the talking. Of course, it is true that both the exercise of one's right to free speech and one's right to fund campaigns usually has a communicative *effect*: both voice a political preference. But why should rights be lumped together in the same conceptual category *just because* their exercise potentially has similar general effects? After all, we do not do this with other kinds of rights.

A further concern about simply equating the right to fund campaigns with the right to free speech is that even if the effects of exercising either right are structurally similar in the sense that they voice preferences, the magnitude of their respective political impact is likely to differ. Suppose that I am an extremely wealthy individual, and that I support a policy P1. Suppose further that P1 is a truly bad policy which most reasonable people will not support if they have a clear picture of what the policy entails. When I exercise my right to free speech, it is possible that I will successfully persuade a—potentially large—number of people that my position on policy P1 is correct, thus inducing

[53] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 23 (2010), Justice Kennedy's majority opinion [emphasis added]. For critical discussion of the question whether the right to fund campaigns is simply an instantiation of the right to free speech, see J. Skelly Wright, "Politics and the Constitution: Is Money Speech?" *The Yale Law Journal* 85, no. 8 (1976): 1001-1021; Vincent Blasi, "Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment after All," *Columbia Law Review* 94, no. 4 (1994): 1281-1325; Joshua Cohen, "Money, Politics, Political Equality," in *Fact and Value : Essays on Ethics and Metaphysics for Judith Jarvis Thomson*, eds. Alex Byrne, Robert Stalnaker, and Ralph Wedgwood (Cambridge, MA: MIT Press, 2001), 47-80; Robert C. Post, *Citizens Divided: Campaign Finance Reform and the Constitution* (Cambridge, MA: Harvard University Press, 2014).

them to support policy P1 in democratic deliberations and decisions. Given that I am wealthy, I might use some of my money for personalised debating lessons, or I might solicit the help of a PR firm on how to come across as compelling as possible when broadcasting my views, thus potentially increasing the political impact of my exercise of the right to free speech. My social status as a wealthy individual may even make it more likely that people will be persuaded by what I have to say. However, I still have to *persuade* people, and after having persuaded them at time t1 that P1 is correct, it is not clear that they will continue preferring P1 to other policies when such policies are up for a vote at t2, because people may deliberate further and gain more information in the meantime. Assume now that, in spite of my considerable resources, efforts, and social status, I do not succeed in persuading a large amount of people that P1 is worthy of their support. People start ignoring P1, which gradually disappears from the political agenda.

Compare this to a scenario in which I exercise my right to contribute financially to campaigns. I use my economic resources to support a small fringe group campaigning in support of P1: suddenly, the group hires dozens of new staff members, puts up ads everywhere, and sends its representatives to talk shows. The group quickly becomes a major player in our political landscape, and P1 becomes a proposal that *everyone* sees *everywhere*: since—thanks to my support—the fringe group now seems like an important new social movement, the news covers P1 constantly, thus endowing it with some degree of legitimacy. I may well have to publicly declare my financial support for the fringe group, but few ordinary democratic agents will go out of their way to check who I am and what my agenda is; and the fringe group will not advertise that they are campaigning for an unreasonable policy reflecting the preferences of only a privileged few. I have now successfully ensured that my favoured policy is on the political agenda: even if people do not end up supporting P1

in democratic decisions, P1 is one of the policies that people now have to contend with. As we can see here, I have communicated a political preference in both cases: the general effect of my exercising my rights is similar in that respect. But by funding a political campaign, my political impact has not only been *disproportionately* larger, but also *harder to track*: rather than having to become one of the faces of P1, I can hide behind the group of campaigners.[54] For these reasons, the problem with labelling the right to fund campaigns as something as (supposedly)[55] morally innocuous as the right to free speech is that it may misleadingly suggest that the former is also morally innocuous.

Analogous arguments apply to the right to engage in boycotts. Again, money does the (political) talking, although of course in this case, it does so because it is *withheld*, not given; and this use of particular means—economic resources—is the reason why boycotts are more specific than the more general right to free speech.

Strikes and participatory budgeting, in turn, are also an interestingly distinct type of exercising democratic voice because they involve public deliberation, contestation, and decision-making specifically about the appropriate use of economic sources. For instance, the function of participatory budgeting is to deliberate about the distribution and allocation of economic resources within local constituencies; and the usual goal of labour strikes is to communicate employee grievances concerning the allocation of economic resources with an economic relationship, and to leverage the

[54] Depending on the specific empirical context, the right to fund campaigns will not *always* have an impact that is disproportionate and hard to track in this way. But all I am arguing here is that the right *can* have this kind of impact, and this is enough to highlight an important normative worry.

[55] Of course, exercising one's right to free speech is not always *entirely* morally innocuous: consider hate speech which incites racially or religiously motivated violence, for instance. This is why many democracies impose certain constraints on this right, while remaining concerned about not restricting this important right *unduly*. The point, however, is that the claim that 'all people ought to have a right to free speech that is as unconstrained as possible' is comparatively much less controversial than the claim that 'all people ought to have a right to fund campaigns that is as unconstrained as possible' (which implies no upper spending limits).

inconvenience caused by the strike in order to initiate and sustain collective bargaining processes concerning the terms of that economic relationship. In sum, the function of the right to strike and the right to participatory budgeting is therefore restricted to a particular *decisional domain*, and this is what distinguishes them from standard political participation rights, which are not *necessarily restricted* in this way. Clearly, striking and participatory budgeting differ from campaign funding and boycotts in the sense that the latter involve the indirect communication of political preferences via economic resources, while the former rely on the direct voicing of preferences. The point is that both clusters of economic participation rights *necessarily* involve decisions with or about economic resources, which is why both clusters are part of one discernible conceptual category.

This distinguishes economic participation rights X_E conceptually from standard political participation rights X_P like the right to vote in local and national elections,[56] the right to run for office, or the right to participate in demonstrations, the function of which is not *necessarily* restricted to economic resources in terms of means or decisional domain. But note that even if one rejects the claim that there is a clear conceptual boundary between X_E and X_P,[57] one can accept the more *general* claim (which is compatible with my view) that,

[56] Aside from instantiating itself as a political participation right, the right to vote can also take the form of an economic participation right depending on the decisional context in which it is exercised, of course: the right to vote specifically as part of a participatory budgeting process, for instance, is more plausibly construed as an XE than an XP.

[57] The boundaries of 'The Political'—the question of which issues and practices are part of the *political* sphere, as opposed to the private, social, or economic sphere—are of course contested. For discussion see, for instance, Elizabeth Frazer, "Political Theory and the Boundaries of Politics," in *Political Theory: Methods and Approaches*, eds. David Leopold and Marc Stears (Oxford: Oxford University Press, 2008), 171-195; Lois McNay, *The Misguided Search for the Political: Social Weightlessness in Radical Democratic Theory* (Cambridge: Polity Press, 2014); Susan Moller Okin, *Justice, Gender, and the Family* (New York, NY: Basic Books, 1989). But the fact that the boundaries of The Political are contested does not mean that there cannot be a core subset of democratic rights—standard political participation rights XP—which are uncontroversially part of the political domain and which are not restricted in the way in which XE are restricted, and which can therefore be distinguished conceptually from *necessarily restricted* XE. However, XE and XP are not necessarily parts of conceptually distinct domains: they may in some instances overlap, or a type of XE may simply be a specific and restricted instantiation of a more general XP.

since our interests are significantly affected by decisions over economic resources, a commitment to AAP entails a commitment to the view that we ought to grant affected persons a whole *range* of rights over those decisions, *both* by expanding the scope of concrete X_P, *and* by expanding the scope of concrete X_E.

If we understand concrete X_E in the way outlined above, under which circumstances does the abstract right to participation justified by AAP instantiate itself in the form of X_E? My claim is that it does so whenever the morally significant interests in autonomy and wellbeing cannot be adequately protected *without* concrete X_E, or whenever relevant interests can be protected *better* via X_E than via political participation rights X_P alone.

1. Substitutes

Having clarified what X_E are, let us now consider *how* X_E can possibly work in conjunction with political participation rights X_P to protect morally significant interests. There are at least three cases which seem *prima facie* plausible. It seems that X_E may, first, serve to achieve the same ends as political participation rights do, so that they act as a substitute. Even though political and economic participation rights are qualitatively different, and may thus be incommensurable in certain cases, there *are* cases in which they may serve the same purpose for the prospective rights-holder.

> **Substitute**: Either X_E or X_P protect A's morally relevant interests sufficiently and equally well.

To see how X_E could act as a substitute for X_P, consider, for example, participatory budgeting: residents meet in neighbourhood assemblies to deliberate on the community's needs, and subsequently appoint community representatives who make decisions about the allocation of those funds, as well as about future investment priorities. Thus, participatory budgeting *integrates*

the exercise of *political* participation rights X_P into a decision-making process specifically concerned with the use and distribution of economic resources. Here, participatory budgeting functions as a genuine substitute only if other, more general political participation rights, such as the right to vote in federal elections, are unavailable to the holder of the right to engage in participatory budgeting. This does not necessarily imply that the holder of this right would be indifferent between having X_P or X_E; it simply means that X_E can, in this limited decision-making domain, fulfil a sufficiently similar function as more standard X_P.

Participatory budgeting is a comparatively young democratic innovation: first developed in the late 1980s in Porto Alegre, Brazil, it was subsequently adopted in over 1,500 cities across the world by 2012.[58] One of the reasons for this is its relative success in securing better outcomes than conventional models of political participation: in Porto Alegre, for example, participatory budgeting successfully increased levels of democratic participation by traditionally non-participating citizens.[59] Furthermore, exercising standard political rights had been ineffective in securing an accountable and fair use of public resources in light of a historical background of deeply entrenched political corruption. Participatory budgeting, by contrast, gave residents direct control over the means to provide key public services and basic infrastructure, such as widespread access to water services and to more public schools.[60] This track record suggests that the right to engage in participatory budgeting helps protect the kind of affected interests that are relevant for AAP more directly than standard political participation rights such

[58] Ernesto Ganuza and Gianpaolo Baiocchi, "The Power of Ambiguity: How Participatory Budgeting Travels the Globe," *Journal of Public Deliberation* 8, no. 2 (2012): 1.
[59] Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge: Cambridge University Press, 2009), 39.
[60] Archon Fung and Erik Olin Wright, "Thinking about Empowered Participatory Governance," in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance,* eds. Archon Fung and Erik Olin Wright (London: Verso, 2003), 5.

as voting in local or federal elections, and may thus be a *better substitute*. Even if the same positive outcomes could have been achieved via the exercise of X_P—assuming that the background problem of corruption could have been tackled otherwise—this kind of economic participation is more direct and more accountable.[61] In addition, participatory budgeting is a positive model for a 'second-best' enfranchisement of relevantly affected resident *non-citizens* via X_E if standard X_P are unavailable to them. If X_E do function as a genuine substitute in this case—and this case may be admittedly rare[62]—then from the perspective of AAP, non-citizens are not being wronged by not having X_P.

How does a traditionally local practice like participatory budgeting enhance *transnational* democratic inclusion? Empirically, the right to contribute to participatory budgeting is usually conferred to residents. But the fact that transnational participatory budgeting which includes non-resident non-citizens is not an empirical reality (yet) is not decisive for this argument: the point is that, from the perspective of AAP, transnational participatory budgeting *would* be desirable if it could substitute or supplement political participation rights conferred to non-resident non-citizens in accordance with AAP. Transnational participatory budgeting could be implemented, for instance, in the context of local cross-border decision-making concerning the protection of public goods, such as environmental protection policies: several municipalities (M1, M2, ... Mn) located in the same region, but divided by a national border, could implement a *joint* participatory budgeting scheme,

[61] Another added benefit is informing and mobilising the wider public: as Goodin argues, "[b]eyond informing policymakers, deliberative mini-publics can play an important role in informing fellow citizens about what they might themselves think about the matter, had they the same opportunity to study and discuss the matter intensively with one another." Robert E. Goodin, *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn* (Oxford: Oxford University Press, 2008), 268.

[62] Whenever participatory budgeting does *not* function as a genuine substitute, it is best construed as a special case of a *supplement* which integrates both XE and XP and is designed in a way that maximises the ability of rights-holders to access, and to actually exercise, such rights.

which would thus grant persons who are neither residents nor citizens of M1 participation rights in M1. This would be justifiable according to AAP, provided that the interests of the enfranchised groups in M1, M2, ... Mn are relevantly affected.

2. Supplements

Second, economic participation rights may *supplement* political participation rights by amplifying their scope. As supplements, economic participation rights protect relevant interests indirectly by adding an enforcement mechanism for the impact of political participation rights, thus increasing their potency.

> **Supplement**: Possession of either X_E or X_P protects A's morally relevant interests sufficiently, but possession of both X_E and X_P amplifies the scope and/or political impact of each one of those rights.

For instance, simply voting for a political party that wants to improve fair working conditions in transnational corporations may well suffice in some cases for protecting vulnerable interests of workers—depending on whether the party succeeds, of course. But if members of the same constituency that would vote for the political party also engage in a transnational solidarity strike, this will amplify the impact of their vote, because the party can then demonstrate that the issue of fair working conditions is a widely shared concern and thus subject to public scrutiny. There are many *transnational* examples of solidarity strikes which aim to increase political pressure. For instance, when the Latvian building company Laval un Partneri Ltd won a school renovation contract from the Swedish government, it employed Latvian workers, but paid them significantly less than local Swedish workers would ordinarily earn, thus

exploiting them.[63] In solidarity with the Latvian workers, the Swedish Building Workers' Union asked Laval Ltd to sign their collective agreement, and when the company refused, the union joined forces with the Swedish Electricians Union to engage in strike action, thus effectively blocking the company from doing business in Sweden. In cases like these, the exercise of economic participation rights clearly increases the likelihood of adequate interest protection for relevantly affected citizens and non-citizens, even if political participation alone could be sufficient.

In both the first case (substitutes) and the second one (supplements), AAP may not *demand* the conferral of X_E, if morally relevant interests are protected sufficiently via X_P. However, in non-ideal conditions, this may not often be the case: it is often costly, impractical, and sometimes just impossible to create the kinds of institutions that would be needed in order for all affected persons to be able to exercise X_P. X_E would be a feasible, and thus better, alternative to standard X_P under those circumstances. And if X_E are the only or best way to protect morally relevant interests under non-ideal conditions, then their conferral *is* morally required by AAP. Similarly, even if feasibility constraints are not the main problem, AAP may demand the conferral of X_E. In non-ideal conditions where a group's exercise of X_P gets systematically ignored, so that the group finds itself in a persistent minority, the group may need an added enforcement mechanism in order to ensure equal concern for the interests of its members. X_E may provide such an enforcement mechanism. So, in sum, AAP demands the conferral of X_E—when X_E are either substitutes

[63] See the European Court of Justice ruling in *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet,* C-341/05, I-11767 E.C.R. (2007), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0341 (accessed: May 24, 2018). The ruling was widely criticised for overemphasising business interests, which again successfully increased political pressure to adequately consider the fundamental interests of workers.

or supplements for X_P—if X_P either cannot be exercised for feasibility reasons, or if X_P are ineffective for interest protection for other reasons.

3. Constraints

Consider now a third, and last, possibility: X_E may act as a constraint on X_P—both on the X_P of others, and on one's own X_P.

> **Constraint**: A's X_E constrains the exercise of a right X_P in a way that enhances the protection of A's interests.

Regarding the former, X_E may act as a countervailing power to X_P, as "a variety of mechanisms that reduce, and perhaps even neutralize, the power-advantages of ordinarily powerful actors".[64] Consider a strike by persons—citizens or non-citizens—who are relevantly affected for the purposes of AAP because they are being *exploited*. Given that a relationship of exploitation is present, this suggests a clear power advantage of the exploiter, in which case expressions of the political preference not to be exploited may well remain inconsequential. A strike, however, may give exploiters a tangible incentive to enter into a negotiation with exploitees; and the exploitees' power to strike allows them to place credible demands on the exploiter during that negotiation process. For a transnational example of this, consider a well-known EU labour law case, *The International Transport Workers' Federation and The Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti* (2007).[65] Finnish company Viking Line ABP operated a ship between Finland and Estonia, which it attempted to 'reflag' as Estonian in order to avoid having to pay its

[64] Archon Fung and Erik Olin Wright, "Countervailing Power in Empowered Participatory Governance," in *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance,* eds. Archon Fung and Erik Olin Wright (London: Verso, 2003), 260.

[65] *The International Transport Workers' Federation and The Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti*, C-438/05, I-10779 E.C.R. (2007), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0438 (accessed: May 24, 2018).

workers Finnish wages instead of lower Estonian wages. Here, the company's aim clearly seems to have been to take unfair advantage of their workers' labour, which is why the workers' interests count as relevantly affected by exploitation according to the version of AAP developed above. When ITF and its local partners jointly planned strike action, the company sought an injunction against them in UK courts, and even though England and Wales's High Court granted the injunction, the Court of Appeal of England and Wales ultimately overturned it. However, when this case was referred to the European Court of Justice, the ECJ ruled in favour of the company. But since this ruling was widely condemned for prioritising business interests over the basic interests of workers, it still had a significant political impact by triggering public debate about the transnational right to strike as a strategy for opposing exploitative working conditions in transnationally operating companies.

Regarding the latter, consider the recent history of US campaign finance law about Political Action Committees (PACs) run by unions and corporations. The *Bipartisan Campaign Reform Act* of 2002 (better known as the McCain-Feingold Act) prohibited solicitation of contributions from non-union-members.[66] What does this mean for the relationship between X_E and X_P? Members of these kinds of PACs have exercised their X_P by forming and joining associations (in this case, a union or corporation, and a PAC), and they express their political preferences through those associations, but their use of campaign finance-related X_E is restricted to soliciting financial contributions from *union members* only. So the exercise of X_E constrains the scope in which one's own X_P may be exercised.[67] From the perspective of AAP, these kinds of X_E could justifiably also be accorded to relevantly affected non-citizens—for

[66] *Bipartisan Campaign Reform Act of 2002*, 47 U.S.C. 315 (2011). Note that this particular provision was struck down by *Citizens United v. Federal Election Commission*.

[67] Of course, in this case, in addition to acting as a constraint on one's other rights XP, the economic participation right XE is also constrained *itself*, most importantly by relevant legislation concerning PACs.

instance, resident non-citizens who are union members. However, when it comes to according this right to non-resident non-citizens, the case is likely to become more complex: while campaign contributions by foreigners are not impermissible *as a matter of principle* from the perspective of AAP, they do need to be balanced against principles of justice: even if AAP would justify the conferral of a right to engage in transnational campaign funding to a non-resident non-citizen, this right might be overridden by potentially weightier justice-based concerns about *disproportionate* and *intransparent* foreign interference in a polity's political decision-making landscape, especially if they undermine the integrity of that polity's existing democratic institutions. Consider, for instance, the role of think tanks like the Legatum Institute in the context of the British political debate on hard Brexit. The Legatum Institute was founded as an educational charity by billionaire businessman Christopher Chandler, a citizen of New Zealand and Malta, and the founder of the Dubai-based private investment firm Legatum Ltd. The Institute employs several high-ranking members of the Vote Leave campaign as Senior Fellows, and has positioned itself as an influential lobbying organisation arguing for the economic benefits of the UK leaving the European single market. Members of the Institute have enjoyed unparalleled access to key decision-makers in the British Conservative Party: in the first seven months of 2017, for instance, members of the Institute had five private meetings with David Davis, the Secretary of State for Exiting the European Union. The Department for Exiting the European Union subsequently turned down Freedom of Information requests concerning the nature of these meetings, maintaining that "there is a strong interest in policy making associated with our exit from the EU being of the highest quality [...] it is important that policy officials can exchange views and openly discuss and understand potential implications, especially on live issues," and that "releasing the information may result in policy officials

refraining from considering all available views and options".[68] From the perspective of AAP, individuals like Chandler, as well as the other 40 anonymous donors funding the Legatum Institute, have the moral right—in principle—to use their economic resources to finance lobbying initiatives and campaigns of this kind. However, this neither implies that exercising this right in this way is morally justifiable *all things considered*, nor does it imply that the right ought to be exercised without any constraints. In fact, in this particular case, it is clear that the opaque, and potentially disproportionate, impact of foreign financial contributions to pro-Brexit campaigns and lobbying ought to be severely constrained, and subjected to much further-reaching public oversight.[69]

Having outlined these three relationships between X_E and X_P, it is useful to reflect on what I am *not* claiming. First, I am not committing myself to the view that X_E always, and only, interact with X_P in these three ways: I have neither tried to argue that X_E necessarily fulfil these functions, nor have I attempted to offer an exhaustive list of possible relationships between X_P and X_E. Second, my account is not incompatible with the view that one and the same right of economic participation may fulfil more than one of the three functions: boycotts and strikes, for instance, may be both supplements and constraints. Third, I am not denying that persons who do not count as relevantly affected from the perspective of the AAP can have X_E as well. It might be possible to justify X_E for the unaffected—but such a justification could obviously not be based on affected interests, which is why I will not discuss this possibility in detail here. In sum, my modest aim in this section has simply been to point

[68] Jenna Corderoy and Peter Geoghegan, "Government Refuse to Reveal Details of Meetings with the Man Who's Shaping Brexit," *OpenDemocracy* (March 19, 2018), https://www.opendemocracy.net/uk/brexitinc/jenna-corderoy-peter-geoghegan/government-refuse-to-reveal-details-of-meetings-with-man (accessed: May 24, 2018).

[69] Similar arguments may well apply to anti-Brexit campaigns, of course (if they give rise to the same problems as the campaigns outlined here).

out that X_E *can* act as substitutes for, supplements of, or constraints on X_P, and that this important type of transnational enfranchisement is currently heavily underexplored in the literature on AAP. Whenever this is the case, X_P are not necessarily the only way, and not necessarily the best way, to protect the kinds of morally relevant interests that count as relevant for the AAP. So it is exactly in these cases that AAP justifies the conferral of X_E to persons—citizens as well as non-citizens, residents as well as non-residents—whose interests are relevantly affected.

IV. Constraining Duties: Accountability and No Intentional Misuse

There is one important worry about including economic participation rights X_E in the set of rights conferred to affected persons in accordance with AAP. Even if AAP plausibly justifies an ex ante distribution of concrete X_E in a way that is similar to the way in which it justifies the distribution of concrete political participation rights X_P, the full extent of X_E's ex post impact may be much less tangible than the impact of exercising X_P. X_E which involve voluntary (non-)exchanges of private economic resources, particularly campaign funding and boycotting, are likely to have a political impact that is hard to track, simply because voluntary transactions of economic resources from *private* individuals to private or public agents are subject to much less public scrutiny than those occurring exclusively within the public domain. Furthermore, in a globalised economy, those private economic relationships are often subject to overlapping and potentially conflicting laws governing the exercise of X_E, which renders the issue of public oversight even more complex. In light of these factors, it is therefore difficult to determine which holders of X_E ought to be held accountable for any detrimental impact of X_E being exercised, and to which constituency they ought to be accountable.

If X_E are particularly hard to track in this way, it is plausible to think that their exercise is constrained by a number of duties. In the specific context of X_E, there are at least two such duties which constrain the scope of X_E.[70] First, rights-holders need to be accountable for how they use or do not use their X_E, which requires their respective ability and willingness to publicly justify their actions to other holders of affected interests. Second, rights-holders have a duty not to intentionally and foreseeably *misuse* their X_E in a way that adversely affects the interests of others. My claim here is that any plausible version of AAP must include a commitment to the imposition of at least[71] these two minimal duties: without these duties, the participation rights conferred in accordance with AAP cannot be used as an adequately strong democratic enforcement mechanism for the consideration of the affected interests that they are supposed to help protect.

Before discussing the substantive content of these duties further, it is worth pointing out that imposing these duties will not always—and perhaps not even often—be sufficient for rendering the distribution of X_E in accordance with AAP entirely unobjectionable from a justice-based perspective.[72] The conferral of X_E may be contingent on securing particular *preconditions*, and the exercise of X_E may need to be constrained ex post by particular minimum *outcome*

[70] These duties are not necessarily specific to XE, for they may plausibly apply to the exercise of other rights as well: they are duties which are more *general* than the AAP. For instance, consider countries where voting (and thus the exercise of a particular XP) is compulsory, such as Luxembourg or Peru: here, the exercise of XP correlates with a duty incurred by the holder of XP to exercise this right in a particular way. Nevertheless, it is important to examine how exactly these duties play out in the context of XE, which is my aim in this paper.

[71] It is possible that AAP also justifies other correlative duties, but this is beyond the scope of this paper.

[72] As I point out in "What AAP Is, and How (Not) To Fight It", AAP is not a principle of democracy *and justice*—instead, it is just a principle of democracy. Therefore, it cannot by itself articulate what substantive justice requires, which is why I will not go into much detail about the justification of the preconditions and ex post constraints mentioned here. My aim here is simply to briefly point out the limitations of AAP in this regard, in order to show why justice-based considerations about the appropriate preconditions of and constraints on democratic decision-making are important for the protection of fair democratic procedures, as well as for evaluating the substantive justness of democratic decision outcomes.

standards.[73] Regarding the former, one precondition might be that polities implement fair policies of (re-)distributive justice in order to ensure that each holder of X_E has access to at least a minimum set of economic resources, which she is then free to use in the context of exercising her X_E. Another precondition might be that polities impose upper spending limits for particular X_E, such as the right to contribute financially to campaigns. If these preconditions are not present, the conferral of X_E risks undermining AAP's aim of ensuring a fair consideration of affected interests and of realising procedural fairness. Vastly unequal distributions of capital in society translate into vastly unequal opportunities to participate in democratic decisions via the use of X_E, even if the original distribution of X_E is egalitarian: some holders of X_E simply have fewer resources (or none at all) to be used for influencing political agendas and public opinion, for paying lobbyists and political think tanks which then influence legislative procedures, for contributing to campaigns, and so on. This may well bias democratic decisions in favour of the affluent: even if the group of affluent holders of X_E disagree politically amongst each other, the point is that the kinds of disagreement that get a wider platform are the disagreements of the affluent.[74] The problem here is that this makes it more likely that the interests of the affluent get publicly *articulated*, and actually *advanced* by particular decisions. Obviously, if the affluent were to have stronger democratic enforcement mechanisms for the consideration of their affected interests, this would be unfair from the perspective of AAP: what matters for AAP supporters is the moral weight of affected interests, and it is clear that just because the affluent have 'more at stake' in terms of material resources, their relevant

[73] On minimum outcome standards in democratic decision-making more generally, see Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), 297-300.

[74] See Thomas Christiano, "Money in Politics," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012), 250, for a similar argument.

interests in autonomy and wellbeing are not *necessarily* more strongly affected in a way that makes a difference for AAP.

And even if the interests of the affluent *were* affected more strongly in a particular case—thus raising the question whether the disproportionate impact of the affluents' use of X_E is truly objectionable in that situation—we need to ask to what extent the *outcomes* of democratic decision-making procedures must be constrained in order to ensure the continuous integrity of democratic institutions. As I have argued in another paper,[75] unequal distributions of democratic participation rights are compatible with AAP, yet those unequal distributions must not undermine AAP's higher-order commitment to the principle of equal concern. But this is precisely the problem when it comes to wealthy elites exercising their X_E: their unconstrained use of such rights may well erode a democratic institution's ability to actually give equal concern to all affected interests.[76] A disproportionately strong political impact of wealthy elites using their X_E may drown out the political impact of others using their X_E—and indeed, their X_P as well. More precisely, the exercise of X_E by the more economically advantaged group could easily have a *silencing effect* on the democratic participation of the less advantaged: it may diminish or even neutralise the political impact of less advantaged persons exercising their X_E, without actually depriving the less advantaged of their X_E *de jure*. Furthermore, a failure to address a state of affairs of this kind would not only undermine the *de facto* ability and motivation of *individual* representatives to give equal concern to all affected persons during legislative and other democratic processes, but it would also publicly express—from the perspective of a given democratic system *as a whole*—a significant lack of concern for the interests of

[75] "Narrow Possibilism about Democratic Enfranchisement".

[76] For a related, but distinct, argument (specifically about campaign finance), see Cohen, "Money, Politics, Political Equality," 47-80, who argues that the current campaign finance system in the US undermines equal *opportunities* for political impact.

the less advantaged. Articulating a complete account of appropriate minimum outcome standards would be beyond the scope of this paper, but the point I wish to make here is that, irrespective of the precise form that such standards may take, they must be designed in such a way as to prevent an erosion of the principles that underpin AAP.

1. Deliberative Accountability via Public Justification

How can private individuals be held accountable for the ways in which they use their participation rights? Standard, 'narrow' models of democratic accountability focus on holding elected representatives accountable for their decisions. Holders of participation rights can hold such representatives accountable via electoral sanctions, for example by choosing other candidates in the next election. 'Wide' conceptions of accountability, by contrast, emphasise the accountability of a broader set of democratic agents, including unelected individual rights-holders who participate via X_E and X_P.[77] Holding such *unelected* agents accountable via direct *electoral* sanctions is clearly not possible. But these agents can be asked to justify during deliberative processes how they make use of their opportunities of impact on a polity's decisions, and their respective effect on the morally relevant interests of others.[78] In that way, the wide conception allows us to think about duties of democratic accountability held by unelected political agents, and particularly those exercising their X_E outside of state institutions. Thus, the 'wide' model of accountability is particularly useful for understanding the specific duties that arise in correlation with X_E, although similar duties may of course also arise in

[77] For an influential alternative to the sanctions model, see Jane Mansbridge, "A 'Selection Model' of Political Representation," *The Journal of Political Philosophy* 17, no. 4 (2009): 369-398.

[78] This does not mean, of course, that each XE-holder A must *actually* justify her use of XE to each affected person every time A makes use of her XE. This would be overly demanding. Instead, A's use of XE must be *justifiable*—rather than actually *justified*—to the justificatory group, the latter of which can then challenge A to actually justify her use of XE ex post.

correlation with standard X_P. To illustrate how this duty works in practice, consider participatory budgeting, where resident citizens and resident non-citizens use X_E to self-select into a deliberative process regarding the use of public resources in a way that protects the interests of residents. The participants of participatory budgeting processes have to justify their decisions to each other and to the wider public. They also have to publicly justify why they are the right agents to participate in this kind of decision-making, for example by demonstrating a basic level of familiarity with the issues under discussion.[79]

Of course, the scope of the justificatory group may increase dramatically, and to an unforeseeable extent, with the conferral of X_E. This raises the question whether we can always know ex ante towards whom our duties of accountability are directed. The brief answer is: we cannot. The epistemic problem of unforeseeability may well constitute a hard feasibility constraint in some cases, that is, one that we cannot overcome by investing time, money, and effort into identifying the full scope of the justificatory group.[80] But this is not necessarily a reason to be sceptical of AAP. In addition to providing an argument for justifying the correct ex ante distribution of democratic participation rights X_P and X_E including the duties which constrain the exercise of such rights, AAP as an *ideal* principle of democratic enfranchisement offers us conceptual tools for an *ex post evaluation* of democratic participation: AAP does not only determine who has duties of accountability, but it also shows when and why democratic actors have

[79] Note however that from the perspective of AAP, it is not the case that *non-citizens*, purely in virtue of their legal status, incur a *special*, more demanding duty of justification for their exercise of participation rights. Since AAP is a citizenship-independent account regarding the conferral of participation rights, it also offers a citizenship-independent account of correlative duties, so that 'foreign influence' is not intrinsically objectionable.

[80] For an account of hard and soft feasibility constraints, see Pablo Gilabert and Holly Lawford-Smith, "Political Feasibility: A Conceptual Exploration," *Political Studies* 60, no. 4 (2012): 809-825. See "What AAP Is, and How (Not) to Fight It" for discussion of how AAP supporters should respond to the presence of hard and soft feasibility constraints.

breached a duty of accountability. Hence, the issue of the unforeseeable political impact of X_E simply highlights a feature of AAP, not a bug. One may wonder, of course, whether there is a contradiction between the claim that we cannot always know towards whom our duties of accountability are directed, and the claim that AAP tells us *when* we have breached those duties. In response, I would argue that there is no contradiction, since the former claim refers to a feasibility constraint, whereas the latter claim refers to the normative function of AAP as an ideal principle: even if we cannot determine the full extent of the justificatory group ex post due to feasibility constraints, it is still plausible to commit to a more general normative principle, articulated in conditional form: *if* we are able to identify someone as a member of the justificatory group for the exercise of a particular right X_E, *then* we owe that specific person a duty of public justification. In other words, the undirected duty of public justification turns into a directed duty as soon as we possess empirical knowledge about who in fact fulfils the conditions for being part of the justificatory group.

One final question remains: do the holders of X_E incur these duties only if they actually exercise their rights? This would be plausible if failing to exercise one's participation rights never affected the interests of others. However, this is just not how economic participation rights work. Consider strike-breakers: a worker of company A choosing not to exercise their right to strike actively undermines an on-going strike, and weakens the bargaining position of other holders of the right to strike. This adversely affects the interests of all strikers in A, including the strike-breaker's. It may also adversely affect the interests of workers in a different organisation B, who do not have the right to strike in A but nevertheless have a stake in how successful the strikes in A turn out to be. Strike-breaking in A may set a bad precedent for future

strikes in B.[81] Hence, overall, it is more plausible to say that *both* acts (exercising one's right to strike) *and* omissions (not exercising this right) are constrained by a duty of justification.

2. No Intentional Misuse

Secondly, holders of X_E incur a duty not to intentionally and foreseeably misuse their rights in a way that affects the interests of others in an unjust or exploitative way. The relevant interests here are the ones that count as morally relevant for the AAP, as outlined in section I of this paper: the interest in autonomy and wellbeing. The justification for this duty, again, is that AAP would be inconsistent if it demanded the conferral of rights, but allowed for these rights to be used in such a way that they undermine the very purpose for which they were conferred in the first place: the equal consideration and protection of fundamental interests. As Christiano (in my view, rightly) points out, "the ordinary exercise of liberal property rights can in some contexts constitute an exercise of political power that abridges political equality".[82]

To illustrate more concretely how X_E can be intentionally misused in a way that breaches the correlative duty outlined above, consider two kinds of boycotts, which both involve the use of *private* financial means in the context of *private* economic relations in a way that is intended to have a *political* impact: the historical case of the transnational boycott of South African products in an effort to end Apartheid, and a boycott of the products of a company run by members of a particular social group (e.g. LGBTQ persons). The first kind of boycott was non-discriminatory, because its political aim was to combat

[81] This might imply a *duty* to exercise one's right to strike, grounded in a more general duty of solidarity and/or assistance. But such a duty would not be the kind of very specific constraining duty that AAP can justify: it would be a more general duty justified by an argument external to AAP.

[82] Thomas Christiano, "Political Equality and the Independent Power of Private Property," in *Problems for Democracy*, eds. John H. Kultgen and Mary Lenzi (Amsterdam: Rodopi, 2006), 120.

injustice—specifically, racial injustice in South Africa—and because it was not targeted against persons or groups based on morally arbitrary criteria.[83] The second boycott, in turn, is discriminatory, because it targets LGBTQ individuals simply in virtue of their sexual orientation, which is a morally arbitrary feature. As such, the aim of this boycott would be to further the social exclusion and disadvantage of LGBTQ persons, and thus to uphold an unjust state of affairs. Holders of the right to boycott have a duty not to intentionally use their right in this second way.[84]

Note that the duty specified here is not a duty of redistribution or compensation. If A's exercise of X_E or X_P does turn out to be detrimental to B's interests ex post, A may well be liable to compensatory measures. But those measures have to be justified by additional principles of justice and fairness. They cannot be justified internally by AAP because AAP determines the correct *ex ante* distribution of rights and correlative duties.

One may object that my account so far seems to imply a dramatically overdemanding duty, according to which we may never infringe on the interests of others by exercising X_E. But recall that the AAP excludes trivial interests from consideration, so this duty is limited to infringements of fundamental interests in autonomy and wellbeing. Furthermore, given that we sometimes have to infringe even on such fundamental interests in order to pursue an even

[83] My use of the term 'morally arbitrary' reflects standard terminology in the philosophical literature on discrimination. As David Miller puts it, "a morally arbitrary feature of persons is a feature that should not be allowed to affect the way they are treated". See David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 32. For an extensive discussion of which features might qualify as arbitrary, see (amongst many others) Richard J. Arneson, "Discrimination, Disparate Impact, and Theories of Justice," in *Philosophical Foundations of Discrimination Law,* eds. Deborah Hellman and Sophia Reibetanz Moreau, (Oxford: Oxford University Press, 2013): 87-111. For critical discussion of accounts relying on a non-arbitrariness requirement, see Kasper Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination* (Oxford: Oxford University Press, 2014), 105-111.

[84] This applies not only to boycotts where persons misuse their XE collectively in order to achieve a shared goal, but also to individual instances of non-association. If the background conditions are such that a significant number of XE-holders choose to engage in individual non-association, this may well have a political effect similar to the effects of a boycott.

more important goal, this duty is best understood as a pro tanto duty, so that it may be permissibly overridden if that ensures an overall better protection of relevant affected interests.

Conclusion

This paper has made three contributions to the philosophical debate about the democratic enfranchisement of non-citizens. Firstly, I have developed a General Statement of the all-affected principle (AAP), which clearly states what kinds of interests are morally relevant for AAP, what it means to be affected, and why being affected justifies an abstract right to democratic participation (sections I and II). My goal here has not been to defend AAP fully against competing solutions to the democratic boundary problem. Rather, I have constructed a plausible version of AAP that addresses some of the undertheorised aspects of existing versions of AAP, and I have then shown what this implies for possible views about *concrete* participation rights that AAP supporters must commit themselves to. Secondly, I have argued that the abstract right justified by AAP instantiates itself not only as a cluster of concrete *political* participation rights, but also as a cluster of concrete *economic* participation rights (section III). These kinds of economic participation rights have been underacknowledged in the literature so far, but they are crucial for AAP: there are important cases in which relevant interests cannot be adequately protected without these rights, especially under non-ideal conditions. Therefore, those who commit themselves to AAP more generally must also commit themselves to the more specific view that AAP demands the conferral of concrete economic participation rights. In this context, I have identified ways in which economic participation rights substitute, supplement, and constrain political participation rights. I have concluded the paper by arguing, thirdly, that concrete economic participation rights raise unique

worries about low accountability and the intentional misuse of rights, which is why AAP supporters must reflect explicitly on the question of how a range of general duties constrain the exercise of such rights *in particular* (section IV). One wider implication for future research is that, when it comes to understanding democratic *voice* in the context of the democratic boundary problem, we ought to adopt a more multifaceted approach than most contributors to the debate have done so far: rather than only analysing discrete instantiations of participation rights in isolation, and only focussing on standard political participation rights, we also ought to examine how the interplay between economic and political participation rights serves to protect valuable interests, and what kinds of duties constrain the exercise of such rights.

Bibliography

Abizadeh, Arash. "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." *Political Theory* 36, no. 1 (2008): 37–65.

Arneson, Richard J. "Human Flourishing Versus Desire Satisfaction." *Social Philosophy and Policy* 16, no. 1 (1999): 113-142.
———. "Discrimination, Disparate Impact, and Theories of Justice." In *Philosophical Foundations of Discrimination Law,* edited by Deborah Hellman and Sophia Reibetanz Moreau, 87-111. Oxford: Oxford University Press, 2013.

Bipartisan Campaign Reform Act of 2002. 47 U.S.C. 315 (2011).

Blasi, Vincent. "Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment after All." *Columbia Law Review* 94, no. 4 (1994): 1281-1325.

Butt, Daniel. *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations.* Oxford: Oxford University Press, 2009.

Christiano, Thomas. "Political Equality and the Independent Power of Private Property." In *Problems for Democracy*. Edited by John H. Kultgen and Mary Lenzi, 119-138. Amsterdam: Rodopi, 2006.
———. *The Constitution of Equality*. Oxford: Oxford University Press, 2008.
———. "The Uneasy Relationship Between Democracy and Capital." *Social Philosophy & Policy* 27, no. 1 (2010): 195-217.
———. "Money in Politics." In *The Oxford Handbook of Political Philosophy*, edited by David Estlund, 241-258. Oxford: Oxford University Press, 2012.

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

Cohen, Joshua. "Money, Politics, Political Equality." In *Fact and Value : Essays on Ethics and Metaphysics for Judith Jarvis Thomson,* edited by Alex Byrne, Robert Stalnaker, and Ralph Wedgwood, 47-80. Cambridge, MA: MIT Press, 2001.

Corderoy, Jenna, and Peter Geoghegan. "Government Refuse to Reveal Details of Meetings with the Man Who's Shaping Brexit." *OpenDemocracy*. Published online (March 19, 2018).

https://www.opendemocracy.net/uk/brexitinc/jenna-corderoy-peter-geoghegan/government-refuse-to-reveal-details-of-meetings-with-man. Accessed: May 24, 2018.

Feinberg, Joel. *The Moral Limits of the Criminal Law Volume 3: Harm to Self.* Oxford: Oxford University Press, 1986.
———. *The Moral Limits of the Criminal Law Volume 4: Harmless Wrongdoing.* Oxford: Oxford University Press, 1988.

Frazer, Elizabeth. "Political Theory and the Boundaries of Politics." in *Political Theory: Methods and Approaches*, edited by David Leopold and Marc Stears, 171-195. Oxford: Oxford University Press, 2008.

Fung, Archon, and Erik Olin Wright. "Thinking about Empowered Participatory Governance." In *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance.* Edited by Archon Fung and Erik Olin Wright, 3-44. London: Verso, 2003.
———. "Countervailing Power in Empowered Participatory Governance." In *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance.* Edited by Archon Fung and Erik Olin Wright, 259-289. London: Verso, 2003.

Ganuza, Ernesto, and Gianpaolo Baiocchi. "The Power of Ambiguity: How Participatory Budgeting Travels the Globe." *Journal of Public Deliberation* 8, no. 2 (2012): 1-12.

Gilabert, Pablo, and Holly Lawford-Smith. "Political Feasibility: A Conceptual Exploration." *Political Studies* 60, no. 4 (2012): 809-825.

Goodin, Robert E. "Exploiting a Situation and Exploiting a Person." In *Modern Theories of Exploitation*, edited by Andrew Reeve, 166-200. London: Sage, 1987.
———. *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn.* Oxford: Oxford University Press, 2008.
———. "Enfranchising All Subjected, Worldwide." *International Theory* 8, no. 3 (2016): 365-389.

Gould, Carol C. *Globalizing Democracy and Human Rights.* Cambridge: Cambridge University Press, 2004.

Green, Leslie. "The Forces of Law: Duty, Coercion, and Power." *Ratio Juris* 29, no. 2 (2016): 164-181.

Griffin, James. *Well-Being: Its Meaning, Measurement and Moral Importance*. Oxford: Clarendon Press, 1986.

HM Revenue & Customs. "Statistics on recently arrived non-UK EEA nationals subject to income tax and National Insurance contributions or receiving HMRC administered benefits." Published online (May 2016). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522811/HMRC-Ad_Hoc_Stats_Release-EEA_Nationals_net_contribution_2013-2014.pdf. Accessed: May 24, 2018.

"Immigration Rules 2014 (United Kingdom)". Published online (February 25, 2016). https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum. Accessed: May 24, 2018.

The International Transport Workers' Federation and The Finnish Seamen's Union v. Viking Line ABP and OÜ Viking Line Eesti, C-438/05, I-10779 E.C.R. (2007). Published online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0438. Accessed: May 24, 2018.

Kramer, Matthew H. "Refining the Interest Theory of Rights." *The American Journal of Jurisprudence* 55, no. 1 (2010): 36-37.

Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet, C-341/05, I-11767 E.C.R. (2007). Published online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0341. Accessed: May 24, 2018.

Lippert-Rasmussen, Kasper. *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*. Oxford: Oxford University Press, 2014.

Mansbridge, Jane. "A 'Selection Model' of Political Representation." *The Journal of Political Philosophy* 17, no. 4 (2009): 369-398.

McNay, Lois. *The Misguided Search for the Political: Social Weightlessness in Radical Democratic Theory*. Cambridge: Polity Press, 2014.

Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2007.

Nickel, James W. "Economic Liberties." In *The Idea of a Political Liberalism: Essays on Rawls*, edited by Victoria Davion and Clark Wolf, 155-175. Lanham, MD: Rowman and Littlefield, 2000.

Nussbaum, Martha C. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press, 2000.

Okin, Susan Moller. *Justice, Gender, and the Family*. New York, NY: Basic Books, 1989.

Pettit, Philip. *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge University Press, 2012.

Post, Robert C. *Citizens Divided: Campaign Finance Reform and the Constitution*. Cambridge, MA: Harvard University Press, 2014.

Raz, Joseph. *The Morality of Freedom*. Oxford: Clarendon Press, 1986.

Sample, Ruth J. *Exploitation: What It Is and Why It's Wrong*. Lanham, MD: Rowman & Littlefield, 2003.

Smith, Graham. *Democratic Innovations: Designing Institutions for Citizen Participation*. Cambridge: Cambridge University Press, 2009.

Song, Sarah. "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State." *International Theory* 4, no. 1 (2012): 39-68.

Steiner, Hillel. "Individual Liberty." *Proceedings of the Aristotelian Society* 75, no. 1 (1974): 33-50.

Swanton, Christine. "The Concept of Interests." *Political Theory* 8, no. 1 (1980): 83-101.

Valentini, Laura. "No Global Demos, No Global Democracy? A Systematization and Critique." *Perspectives on Politics* 12, no. 4 (2014): 789–807.

Warren, Mark E. "The All Affected Interests Principle in Democratic Theory and Practice." *IHS Political Science Series Working Paper 145.* Published online (June 2017). http://irihs.ihs.ac.at/4306/15/Warren%20-%20All%20Affected%20Interests%20Principle.pdf. Accessed: May 24, 2018.

Wertheimer, Alan. *Coercion*. Princeton, NJ: Princeton University Press, 1987.

Wright, J. Skelly. "Politics and the Constitution: Is Money Speech?" *The Yale Law Journal* 85, no. 8 (1976): 1001-1021.

Young, Iris M. *Inclusion and Democracy*. Oxford: Oxford University Press, 2000.

Zimmerman, David. "Coercive Wage Offers." *Philosophy & Public Affairs* 10, no. 2 (1981): 121-145.

What AAP Is, and How (Not) to Fight It

Abstract: The aim of this paper is to assess the force of a range of possible objections against the All-Affected Principle (AAP). I respond to two clusters of objections: on the one hand, concerns about the normative desirability of AAP, and on the other hand, concerns about the feasibility of implementing the principle in the context of currently existing democratic institutions. The former category includes the worry that the principle is circular or indeterminate, that it is either overinclusive or underinclusive, that it is overly demanding, that it leads to bad or unjust outcomes, and that the most plausible, narrow version of the principle is ultimately underwhelming in spite of its complexity. The latter category includes concerns about hard feasibility constraints ('realising AAP is impossible') as well as soft feasibility constraints ('realising AAP is contingent on time, available resources, and effort').

The overall upshot is that, given that refined accounts of AAP are able to respond plausibly to a range of popular objections, AAP cannot be dismissed as easily as many AAP sceptics may have thought. These reflections are thus useful not only for AAP supporters, but also for AAP sceptics, because they help clarify exactly what *kind* of objection one would have to put forward in order to cast serious doubt on AAP.

The view that relevantly affected interests are sufficient for justifying democratic enfranchisement has been the target of a heterogeneous set of objections. But are any of these objections indeed fatal for plausible, sufficiently nuanced versions of AAP? In this paper, I assess the force of two broad clusters of objections: those expressing scepticism about AAP's desirability as an ideal principle of democratic enfranchisement, and those criticising AAP on feasibility grounds. In particular, I examine objections that have *already* been put forward by various contributors to the debate, but I also construct a number of new possible objections that AAP sceptics *could* put forward—but have (to my knowledge) not put forward yet, although they are natural extensions of existing critiques. The guiding thought is that the groundwork for any plausible defence of AAP must rest on an assessment of the force of AAP-sceptical views that is as complete and as charitable as possible.

By laying this groundwork, this paper contributes to the debate on AAP in two ways: first, I hope to strengthen the case for AAP by offering a systematic analysis of the kinds of assumptions on which different strands of AAP scepticism rely, and by subsequently showing how AAP supporters can plausibly respond. At the same time, I aim to push the philosophical debate forward *on behalf of* AAP sceptics, in the sense that one central goal of my discussion is to show what exactly a plausible critique of AAP would have to demonstrate in order to provide *decisive* reasons for rejecting AAP.

I begin my reflections about the normative desirability of AAP by responding to a cluster of critiques which question AAP's desirability because of its (i) internal consistency, (ii) its scope, and (iii) its implications. The first category encompasses objections from circularity and indeterminacy, which are often conflated, but actually articulate conceptually distinct worries. I argue that

plausible versions of AAP are not subject to circularity, and that, while they might be indeterminate, they are not indeterminate in a way that is objectionable. The second category includes objections that AAP is either overinclusive, underinclusive, or both. Here, I argue that AAP is not objectionably overinclusive in the sense of being inaccurate, but I accept that it may be objectionably overinclusive in the sense of being intrusive, that is, by conflicting with a right to collective self-determination—unless AAP is plausibly constrained in order to avoid such conflicts. I also respond to the worry that AAP is overinclusive because it implies a demos that is simply too big: a world demos. I argue that AAP requires successive global democratisation, but not a world demos. Finally, I reject the claim that AAP is *under*inclusive. The third category includes the worry that AAP is overly demanding, that it generates bad or unjust outcomes, and (perhaps more surprisingly) that its normative implications are ultimately underwhelming. I respond that AAP's demandingness is a virtue, because AAP rightly accords the democratic value of inclusion priority over the value of creating a well-functioning demos; although I do not deny that the latter value is important. I then go on to argue that AAP is necessary but not sufficient for securing good and just democratic decision-making outcomes. I conclude the section by responding to AAP scepticism on the grounds that AAP in its plausibly constrained form is complex and thus theoretically costly in the sense that it is less parsimonious than alternative enfranchisement principles, which lead to relevantly similar conclusions. I show why this is not a good reason to reject AAP.

In the second part of the paper, I examine critiques of AAP grounded in a concern about its feasibility. I begin my discussion by offering a brief overview over different kinds of feasibility constraints, distinguishing between *hard* constraints ('AAP is impossible to realise') and *soft* constraints ('AAP's realisation is contingent on time, available resources, and effort'). I respond to

the objection that AAP ought to be rejected because AAP's institutional implementation poses a hard feasibility constraint for epistemic or motivational reasons. Even if it is impossible to implement AAP in its ideal form, I argue, AAP is valuable as an action-guiding ideal precisely because its ideal form is insensitive to feasibility constraints. Furthermore, aside from articulating a plausible ideal, AAP offers attractive second-best and third-best non-ideal variations which are not vulnerable to objections from hard constraints, and which can be supplemented by additional principles concerning the non-ideal realisation of democratic procedures in order to respond to objections from soft feasibility constraints. I conclude that AAP is not strictly infeasible, but that is nevertheless subject to soft feasibility constraints which are relevant for a nuanced assessment AAP's comparative feasibility in relation to alternative principles of democratic enfranchisement.

I. Is AAP Desirable?

1. Internal Consistency

a. Circularity

The charge of circularity is arguably the most common objection against AAP. However, this does not mean that there is widespread agreement about *why* AAP is circular: even though many critical contributors to the debate seem to think that the charge of circularity is straightforward, it is important to examine whether all circularity objections actually tackle the same issue. To see why, compare the following two well-known versions of the circularity objection to AAP:

> before a democratic decision could be made on a particular issue (by those affected), a prior decision would have to be made, in each case,

> as to who is affected and therefore entitled to vote on the substantive issue—a decision, that is, on the proper bounds of the relevant constituency. And how is this decision, which will be determinative of the ensuing substantive decision, to be made? It too should be made democratically, by those affected—but now we encounter a regression from which no procedural escape is possible.[1]

And

> for any question that has to be decided the domain is likely to vary with the outcome, creating a problem of circularity. [...] [I]f group X has to make a decision between two policies, one of which is detrimental to group Y, but the other of which has no impact on that group, then to know whether the members of group Y should be included in the demos alongside the members of group X, we have already to know which outcome will occur.[2]

The first statement, by Whelan, articulates a worry about whether AAP can plausibly be used as a principle that determines how political units ought to be constituted *initially*. This question—what the boundary of that political unit should be—is logically prior to the question who has participation rights in that political unit. But if that prior question has to be settled democratically, the objection goes, a commitment to the all-affected principle leads into an infinite regress: in order to decide democratically on the question of who should be part of the same constituency, we need an already-constituted group. By contrast, the second critique, put forward by Miller, asks whether AAP is plausible as a principle that determines who should be part of decision-making procedures in already existing political units. Whether a person's interests are actually affected by a decision hinges on what the outcome of that decisions turns out to be. If AAP demands the democratic inclusion of everyone whose interests are actually affected, we cannot implement AAP unless we already

[1] Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," in *Liberal Democracy*, Nomos 25, ed. J. Roland Pennock and John W. Chapman (New York, NY: New York University Press, 1983), 40.
[2] David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 215.

know the decision outcome. The two objections from circularity can thus be summarised as follows:

> **Circularity Regarding the Initial Constitution of the Demos**: AAP demands that all democratic decisions are made by including all persons whose interests are affected by that decision. This includes decisions about the initial constitution of the demos. But using AAP to settle this initial question is circular.
>
> **Circularity Regarding Participation in the Demos**: AAP demands that all democratic decisions are made by including all persons whose interests are affected by that decision. But who ends up being affected by a democratic decision depends on what the outcome of that decision is. So using AAP to determine who should be part of decision-making procedures in existing political units is circular.

How persuasive are these well-known critiques? Clearly, the first objection depends on whether it succeeds in attributing a particular view to AAP supporters: the view that the question regarding the initial constitution of the demos must be settled democratically, that is, by implementing AAP. But not so fast: AAP does not necessarily entail a commitment to the view that all political decisions, such as decisions about the initial constitution of the demos, ought to be settled democratically. The principle simply states that, in order for a political decision to be a *democratic* one, we must enfranchise all those whose interests are affected. Nothing about this simple claim implies that *all* political decisions must necessarily be settled by a democratic principle. In fact, AAP supporters can—without abandoning AAP—accept the view held by AAP sceptics like Whelan that there simply is no democratic solution to the version of the democratic boundary problem that refers to the 'initial constitution' question. As Goodin plausibly argues, for instance,

> [u]ntil we have an electorate we cannot have an election. That is not just a temporal observation; it is a logical truth. It is simply incoherent to constitute the electorate through a vote among voters who would be entitled to vote only by virtue of the outcome

> of that very vote. That is like saying the winning lottery ticket will be pulled out of the hat by the winner of that selfsame lottery. Logically, constituting the demos — *in the very first instance, at least* — cannot itself be a product of ordinary democratic decision making.[3]

Settling the 'initial constitution' question would require much more than a principle of democratic enfranchisement such as AAP. In order to settle the question of who should jointly form a political unit at the first instance, we would ideally need a theory of legitimacy, for which democracy is not sufficient;[4] and perhaps also a theory of justice. AAP cannot provide such a rich theoretical foundation, as its scope is much narrower. And even if a political unit is initially constituted in an arbitrary, unjust, or even illegitimate way, we do not necessarily have to consider it as illegitimate after is has, over a long period of time, established a well-functioning system of political and social institutions.[5] Even those political units that were badly-constituted initially are an appropriate locus for implementing AAP: because AAP serves only the narrower function of determining who ought to be enfranchised in an existing political unit, but not who ought to jointly constitute a political unit initially, it does not require us to dismantle existing political units just because those units were initially created in an undemocratic way. In other words, AAP does not

[3] Robert E. Goodin, "Enfranchising All Affected Interests, And Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 43 [emphasis added].

[4] For an influential defence of the view that democracy is not sufficient for state legitimacy, see Allen E. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2003), 233-260.

[5] Many AAP sceptics agree with this claim, too. Christiano, for instance, argues that "the common worlds that most states include are products of highly contingent and morally arbitrary causes. They are the results of the long-term formations of common legal, political, and educational institutions as well as regulatory, welfare, and taxation regimes within certain territorial confines. These activities over the last number of centuries have forged common worlds for their citizens. And in many cases, these common worlds were forged [initially] by the use of force and fraud. But however one thinks of how these common worlds are formed, the fact of a common world is a morally relevant fact now. Arbitrariness of origins does not imply the moral unimportance of the phenomenon that has been formed." Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), 83.

justify the initial constitution of the demos, but it does justify why and how the demos ought to be *re-constituted* going forward.

So if AAP is not vulnerable to the first circularity objection because it is not committed to a key claim that the objection falsely attributes to AAP supporters (the view that AAP must necessarily settle the initial constitution question), what about the second one? Again, AAP supporters can easily rebut this objection, this time by pointing out that AAP is not necessarily committed to actualism about interests: if we endorse a possibilist version of AAP, this circularity objection loses its force because the scope of enfranchisement does not depend on the decision outcome anymore. Charitable critiques of AAP acknowledge this openly: Miller, for example, points out that

> [i]f to avoid [the circularity] problem [generated by actualism] we say that everyone who may possibly be affected by a decision should be included in the constituency that makes it, then the demos will expand in all directions, depending on which possibilities are contemplated in the deliberation leading up to the decision. The upshot is that if we adopt the affected interests principle, we can only be sure of avoiding the circularity problem by making democracy's domain universal [...] But this would mean setting aside all of the questions [...] about the qualities we require for a well-functioning demos.[6]

As Miller rightly acknowledges, the worry about a well-functioning demos is distinct from the worry about circularity, which is why I will tackle it in a different part of this paper. So it seems that endorsing possibilism gets rid of the second circularity charge, although possibilists still have to address other worries about the principle in order to defend possibilism fully.

But it is worth examining this conclusion more carefully. After all, possibilism—and in particular, the narrow possibilist account that I have

[6] Miller, "Democracy's Domain," 215.

defended elsewhere—may still be vulnerable to other kinds of circularity objections. Anticipating a possible worry of this kind, let us consider

> **Self-fulfilling Prophecy:** the 'possibly affected' *become* possibly or actually affected as soon as, and only because, we categorise them as such. So if we make the wrong decision about who counts as relevantly (possibly) affected, we have to enfranchise people who wouldn't otherwise have been affected at all. Possibilism is circular because its assessment of who is relevantly affected is *always right* by definition.

At first glance, this seems like a good reason to abandon even the plausible possibilist variant of AAP. However, on closer inspection, another way of expressing *Self-fulfilling Prophecy* is this: '*if* we *fail* to implement the possibilist AAP correctly, *then* it is objectionably circular'. I am inclined to agree. But clearly, this is not a reason to reject AAP: it is simply a warning about the theoretical costs of applying AAP incorrectly. Therefore, *Self-fulfilling Prophecy* is not a worry about the internal consistency of the principle. It is a worry about epistemic challenges related to *realising* AAP. And no reasonable AAP supporter—and no reasonable AAP sceptic, for that matter—would disagree with the claim that we should avoid an incorrect application of AAP.

b. Indeterminacy

Let us now turn to the problem of indeterminacy, which is distinct from the problem of circularity although it is often conflated with it.[7]

[7] For examples of accounts which in my view conflate these two issues, see Miller's claim that "there [is] an interaction between the domain and the scope of democracy, where 'scope' refers to the range of issues that a given demos deems itself competent to decide. [...] Suppose then that a particular constituency has to resolve an issue that potentially affects the interests of those who are currently not part of that constituency. If it follows the affected interests principle, it seems it must find a way of including these outsiders in the decision. But an alternative would be to rule out in advance any decision that significantly affected the interests of the excluded group, assuming this does not exhaust all the possibilities. This again creates an indeterminacy problem, because one cannot settle the domain question without knowing in advance which scope limits any particular demos is going to impose upon itself." Miller, "Democracy's Domain," 216. See also Sofia Näsström, "The Challenge of the All-Affected Principle," *Political Studies* 59, no. 1 (2011): 116-134; David Owen, "Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and in

> **Indeterminacy**: AAP is unable to delineate a stable demos that persists over time, because there are multiple possible demoi depending on the *decision* that is being taken.

This is different from saying that the question who has participation rights in an existing demos depends on the decision *outcome*: that latter claim was what was at stake in the circularity objection to the actualist variant of AAP discussed above.

In response, I would argue that indeterminacy is not a bug, but simply a feature of AAP. AAP rests on the idea that it is best to disaggregate the thicker notion of membership from the thinner notion of participation, and that AAP's task is to provide an account of the latter but not the former.[8] It is possible that some persons enfranchised under AAP are *always* enfranchised in one particular demos, and one demos *only*; so that they might be seen not only as participation right-holders in that demos, but also as members of that demos. But this is not likely to be the case for everyone. Other relevantly affected persons may have democratic participation rights in multiple demoi, depending on what kind of decision is being taken. AAP, unlike any of its rivals which reject the disaggregation view, can provide a clear account of why those persons ought to be enfranchised in a demos although they may not be regular members of that specific demos. I therefore agree that AAP is indeterminate to some extent, but I dispute that it is *objectionably* indeterminate.[9]

Resolving the Democratic Boundary Problem," *Ethics & Global Politics* 5, no. 3 (2012): 129-152; Carmen Pavel, "Boundaries, Subjections to Laws and Affected Interests," in *The Oxford Handbook of Freedom*, eds. David Schmitz and Carmen Pavel (Oxford: Oxford University Press, 2007), 319-334.

[8] See also the Introduction to this thesis for further discussion.

[9] Fung defends a similar view to mine: "[AAP] can [...] be understood in a way that is more sensitive to circumstances and fluidity [...]. It can be understood as a regulative principle for continuously adjusting the boundaries of inclusion." Archon Fung, "The Principle of Affected Interests and Inclusion in Democratic Governance," in *Representation: Elections and Beyond*, eds. Jack Nagel and Rogers Smith (Philadelphia, PA: University of Pennsylvania Press, 2013), 236-268.

2. Scope

a. Overinclusiveness

Let us now focus on three ways in which AAP generates implications which might be considered overinclusive *and* inherently objectionable precisely *because* they are overinclusive, independently of their respective feasibility. The first one is inaccurate overinclusiveness, where AAP implies the enfranchisement of some unaffected persons. The second one is intrusive overinclusiveness, where AAP ostensibly violates the right to self-determination. The third one is an objection from overinclusiveness on the grounds that AAP supposedly requires a world demos.[10]

> ***Inaccuracy***: Plausible forms of AAP, such as the account of narrow possibilism that I have defended elsewhere,[11] require an *ex ante* judgment about who is possibly going to be relevantly affected. It is possible that the ex ante judgment, although reasonable, may turn out to be wrong. We might have incomplete information at the time of the ex ante judgment, or there might simply be unforeseeable circumstances, making the question of who will be relevantly affected not only unknown, but to some degree unknowable. So it is possible that some of those who are enfranchised under the narrow possibilist AAP will actually turn out to not be relevantly affected after all. From the perspective of AAP, including the unaffected is prohibited—so it is especially troubling if it is AAP *itself* which at the same time explicitly seems to require the inclusion of the unaffected. Here, overinclusiveness is objectionable because it is inaccurate by AAP's own standards.

[10] While the second and third type have been put forward by AAP sceptics already, the first type (*Inaccuracy*) has to my knowledge not yet appeared in the literature. However, *Inaccuracy* is a worry that might arise naturally, particularly in response to any version of AAP that relies on ex ante judgements (like narrow possibilism). Therefore, I construct and discuss it here alongside the second and third type in order to anticipate a more complete range of worries related to overinclusiveness. This, of course, should not be taken to imply that AAP sceptics are necessarily committed to endorsing the *Inaccuracy* objection.

[11] See "Narrow Possibilism about Democratic Enfranchisement". I focus on narrow possibilism here because the inaccuracy objection is less of a worry for actualism because actualism does not rely on an ex ante judgment about who is relevantly affected. However, as I have shown above as well as in my other paper, we have other reasons for rejecting actualism.

This may reveal an internal tension within the account. Assuming that we will never be able to eliminate epistemic uncertainty concerning our ex ante judgments completely, we have to accept that it is virtually impossible for a narrow possibilist AAP to generate fully accurate results. Inaccuracy in this sense is troubling because it reveals that there are instances in which AAP supporters have to commit to enfranchising an unknown and unknowable number of people (n) which according to AAP do not fulfil AAP's own criteria. AAP thus seems to demand the enfranchisement of all *and only* relevantly affected persons; and at the same time demand the enfranchisement of (some) unaffected persons, which of course implies an *all-but-not-only* view. Thus, it seems to require exactly that which it prohibits. And this kind of inaccuracy seems to be not a one-off problem, but rather a systematic feature of the account, since there will always be a set of (n), for which AAP demands both p (enfranchisement) and ¬p (no enfranchisement).

But note that this inaccuracy arises only because of an epistemic *feasibility* constraint regarding ex ante judgments. Granted, that constraint may be ineradicable. But this does not necessarily mean that we should abandon the ideal principle, given that the ideal version of AAP does *not* require p and ¬p at the same time. AAP is thus not internally inconsistent in the way that *Inaccuracy* suggests. If epistemic feasibility constraints were not present, the narrow possibilist AAP would not articulate an inaccurately overinclusive view. The real question, then, is whether we should endorse an ideal principle if the *realisation* of that principle will *always* and *foreseeably* be imperfect regarding accuracy to some extent, and thus overinclusive. My view is that when it comes to realising AAP, it is sufficient to make a reasonable ex ante judgment about who will be relevantly affected, given the available information. Some degree of resulting overinclusiveness due to foreseeable but substantively unknowable

inaccuracy is therefore permissible: what matters is that we do not, to the best of our knowledge, wrongfully exclude anyone.

Let us now turn to the second possible objection from overinclusiveness:

> **Intrusiveness Objection**: AAP justifies an individual right to democratic participation. This right conflicts with the collective right to self-determination whenever those who jointly hold the collective right perceive the democratic participation of newly enfranchised holders of individual democratic participation rights as an intrusive encroachment on their decision-making process. This is a problem even if implementing AAP does not lead to objectively bad or unjust outcomes.[12] AAP is objectionably overinclusive if it is committed to the view that the individual right to democratic participation trumps the collective right to self-determination.

It is important to get one ultimately misleading possible objection out of the way first. One might worry about AAP infringing on the collective right to self-determination, and thus being overinclusive, *purely because* one is worried about AAP seemingly infringing on the *individual* right to self-determination. Consider Nozick's well-known AAP critique, which asks us to imagine a woman with four potential suitors, and then claims that AAP cannot explain why it would be wrong for the suitors to vote on who should be allowed to marry the woman, rather than letting the women decide without their input.[13]

Clearly, AAP would be deeply unappealing if the domain of its decisional power were unrestricted in such a way that it could infringe on private decisions concerning one's own bodily autonomy, or similar issues that are rightly considered not "in principle open to *democratic* adjudication".[14] As I have pointed out in the introduction, it is relatively uncontroversial in our contemporary society that some decisions, such as the private decision of

[12] I will discuss the worry about bad or unjust outcomes later.
[13] Robert Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1974), 269.
[14] Laura Valentini, "No Global Demos, No Global Democracy? A Systematization and Critique," *Perspectives on Politics* 12, no. 4 (2014): 793 [emphasis added].

whom to marry, should simply not be up to a vote.[15] AAP's decisional power is thus restricted to issues that are normally open to political contestation in a democratic state. Granted, there may in some cases be reasonable disagreement about where we should draw the line between decisions that are appropriately settled via democratic procedures, and those that are not: it is likely that there is a grey zone concerning the scope of the democratic decisional domain. The relevant philosophical background problem here is the concept of 'The Political', the boundaries of which are subject to pervasive academic controversy. Offering a systematic account of the extent of the democratic decisional domain's grey zone would require developing and defending a positive account of what constitutes 'The Political' first. The less ambitious alternative strategy—which I adopt in the context of this paper—is to simply acknowledge that there *is* a grey zone, even if it is hard to identify its scope fully, and to identify this as an area where we ought to be cautious when it comes to implementing *democratic*—as opposed to other, individual—decision-making procedures.

Of course, the worry about the scope of the democratic decisional domain is by no means uniquely applicable to AAP: any other democratic principle is going to have to grapple with the potential problem of delineating the issues which are an appropriate subject of democratic decision-making, and which ones are not.. The reason why the scope of democratic enfranchisement ('who has participation rights?') is independent, in my view, from the scope of the democratic decisional domain ('what kinds of issues may everyone who has participation rights decide on, jointly with all other holders of participation rights?') is that making the latter dependent on the former would have

[15] Miller also articulates this view in his discussion of the AAP when he states that "'scope' refers to the range of issues that a given demos deems itself competent to decide. We should not assume that this scope is universal: for any demos there will be questions that are normatively off-limits, so to speak, such as private matters that should be left up to each individual member to decide". Miller, "Democracy's Domain," 215-216.

counterintuitive implications. Of course, what sorts of issues *actually* appear on the political agenda in a particular demos will indeed, to some extent, depend on who is enfranchised in that demos.[16] But the question of what kinds of issues actually appear, as a matter of fact, on political agendas is different from the *normative* question of what kinds of issues should be open to democratic contestation and deliberation. Unlike the question of real political agendas, the question of the boundaries of the democratic decisional domain is prior to the question of what kind of enfranchisement principle we should endorse in the sense that it is perfectly possible for us to develop a view about the boundaries of the decisional domain first, and to then plug in any democratic enfranchisement principle that we like—such as the AAP, the ASP, a citizenship-dependent conception, and so on—later. The (in my view, less plausible) alternative would be to make the scope of the democratic decisional domain, including the question of how far the demos may restrict important personal liberties via democratic decision-making, *contingent* on the implementation of particular models of enfranchisement. This strikes me as a counterintuitive stance because it implies that protections of key personal liberties which uncontroversially fall *outside* of the democratic decisional domain can be justified only *by reference to* a democratic enfranchisement principle. This would be odd because such liberties are usually considered to be more universal than principles of democratic enfranchisement, in the sense that they ought to protected irrespective of what kind of democratic enfranchisement principle, if any, we implement. Thus, if one accepts the view that the protection of such liberties ought not to hinge on the prior

[16] For this reason, it is often thought that a commitment to AAP necessarily implies that the scope of issues that will be decided democratically must be dependent on the scope of enfranchisement. My claim here is that there are multiple possible views that are open to AAP supporters regarding this issue (including my own view, which separates the question of the scope of the decisional domain from the question of the scope of enfranchisement), depending on how one *defines* the concept of the democratic decisional domain, and in particular, whether one combines that normative concept with the empirical one of real political agendas.

determination of who is enfranchised in a polity, one also ought to accept the view that the question of scope of the democratic decisional domain is independent from the question of the scope of democratic enfranchisement.

Having clarified the concept of the democratic decisional domain, let us direct our attention to a range of problem cases which illustrate the implications of the *Intrusiveness* objection in more detail.

> ***Case 1***: Persons in groups A and B count as relevantly affected according to AAP concerning decision X. Group A has previously settled all other decisions on their own, and so has B. Group A doesn't want newcomers B to decide on X with A. A wants to decide X on their own because members of A share certain characteristics (e.g. culture, identity, mutual trust). B's participation may or may not make a difference for decision outcomes, but that is not the point. Whether B's participation would change decision outcomes or not, A would perceive B's involvement as intrusive.

This is the kind of worry that someone who endorses liberal nationalism might put forward: it is therefore not only a worry about a conflict between the individual right to democratic participation and the collective right to self-determination, but rather a conflict between the individual right to democratic participation and the right to *national* self-determination.[17]

Some AAP supporters have dismissed these kinds of objections in the past, on the grounds that nationality functions merely as a proxy for what AAP articulates more plausibly. Goodin, for instance, claims that

> the characteristic form taken by critiques of those alternative ways of constituting the demos [is such that c]ounterexamples are conjured up showing that each of those ways of constituting the demos is either (or both) over- or under-inclusive, wrongly conferring membership upon

[17] For some important general liberal nationalist accounts (i.e. those which are not exclusively concerned with the democratic enfranchisement question), see David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007); Yael Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993); Avishai Margalit and Joseph Raz, "National Self-Determination," *The Journal of Philosophy* 87, no. 9 (1990): 439-461.

> people whose interests are not affected by the decisions of the demos or wrongly denying it to people whose interests are affected. Notice, however, that that is just to say that *the 'all affected interests' principle is the principle that is being implicitly employed* in judging all those other methods of constituting the demos, on the basis of territoriality, nationality, history, or whatever.[18]

But this dismissal is too quick, and in fact sets up a straw man. I doubt that many liberal nationalists would accept the claim that they implicitly endorse AAP. The kind of objection from overinclusiveness that I wish to discuss here is not one that implicitly assumes that AAP is correct. Rather, I take Case 1 to be setting out a worry about *genuine, deliberate* overinclusiveness, not just accidental overinclusiveness in the sense of 'including people who are not actually affected by failing to implement AAP properly'.

Normally, letting the rights-holders enfranchised under AAP decide together is supposed to realise the collective right to self-determination rather than undermining it. But I accept that there may be cases in which the individual right to participation could *conflict* with the collective right to self-determination. However, the individual right to participation does not conflict with the collective right to self-determination *purely because* it conflicts with the right to *national* self-determination. The collective right to self-determination by groups of holders of individual participation rights can be realised outside of, and independently of, territorially bounded nation states. From a liberal nationalist perspective, AAP may seem overinclusive purely because of this stance. My view is that subjective overinclusiveness in this sense is justifiable all-things-considered, because overriding people's subjective preferences concerning their national identity is less bad than wronging people by not giving them participation rights which allow them to have a say in decisions concerning their objective interests.

[18] Goodin, "Enfranchising All Affected Interests," 49 [emphasis added].

Ultimately, liberal nationalists will be inclined to reject this move because they accord significant moral weight to states of affairs—such as institutional arrangements, but also personal feelings of nationally-bounded solidarity and trust—that are a result of empirical contingency, and thus due to brute moral luck. Against that, and with other moderate cosmopolitans, I would reply that it is possible to accept such states of affairs as given, and to also accept the view that these states of affairs are not necessarily *illegitimate* purely because they are a matter of luck. What I insist on, however, is that it does not follow directly from that stance that empirically contingent states of affairs should determine a definitive priority ranking of *rights*, in the sense that the right to national self-determination must necessarily be ranked above individual rights of participation. The morally superior alternative thus seems to be a principle that does *not* rely on empirically contingent states of affairs as a justificatory foundation for an argument about who has individual rights of democratic participation, and to what extent that right can be overridden by the national right to self-determination. AAP is such a principle. Rather than reifying the status quo indefinitely, and using it (circularly) to justify why doing so is the right thing to do, AAP introduces independent moral criteria for why people have a right to democratic participation.

Therefore, rival principles still fare worse than AAP as candidates for the best available principle for realising *Fair Political Equality* (FPE), which—as I have argued elsewhere[19]—is a key desideratum for *any* principle of democratic enfranchisement, not just AAP. Other principles undermine FPE by relying on morally arbitrary criteria. If our goal is to identify the best ideal principle of democratic enfranchisement, we should endorse the principle that does not

[19] See "Narrow Possibilism about Democratic Enfranchisement".

attempt to limit the scope of democratic enfranchisement prematurely out of concern for non-ideal problems.

Contrast now the following two cases:

> ***Case 2***: Persons in groups A and B count as relevantly affected according to AAP concerning decision X. Group A does not want newcomers B to decide on X with A. A disagrees with newcomers B on X. B's participation in X will make a difference for the outcomes of X. B is so large that it will consistently outvote A on X(1), and on all subsequent decisions X(2...n). B has no nefarious aims to oppress A by consistently outvoting A: it just so happens that B's policy preferences are different from A's.
>
> ***Case 3*:** Persons in groups A and B count as relevantly affected according to AAP concerning decision X. Group A does not want newcomers B to decide on X with A. B has wrongful intentions (e.g. controlling or colonising A). This is a problem for self-determination even if (a) A does not *disagree* with B on X or any other policy issues X(2...n), and (b) B's participation will not make a difference to decision outcomes.

These cases do not necessarily express worries about *national* self-determination: it is possible that the individual right to democratic participation and the collective right to self-determination may still conflict, and this tension may be troubling even if one does not endorse liberal nationalism. The relevant question here is this: does AAP imply that the individual democratic participation rights conferred under this principle *necessarily trump* all other rights? No. If conferring democratic participation rights justified by AAP in a way that overrides collective rights of self-determination would ultimately undermine democracy, AAP may well become self-defeating. This suggests that the best response that AAP supporters can give in order to accommodate the worries expressed in Case 2 and 3 is that AAP must be plausibly *constrained* in order to avoid rights conflicts that undermine AAP. This could be done, for instance, by introducing constitutional and institutional safeguards, such as minimum outcome standards for democratic decisions that protect the rights

of vulnerable minorities, which might otherwise be overridden in unconstrained majoritarian decision-making.[20]

Of course, the introduction of constitutional safeguards may not be *sufficient* for tackling the problems expressed in Case 3. In Case 3, B has wrongful intentions, which makes this case even more morally troubling than Case 2. These wrongful intentions will not simply disappear just because we constrain democratic decision-making outcomes in order to protect vulnerable minorities from wrongful rights infringements. The point, however, is that implementing AAP cannot prevent the formation and persistence of wrongful intentions. Indeed, expecting AAP to *resolve* this problem would mean unduly overburdening the principle. However, AAP—if it is appropriately constrained—can *respond adequately* to the problem that some democratic agents simply *will* have wrongful intentions.[21]

Consider now the third and final possible objection from overinclusiveness:

> **World Demos Objection**: AAP, especially in its possibilist variant, ultimately demands a world demos. This renders AAP objectionably overinclusive. In particular, a world demos is objectionable because it has normatively undesirable implications for the following three reasons:[22]
>
> - **Brave New World**: a world demos would enable and encourage an

[20] I discuss such plausible constraints later, when considering objections to AAP's *implications* (section 3).

[21] If such wrongful intentions lead to actual *criminal wrongdoing* that undermines the integrity of democratic institutions, AAP supporters also have a response: disenfranchisement. See "Political Wrongdoing, Criminal Disenfranchisement, and Affected Interests".

[22] There are also important reasons why a world demos would be faced with a range of feasibility constraints—for instance, motivational feasibility constraints related to trust, shared principles, and internal cohesion. See David Miller, "Against Global Democracy," in *After the Nation: Critical Reflections on Post-Nationalism*, eds. Keith Breen and Shane O'Neill (Basingstoke: Palgrave Macmillan, 2010), 141-160; Matthias Risse, *On Global Justice* (Princeton, NJ: Princeton University Press, 2012); Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," *International Theory* 4, no. 1 (2012): 39-68. I will discuss objections from feasibility in the second part of this paper.

oppressive concentration of political power.[23]

- **Too Many Cooks**: a world demos would lead to a dilution of political voice for each person who has participation rights, that is, everyone. This would amount to a global democratic deficit.[24]

- **Unequal Stakes**: democracy can only apply in political units in which people have roughly equal stakes in most decisions over a stable period of time. This kind of 'common world' is not possible on a global scale. It is not going to possible to create a world demos in which all members have roughly equal stakes in the majority of decisions being taken over time.[25]

As Valentini has plausibly argued, AAP implies world democracy but not necessarily a world demos.[26] If world democracy, but not a world demos, is the normative ideal that AAP is committed to, then endorsing AAP simply means committing to the on-going democratisation of global, transnational, and domestic political institutions, in a way which approximates the ideal of global democracy as much as possible. As Goodin points out, "[w]ould democratizing the partial and piecemeal institutions of global governance amount to a contribution toward global democracy? Surely it would".[27] What makes the ideal of successive global democratisation appealing is that it accommodates, and in fact embraces, the widely shared view that democratisation takes time.[28] Acknowledging this empirical reality, however, does not amount to saying that the presence of feasibility constraints gives us strong enough reasons to modify the ideal of successive global democratisation. Given the successive approximation of the ideal is built *into* the ideal, the ideal retains its action-guiding nature even in light of feasibility constraints.

[23] Aldous Huxley, *Brave New World* (London: Chatto & Windus, 1932); Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983).
[24] Song, "The Boundary Problem in Democratic Theory," 61-62.
[25] Christiano, *The Constitution of Equality*, 83.
[26] Valentini, "No Global Demos, No Global Democracy?" 789-807.
[27] Robert E. Goodin, "Global Democracy: In the Beginning," *International Theory* 2, no. 2 (2010): 201.
[28] Goodin, "Global Democracy," 178.

Successive global democratisation is more likely to prevent than to trigger the negative effects of a hypothetical world demos articulated in *Brave New World* and *Too Many Cooks*. World democracy is best understood as a federation of democratically structured political bodies, whereas a world demos implies one unified democratic political unit. Such a federation would make it easier to hold those who attempt to monopolise political power to account,[29] as it would introduce a greater range of institutional checks and balances, and help improve transparency.[30] Such a federation would also help tackle the democratic deficit problem, the latter of which typically arises precisely in those transnational institutional contexts that suffer from a lack of democratisation. If we adopt a federalist approach to global democratisation rather than a world demos approach, this implies that globally affected persons can still be enfranchised in manageable, localised constituencies, where their political voice is not diluted. The decisions made within those localised demoi can then be translated into higher-order transnational decision-making procedures between different demoi. Hence, global democratisation actually enhances the bottom-up representation of affected persons' political preferences, which decreases the global democratic deficit instead of increasing it.

My general response that AAP requires global democratisation but not a world demos also applies to the worry articulated in *Unequal Stakes*—but it cannot offer a complete rebuttal of *Unequal Stakes* on its own. If AAP does not actually need to be realised by establishing a world demos, we now need to ask whether roughly equal stakes are present within discrete political units that

[29] For an account of why we have historical and empirical reasons to support this view, see Goodin, "Global Democracy," 188.

[30] On this point, see Daniele Archibugi and David Held, "Cosmopolitan Democracy: Paths and Agents," *Ethics & International Affairs* 25, no. 4 (2011): 433-461; Christian List and Mathias Koenig-Archibugi, "Can There Be a Global Demos? An Agency-Based Approach," *Philosophy & Public Affairs* 38, no. 1 (2010): 76-110; Terry Macdonald, *Global Stakeholder Democracy: Power and Representation Beyond Liberal States* (Oxford: Oxford University Press, 2008).

form a global democratic federation. If roughly equal stakes do apply in a discrete political unit, the worry does indeed disappear. However, it is likely that realising AAP will require many political units to enfranchise people who have unequal stakes, but whose morally relevant interests are nevertheless *sufficiently* affected. As I have argued elsewhere,[31] *Fair Political Equality* requires that *equal* participation rights are conferred to persons whose morally relevant interests are affected to an *equal* extent, and that unequal participation rights are conferred to the unequally-but-relevantly affected in proportion to their respective stakes. This, I have argued, is the only way for AAP to avoid unfairly treating unlike cases alike.

b. Underinclusiveness

Even though AAP is a highly inclusive principle, some have criticised it on the grounds of underinclusiveness, not overinclusiveness. The worry here is that AAP is committed to excluding the unaffected, but that there are some cases in which it would be counterintuitive to exclude people who seem to be unaffected. Pavel, for instance, argues that

> groups that should normally be included in decision-making should be excluded under [a version of AAP which restricts relevant interests to *basic* interests]. Policies involving abortions would not affect men's basic interests because such policies would not affect their 'essentials to survive in the world'; therefore it would follow that men should not have a say in those policies. But this seems odd. Men may not be entitled to have a say in a particular abortion decision, but they certainly have an important stake in policies that determine whether they are able to have children or not and the conditions under which abortions take place [...].[32]

But, as Pavel says herself, men are *not* in fact *unaffected* in this scenario: any plausible version of AAP is going to include them. AAP is not necessarily

[31] See "Narrow Possibilism about Democratic Enfranchisement".
[32] Pavel, "Boundaries, Subjections to Laws and Affected Interests," 325.

committed to a basic interests view that includes only one's 'essentials to survive in the world'. If 'being affected' means having one's morally weighty interests in autonomy and wellbeing affected by a particular decision, as I have argued elsewhere, this clearly seems to apply to men as well, given that democratic decisions about policies concerning women's rights to have abortions also significantly impact men, particularly if men contribute to social schemes of reciprocity which enable the provision of reproductive health services. Furthermore, men's interest in autonomy is (positively) affected by women having the right to autonomously decide on issues concerning their own reproductive health, including the right to have abortions. While Pavel is right to point out that men should not get a say in *individual* abortion decisions, because those individual decision scenarios should not be up for democratic debate, it is clear that from the perspective of AAP, men *should* get a say in *democratic* decisions about abortion *policy*, because their interests are relevantly affected by those decisions. Given that Pavel wrongly claims that the AAP cannot make that latter move, Pavel's critique thus relies on an uncharitably narrow understanding of AAP. So the charge of underinclusiveness on the grounds that AAP *implausibly* excludes the unaffected is not convincing in this case.

This, however, does not mean that *all* possible underinclusiveness objections are unpersuasive. Let us examine the underinclusiveness charge more closely. The first question we need to settle in order to do so is this: does AAP necessarily mean 'enfranchise all, *and only,* those whose interests are relevantly affected'? Dahl interprets the principle as specifying exactly that.[33] Whelan, by contrast, takes the view that including the unaffected would not make a difference, because the unaffected simply opt out of political

[33] Robert A. Dahl, *After the Revolution? Authority in a Good Society* (New Haven, CT: Yale University Press, 1970), 64.

participation.[34] Goodin, by contrast, argues that "it is unnecessary to add the 'and only' rider to the 'all affected interests' principle. [...] if we want to be sure of protecting 'all affected interests,' we have good reason to err on the side of overinclusiveness".[35] According to Goodin, the unaffected will simply vote randomly, which is why we have no reason not to include what is essentially 'white noise'.[36] An AAP sceptic might go even further: rather than stating that we have no reasons *not* to include the unaffected, one might argue that we have *positive* reasons to include the unaffected, and that if AAP is incompatible with that, we should reject it:

> **Partiality Objection**: The quality of democratic decisions would be improved if they included the unaffected, because the unaffected are naturally indifferent. Therefore, including them would increase impartiality.[37] Since AAP prohibits the inclusion of the unaffected, AAP is undesirable for instrumentalist reasons.

On this view, the reasons for including the unaffected are *instrumental* reasons: this view is not committed to the (conceptually distinct) claim that the unaffected have a *right* to participate. Instead, the claim is that the affected would benefit from including the unaffected, because the latter are 'naturally impartial' and will therefore help the affected make better decisions. This is something that the affected are unlikely to achieve to a similar extent on their own, because approximating the democratic ideal of impartiality requires them to *artificially* abstract from their subjective preferences. While several democratic theories have attempted to develop models for how impartiality can

[34] Whelan, "Democratic Theory and the Boundary Problem," 20.
[35] Goodin, "Enfranchising All Affected Interests, and Its Alternatives," 58-59.
[36] Ibid.
[37] Michael Frazer has defended an argument along those lines: "My argument is not that the unaffected have a right to participate or that they are somehow wronged by political exclusion in a manner analogous to how the affected may be wronged when excluded. What matters, morally, is not what a proper resolution to a specific political conflict will do for the unaffected — by definition, it can do nothing for them. What matters is what the inclusion of the unaffected can do to *improve the quality of the decision being made*, and hence to benefit those affected by this decision [...] namely, by *increasing impartiality*." Michael L. Frazer, "Including the Unaffected," *The Journal of Political Philosophy* 22, no. 4 (2014): 378 [emphases added].

be achieved artificially, for instance by institutional design and by encouraging or incentivising individual participants to block out their self-interest, it would be better to make use of naturally existing impartiality.[38]

I will respond to this objection by making a weaker claim and a stronger claim. The weaker claim is that including the unaffected will *not necessarily* increase impartiality. The stronger claim is that even if including the unaffected would increase impartiality, this would not be a reason to abandon AAP, because the subjective impartiality of democratic participants is not a plausible democratic ideal.

In order to provide support for my weaker claim, I do not have to show that including the unaffected will never increase impartiality. Rather, I merely have to show that there are *some* instances in which this is not the case.

> ***Unaffected by The Smiths***: It is 1987, and Morrissey is planning to split from The Smiths in order to pursue his solo career. Mary, a fan of British rock music, has never met, and will never meet, any of the band members. But Mary has a (well-informed) opinion: she thinks that it would be wise for the band members to stay together rather than splitting up, because the Smiths could successfully build on their steadily growing popularity since the early 80s that way. The morally relevant interests of Mary, however, are *unaffected* by the decision whether the Smiths stay together: although Mary has a strong subjective preference that Morrissey continue to be a member of The Smiths, Mary can reasonably accept that her interest in autonomy and wellbeing is not at stake in the decision whether The Smiths continue to be a band. The band members' relevant interests, by contrast, are at stake in this decision, given that their musical career is the basis of their livelihood. However, Mary thinks that if she were to get a say in this decision, she would be able to help the band members make a decision

[38] As Frazer claims, "[n]atural impartiality is a resource which most recent theorists have either overlooked or consciously chosen to forego. Under the assumption that only those affected can or should participate in political deliberation, theorists have typically appealed to two strategies for achieving impartiality. First, affected parties may be forced to rely on their own artificial impartiality—that is, their own limited ability to screen out their pre-existing preferences and interests. Those who doubt that political actors are sufficiently willing or able to do this instead attempt to design institutions that somehow produce impartial results from a system in which no single actor achieves impartiality on her own." See Frazer, "Including the Unaffected," 383.

> that is best for every one of them. As an unaffected bystander, she argues, she would be naturally impartial, and impartial input would improve the decision-making process.

Assume for a moment that it would indeed have been best for The Smiths to stay together, and that Mary's input would have swayed them to make the optimal decision. Still, it would have been odd to give Mary a say in this decision purely on the grounds that her unaffectedness would have made her a naturally impartial observer, which in turn would have improved the quality of the decision made. Why? Mary was unaffected from the perspective of AAP,[39] but that does not mean that she was *indifferent*. She still developed an opinion: a preference about what she would like to happen with the band. But if Mary is not indifferent, then we cannot count her as impartial, even if her preference about the optimal decision outcome happens to *coincide* with what an impartial observer would recommend.

One might construct analogous examples about members of political units who are *unaffected* by, but nevertheless *not indifferent* about, decision X made by other groups—for instance, because of ideological reasons. Imagine that two villages, one village X in Venezuela and one village Y in Vietnam, are under the autonomous control of independent Maoist militias. The communist militia of X might never come into contact with the communist militia of Y, and may be wholly unaffected by what militia(Y) decides. Militia(X) may nevertheless have strong opinions about what kinds of decisions militia(Y) should make about its ideological underpinnings (e.g. abandoning classic

[39] One may worry at this juncture that Mary is unaffected *from the perspective of AAP*, but that she is not unaffected *tout court*. To contrast, consider an extraterrestial entity which possesses a similar level of knowledge about The Smiths as Mary does, but which is both unaffected from the perspective of AAP, and unaffected in all other senses. But even if we modify the example in this way to get rid of the potential ambiguity between 'being unaffected from the perspective of AAP' and 'being unaffected', my point still stands that unaffectedness does not *necessarily* imply natural impartiality defined—following Frazer's account—as *indifference*, given that it is *possible* that the unaffected extraterrestial entity will develop opinions (based on non-impartial criteria) which decision outcome would be at the top of her personal preference ranking

Maoism in favour of supporting a Marxist-Leninist Workers' Party). The same insight that I articulated above applies here again: 'unaffected' does not imply 'indifferent', and thus also does not imply 'naturally impartial'. It is plausible, in my view, to assume that cases of unaffected-but-not-naturally-impartial persons are not simply an exception that proves the rule, but rather, that they are the norm. It is human nature to develop opinions about things that are not our business—in the sense that they do not affect us. Of course, Frazer might reply at this juncture by conceding my point that the unaffected are not *necessarily* naturally impartial, but by simultaneously insisting that, empirically, they are still naturally impartial *often enough*. We have now arrived at an impasse: Frazer's hypothetical response, as well as a hypothetical rebuttal of Frazer's point to the effect that the unaffected are not often enough naturally impartial, necessarily hinges on an *empirical* investigation of how agents subjectively form particular attitudes about issue X, as well as an empirical study of whether the process of attitude formation is causally related to their (un-)affectedness. Obviously, normative political philosophy is insufficiently equipped to settle such questions on its own: in-depth engagement with behavioural psychology and other empirical social science disciplines would be necessary in order to fully evaluate the claim that the unaffected will normally—but not always, i.e. 'often enough'—be naturally impartial. Furthermore, a full engagement with this issue would also require reaching into other philosophical disciplines outside of normative political philosophy, such as fairly abstract and highly complex debates in the philosophy of action. In particular, both Frazer's hypothetical response to my view as well as my hypothetical rebuttal would have to rest on a plausible account of the extent to which the formation of subjective attitudes necessarily generates *intentions* to act in an impartial way, and in turn, the extent to which the presence of such intentions gives agents *decisive reasons for de facto impartial action*. Developing and defending such an account, as well as testing that account against insights from the aforementioned empirical

disciplines, would be far beyond the scope of this paper. An engagement with Frazer's hypothetical reply from the specific perspective of political philosophy will simply have to conclude that one can either—as I do—take the view that it is *intuitively plausible* to think that people tend to form opinions about issues even if those issues do not affect them, and that people might therefore often not act in an impartial way if given an opportunity to have a say in those issues[40]—or one will deny the intuitive plausibility of that claim, as Frazer might. If one agrees that my favoured position on this issue is more intuitively plausible than Frazer's hypothetical position, then one has one reason—albeit perhaps not a decisive one, given the empirical limitations of intuitionistic reasoning and the disciplinary limitations of political philosophy—to be sceptical of the version of the underinclusiveness objection articulated in *Partiality,* and to affirm AAP's desirability if *Partiality* is the *only* objection levelled against it.

At this juncture, it is worth considering how AAP can realise impartiality itself without relying on the controversial notion of 'natural impartiality' which I have criticised so far. To borrow Elster's phrase, we can 'mimic impartiality' by adopting institutional mechanisms designed to achieve precisely this goal.[41] For instance, AAP could be realised in conjunction with a sortition model, which artificially increases impartiality because it significantly decreases the likelihood of political representatives consistently pandering to partial interest groups.[42] On such a view, AAP would in the first instance

[40] This claim may not only be an an intuitively plausible alternative to Frazer's empirical claim that the unaffected are 'naturally impartial', but also to Goodin's claim that the preferences of the unaffected are merely 'white noise', as well as Whelan's claim that the unaffected will simply opt out of democratic participation due to a lack of interest.

[41] Jon Elster, "Mimicking Impartiality," in *Justice and Democracy: Essays for Brian Barry*, eds. Keith Dowding, Robert E. Goodin, and Carole Pateman (Cambridge: Cambridge University Press, 2004), 125. For a similar argument, see Adrian Vermeule, *Mechanisms of Democracy: Institutional Design Writ Small* (Oxford: Oxford University Press, 2007), 25-72.

[42] For a systematic defence of a sortition account—albeit without a commitment to AAP—see Alexander A. Guerrero, "Against Elections: The Lottocratic Alternative," *Philosophy & Public Affairs* 42, no. 2 (2014): 135-178.

determine who has the right to participate in a given demos, and we would then select artificially impartial representatives out of that subset of persons by lot.

In addition to my claim that AAP can sufficiently approximate the ideal of impartiality without including the unaffected, I also propose the following stronger claim: individual, subjective impartiality does not look like an attractive democratic ideal anyway. What really matters is that democracies realise procedural impartiality,[43] which is a necessary, but not a sufficient condition for impartiality in the sense of just decision outcomes. But requiring *individual* holders of participation rights to be artificially impartial themselves is not only unrealistic, and unnecessary in the pursuit of that goal, but it is also overly demanding, and in fact counterproductive when it comes to the successful protection of interests during democratic decision-making. Rather than asking the relevantly affected group of persons—voters, or representatives selected by lot—to abstract from their individual preferences, we should allow them to articulate those preferences in the relevant loci of democratic deliberation and contestation. This serves the epistemic purpose of revealing important preferences, views, and needs that might not be fully known to all decision-makers.[44]

[43] For well-known defences of the view that procedural impartiality is an important desideratum for democracies, see Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995); Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1991), 155.

[44] This is not inconsistent with my more general view that when it comes to determining who is enfranchised under AAP, these subjective preferences are not decisive. Instead, AAP is committed to enfranchising all and only those whose morally relevant interests are *objectively* affected. But as soon as we have a clear picture of who has participation rights, every holder of participation rights is free to articulate their subjective preferences (including preferences about what they perceive to be in their interest).

3. Implications

a. Overdemandingness

The worry that AAP places overly demanding requirements on us is implicit in many critiques of the principle.[45] In my view, there are three major versions of a potential overdemandingness objection to AAP: first, the worry that AAP implies that we abandon due regard for a well-functioning demos and that doing so is too costly; second, the worry that realising AAP's first-best option (*participation rights* for all affected persons) is too demanding, and that mere *consideration* of interests would be sufficient; and third, the worry that even AAP's second- and third-best variants are objectionably costly. But before discussing these objections in detail, a few clarifications about the nature of the overdemandingness objection are in order.

The worry that a normative theory is undesirable because it imposes overly demanding duties on us is most often found in debates about consequentialist duties of beneficence, which have often been criticised for demanding significantly more of people than what common-sense morality would consider an acceptable sacrifice. One well-known target of the overdemandingness objection is Peter Singer's consequentialist defence of the view that residents of affluent countries ought to use significant amounts of their resources to help alleviate global poverty, as a matter of duty rather than as a supererogatory act of assistance.[46] The worry here is *not* that a theory is morally undesirable because it demands the *wrong* things of us: Singer's critics may well

[45] See Matthias Koenig-Archibugi, "Fuzzy Citizenship in Global Society," *The Journal of Political Philosophy* 20, no. 4 (2012): 456-480; Mark E. Warren, "The All Affected Interests Principle in Democratic Theory and Practice," IHS Political Science Series Working Paper 145 (June 2017): 1-15, http://irihs.ihs.ac.at/4306/15/Warren%20-%20All%20Affected%20Interests%20Principle.pdf (accessed: May 24, 2018); and Michael Goodhart, "Democratic Accountability in Global Politics: Norms, not Agents," *The Journal of Politics* 73, no. 1 (2011): 45-60, for discussion of some arguments in which this worry is implicit.

[46] Peter Singer, "Famine, Affluence, and Morality," *Philosophy & Public Affairs* 1, no. 3 (1972): 229-243.

accept the view that we have consequentialist reasons to help alleviate global poverty. Rather, the worry is that a theory demands *too much* of us, and morally condemns us if we fall short.

What 'too much' means is not necessarily straightforward, of course. The most readily apparent account of what 'too much' means in this context is costliness: complying with a particular moral theory may require us to redistribute large amounts of goods and services that currently benefit us from those to whom we have social ties to those who are more needy. Thus, we may incur material and relational costs that we deem *disproportionate* in the sense that they exceed the costs of compliance that we think we can reasonably be expected to bear given that compliance may well set back our own interests; or in the sense that the they do not match the magnitude of goods that we would achieve by complying with the theory. As Scheffler puts it,

> [i]f the unrestricted responsibility for producing optimal outcomes that consequentialism assigns to individuals is [...] objectionably demanding, then the natural solution is to allow agents not to promote such outcomes when it would be *unduly costly* [...] for them to do so.[47]

Bear in mind that the question of whether Scheffler is right about the force of the overdemandingness objection to consequentialism is irrelevant here. My point is that both supporters and opponents of the overdemandingness objection to consequentialism can agree that costliness is a reasonable metric for demandingness. Costliness may therefore also be a sufficiently non-controversial metric for measuring demandingness *beyond* the debate on consequentialism: for instance, in the context of AAP. Of course, what is at stake in the debate on AAP—the correct distribution of *rights* of *democratic participation*—is obviously different from what is at stake in the aforementioned

[47] Samuel Scheffler, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (Oxford: Oxford University Press, 1994), 20 [emphasis added].

debate on consequentialist *duties* in the context of a just distribution of *resources*. However, the demands of compliance with AAP can also be measured in terms of costs, even though what is being distributed are rights, not material goods: as Miller puts it, "[w]e measure how demanding a *right* is by asking what burden recognizing it would place on others, either in terms of constraints on their freedom or in terms of the resources they would need to give up".[48]

But while the demandingness of distributing rights in accordance with AAP can be reasonably measured with reference to the costs of compliance, costliness does not give us an exhaustive picture of what it means for a theory to demand 'too much'. Consider, for instance, *difficulty*: a morally required action might not be materially or socially costly for me at all, and performing that action may even benefit me—but it might be incredibly hard, although not impossible.[49] It is useful to distinguish difficulty from cost as a possible metric for demandingness because the two are not necessarily commensurate, although there may well be instances in which cost and difficulty are interdependent.[50] It is plausible to think that difficulty is not *on its own*—that is, without any correlation to costliness—decisive for demandingness. As G. A. Cohen argues, "difficulty, as such, is no reason for not performing an action that (although difficult) is possible. [...] It's of course unreasonable to ask

[48] David Miller, "Is There A Human Right to Democracy?" *CSSJ Working Papers Series, SJ032*, 17 [emphasis added] (April 2015): https://www.politics.ox.ac.uk/materials/publications/13731/sj032is-there-a-human-right-to-democracy-final-version.pdf (accessed: May 24, 2018).

[49] I say 'not impossible' because the overdemandingness critique is distinct from an 'ought-implies-can' critique. The appropriate target for the latter would be a moral theory requiring acts which are impossible, whereas an overdemandingness critique is typically directed at moral theories that require acts which are not impossible, but costly and/or difficult.

[50] For a similar point, see G. A. Cohen's discussion of overdemandingness in the context of voluntary giving: "The cost of an action for me is what I lose [...] as a result of performing it, whereas its difficulty for me is a function of how my capacities measure up to the challenge it poses. [...] Difficulty and cost, though distinct, do interact: they to some extent track, and otherwise affect, each other, which why, indeed, they are so commonly confused." G. A. Cohen, *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, MA: Harvard University Press, 2001), 171-172.)

someone to do something impossible, but it's not unreasonable to ask someone to do something difficult, provided that it does not carry too high a cost".[51] Of course, the difficulty of implementing the normative demands of a particular theory must be balanced against the benefits of implementing the morally right principle. But this does not mean that we should doubt a principle's desirability solely on the grounds that it is *hard*. Thus, an overdemandingness objection that measures demandingness in terms of difficulty, not costs, is best construed as a *worry* that pinpoints what kinds of compromises we make when we endorse a particular theory. It does not amount to a rejection of the principle itself.

This thought is directly relevant to the first overdemandingness objection to AAP:

> **Functionality Objection**: AAP prioritises the value of inclusion over the value of having a well-functioning, stable demos. It is overly demanding to implement a principle which—though it may well be a plausible principle of inclusion—advocates for an inherently unstable demos.

Objections along these lines have been put forward by Miller,[52] Song,[53] and Dahl,[54] amongst others. Including all affected persons in democratic decisions, the objection goes, implies single-issue enfranchisement for at least some decisions. AAP thus requires a fluid demos. This may be costly in the material sense of requiring the establishment of much larger and more flexible institutions. But it may also be costly in the more abstract sense of potentially leading to low internal cohesion, both in terms of intersubjective ties based on

[51] Ibid., 172.
[52] See Miller, "Democracy's Domain," 215: "[Endorsing possibilism] would mean setting aside all of the questions [...] about the qualities we require for a well-functioning demos. There would be a stark choice between satisfying the affected interests principle and constituting the demos in such a way that its decisions were likely to meet other desiderata (such as offering protection to minority groups)."
[53] Song, "The Boundary Problem in Democratic Theory".
[54] Robert A. Dahl, "Procedural Democracy," in *Philosophy, Politics and Society*, eds. Peter Laslett and James S. Fishkin (Oxford: Basil Blackwell, 1979), 97-133.

trust and solidarity, which are necessary for a well-functioning demos, and in terms of institutions which are accountable to one, and only one, stable constituency. This is not simply a worry about the feasible implementation of AAP. It is a normative worry about the desirability of a principle that prioritises the democratic value of inclusion over other important democratic values, which are necessary to keep democratic institutions going. If the implementation of a democratic principle like AAP ultimately erodes the ability of democratic institutions to function well, the objection goes, the principle becomes self-defeating.

But is the reverse not self-defeating as well? Remember that AAP, and its rival principles, aim to provide an *ideal* solution to the democratic boundary problem. Articulating an ideal view that prioritises a well-functioning demos over a correctly inclusive one—should these two important values conflict even on that ideal level—would not be a very attractive ideal view indeed. If we compromise on the ideal of inclusion, we necessarily compromise on the ideal of the well-functioning demos as well. To illustrate one reason why this is the case, recall that those who defend the objection from functionality were concerned about trust as a central component of the well-functioning demos. But if we do not get inclusion right, this is likely to erode trust, since compromises regarding the value of inclusion would imply that each person's right to participate can be permissibly infringed upon contingent on particular empirical circumstances, that is, anytime that person's exercise of this right might threaten the functionality of the demos.[55] Thus, getting inclusion *right*, and insisting that this value is prior to the value of the well-functioning demos, is worth it: if we are not willing to prioritise the value of inclusion even on this ideal level, why be democrats at all?

[55] For a similar but more general point, see Robert E. Goodin, "Demandingness as a Virtue," *The Journal of Ethics* 13, no. 1 (2009): 5.

In this context, AAP's demandingness looks more like a virtue than a vice: AAP might be demanding, but it is not *overly*—that is, wrongfully—demanding. When we try to articulate the best possible principle of democratic enfranchisement, surely this ideal ought not to offer mere *suggestions* about who ought to be enfranchised. Instead, the ideal should justify who we are morally *required* to enfranchise.[56] Only after we have identified what democratic enfranchisement ideally demands, and how this ideal ought to guide our actions, can we begin to consider whether and to what extent the ideal is overly demanding *given particular non-ideal circumstances*. But this implies that the original ideal cannot be overly demanding itself: here, I endorse Goodin's view that the

> argument [about which demands are legitimate] should be conducted purely at the level of [...] first-order moral propositions, without recourse to any 'demandingness' side-constraint. If a morality gets the answers to those first-order questions right [...] then it simply cannot be *too* demanding. It may require a lot of us. But if that morality is substantively right, it cannot be wrongfully demanding.[57]

It is therefore better to accord the value of inclusion the highest priority on the ideal formulation of a plausible principle of democratic enfranchisement, and to remedy any problems related to the functionality of the demos downstream, that is, by introducing supplementary principles. This does not amount to saying that functionality is merely a feasibility issue: as I have acknowledged above, supporters of the functionality objection are right in pointing out that a well-functioning demos is also a normative concern. What I *am* saying is that whenever the realisation of AAP in its ideal form is faced with non-ideal conditions, such that realising the ideal becomes impossible, AAP can justify plausible second-best and third-best variants. In terms of a second-best option,

[56] See ibid., 3: "A morality of 'suggestion' rather than of 'obligation' would be action-guiding only in a 'signposting' sense, and that is simply not action-guiding enough."
[57] Ibid., 2.

if the conferral and actual exercise of participation rights held by all affected persons is impossible, a combination of partial enfranchisement in conjunction with the institutional representation and consideration (e.g. via ombudsmen) of the interests of affected persons who cannot participate would sufficiently approximate AAP's first-best. A third-best variant of AAP would be a system of ex post compensation,[58] which would not restore the status quo ante, but which would express an acknowledgement of AAP's central idea that if we fail to enfranchise the relevantly affected, we *wrong* them[59]—although compensation would not *right* that wrong, of course. The reason why compensation is less attractive than representation, and why it is thus best construed as a third-best, is that compensation (unlike representation) does not give affected persons the ability to pursue the *same* ends that they would be able to pursue via participation, albeit with different means: for instance, by lobbying representatives to consult with them directly so that representatives become more likely to be able to accurately consider their interests. Compensation does therefore not provide an *equivalent* benefit in comparison to participation and representation.[60] But it does acknowledge that something is lost when we fail to realise the democratic ideal of inclusion fully.

This being said, I doubt that the ideal of the well-functioning demos *does* necessarily conflict with AAP's ideal of inclusion as strongly as supporters of this objection might think. Recall my earlier response to the first circularity objection, where I argued that endorsing a plausible version of AAP is

[58] Goodin has also proposed ex post compensation as a third-best option, although his account of the third-best only applies to the specific case in which the demos has transgressed the boundaries of its *decisional power*, i.e. when it has *already* made decisions that affect others. My account of compensation as a third-best realisation of AAP applies more generally to possibilism. See Goodin, "Enfranchising All Affected Interests", 66-68.

[59] See "Narrow Possibilism about Democratic Enfranchisement".

[60] For a systematic account of what kinds of *criteria* compensation would have to meet in order to achieve equivalence, and what *types* of equivalence are relevant in the context of compensation, see Robert E. Goodin, *Utilitarianism As A Public Philosophy* (Cambridge: Cambridge University Press, 1995), 164, where he distinguishes between models of compensation which "provide people with equivalent means to the same ends" and models which "provide them with equivalent satisfactions through different ends".

compatible with the view that AAP does not have to solve the initial constitution question, so that we can accept existing nation states as legitimate loci for implementing AAP. Given that AAP can be realised without dismantling existing states, it is possible to gradually reform and democratise existing state institutions—including transnational institutions based on the cooperation of distinct states—in order to help realise single-issue enfranchisement in accordance with AAP. As I have argued in response to *Circularity*, while AAP does not settle the question of initial constitution, it does provide a plausible answer to the question of the *reconstitution* of existing demoi. And as I have argued in response to *World Demos*, just because world democracy is the ultimate aim, this does not mean that AAP requires a world demos. Now, if those gradually reconstituted demoi include shifting groups of people, this is more likely to support than hinder functionality, for precisely the two aforementioned reasons why sceptics worry about functionality. First, the knowledge that we may have to cooperate democratically with different groups of people who are not our co-citizens may make us more aware of the fact that we have to justify our political preferences in such a way that even those who do not—to borrow Christiano's phrase—share a 'Common World' with us can reasonably accept. In exchange, the latter may well be inclined to justify their preferences in a similar way.[61] Second, if democratic institutions and elected representatives serving within those institutions become accountable to a larger, more fluid constituency, this may decrease the likelihood of short-termist, partisan policies which pander to localised preferences. While it is harder for shifting constituencies to issue electoral sanctions to representatives—simply because some members of the constituency might not be enfranchised more than once during one election period—representatives may self-police more

[61] How likely this is in a given context depends on a variety of complex empirical factors, which is why I will not speculate about it here. However, this issue might merit further investigation in future interdisciplinary work.

because they know that they might become accountable to new constituencies in the future, which is why they cannot know in advance which policy they would have to endorse in order to pander successfully to the partisan interests of those future constituencies.

Let us now turn to a second possible objection from overdemandingness:

> **Consideration But Not Rights:** Why is it not enough to simply give equal consideration to people's affected interests—why do people need participation *rights*?[62] It is overly demanding to expect existing demoi to shoulder the cost of changing their democratic institutions in order to enable the participation of all those whose interests are affected, if it is possible to take those interests into account in other ways.

The thought that underpins this kind of objection is the assumption that AAP's appeal is grounded in its concern for protecting and promoting morally weighty interests. If we can protect those interests *equally well* by appointing representatives who give due consideration to those interests and then adopt policies which protect those interests, we do not need to enfranchise the holders of those interests—not even when it comes to selecting appropriate representatives. This would suggest that representation is not a non-ideal second-best, as I have claimed above, but rather a more plausible contender for an ideal first-best: an alternative to AAP.

But AAP is about much more than protecting the interests of those who are affected by particular democratic decisions. Enfranchisement in accordance with AAP is valuable for three additional reasons, all of which do not apply to a 'mere consideration' account. First, having participation rights as opposed to having the right to have your interests considered gives affected persons a *democratic enforcement mechanism*. Participation rights do not guarantee that one achieves particular outcomes—such as a decision in favour

[62] See, for instance, Margalit and Raz, "National Self-Determination," 439-461.

of a policy that protects and promotes one's personal interests—but it does enable one to penalise representatives who fail to consider one's interests sufficiently. Second, conferring participation rights to all affected persons serves the *expressivist value* of according equal status to those enfranchised, even if their respective participation rights vary in scope in proportion to the degree to which they are affected.[63] Third, conferring participation rights to all affected persons has an *epistemic advantage* over mere consideration because of the inescapable reality of human fallibility and bias. As Christiano argues,

> [m]any thinkers [...] have expressed the view that a person could be virtually represented by others even if those others' places in society, background experiences, and distinctive conditions of flourishing were very different. This was the theory behind the denial of the rights to vote of working-class persons, African-Americans, [and] women [...]. The interests of the members of these groups were not adequately taken into account. Is this because those who did hold power were selfish and [...] merely claiming to be concerned with the welfares of the others? It seems to me to be highly unlikely that this is generally true. Surely men did not think that they merely wanted to advance their own interests at the expense of women. We have good reason to think that people in fact have been sincerely concerned with the well-being of others. The problem is that the well-being of others is not so easy to understand. They must be there to speak for those interests and to stand up for them. They must be there to make sure that those interests get an adequate hearing and that they are properly accommodated in the scheme of justice that is chosen. Otherwise, the even well-meaning efforts of those who need not listen to them are likely to miss their marks.[64]

[63] As I have argued elsewhere, the narrow possibilist version of AAP demands proportionate enfranchisement in order to realise Fair Political Equality (FPE), which—unlike other possibilist versions of AAP—avoids unfairly treating unlike cases alike. For an account of democracy that is similarly committed to the expressivist value of public equality (while at the same time not endorsing AAP, and thus also not endorsing my particular view of FPE), see Christiano, *The Constitution of Equality*, 267.

[64] Christiano, *The Constitution of Equality*, 89. For another account of the epistemic benefit of directly enfranchising persons rather than merely considering their interests, see Hélène Landemore, "Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy," *Social Epistemology* 31, no. 3 (2017): 277-295, which defends the "truth-tracking properties of democratic procedures".

My response to the first overdemandingness objection applies to the second objection as well: if the three additional values of AAP's first-best cannot be achieved by mere consideration, then it is not worth modifying AAP's first-best *simply because of a concern about overdemandingness*.[65] Keeping AAP's ideal first-best demanding is worth it given that its first-best version properly articulates and realises these three values.

This is not to say that consideration of all affected interests is wholly undesirable. As I have argued above, when according participation rights to all affected persons in accordance with AAP is impossible, 'mere consideration' via representatives—possibly in combination with partial enfranchisement—is a plausible second-best option. However, it is not *equivalent* to AAP's first-best: and equivalence is precisely what the second overdemandingness objection would have to demonstrate in order be plausible. 'Mere consideration' is not viable as a competing ideal to AAP's first-best. But consider now a third possible objection from overdemandingness:

> **Costly Second-Best and Third-Best**: Even if we accept that the ideal first-best option ought not to be modified to accommodate the overdemandingness objection, it is not clear why the same should apply to AAP's second-best, representation, and AAP's third-best, compensation. But AAP's second- and third-best are also costly and difficult, so they are still vulnerable to the overdemandingness objection.

What exactly makes the second- and third-best costly and difficult? Representation is demanding in two ways: for representatives themselves, since they have to consider and weigh a wide range of diverse and potentially conflicting interests; and for the demos as a whole, because increasing representation in an effort to comply with AAP might slow down and complicate decision-making procedures. Compensation is demanding in a

[65] We may, of course, have plausible *other* reasons, unrelated to overdemandingness, to switch from AAP's first-best to its second- or third-best.

more straightforward way, as it is costly in the obvious sense of requiring the redistribution of material resources. But note also that compensation is demanding in terms of difficulty, as it may be faced with incommensurability issues: identifying an amount of material goods that compensates appropriately for the inability to exercise a right is not straightforward.

In response, I would argue that the expectation that AAP's second- and third-best should be less *demanding* is misplaced. The *reason* why we should default to the second- and third-best is because of non-ideal circumstances—that is, whenever feasibility constraints arise—not because we want to make AAP and its variants less demanding. Of course, one may still object that the second- and third-best *should* be less demanding than AAP's ideal iteration. But this is not the task of second- and third-best principles: it is the task of a principle that attempts to be a genuine *rival* of AAP. It is not my ambition to articulate such a rival principle here.

b. Bad or Unjust Outcomes

So far, I have focussed on the worry that AAP's implications are overly demanding. Let us now turn to a worry about the actual decision *outcomes* reached via democratic decision-procedures that include everyone who has democratic participation rights in accordance with AAP. If those outcomes are *unjust*, or otherwise *bad*—for instance, because they are not actually in the interest of those enfranchised under AAP—this would be a problem for AAP even if implementing AAP is not overly demanding in other ways. My aim here is to anticipate a range of potential worries,[66] instead of describing objections against AAP that have already been put forward in the literature. This is helpful

[66] It is important to note that these worries are not AAP-specific. Other principles of democratic enfranchisement must grapple with worries about bad or unjust outcomes too. So even if one thinks that the objections that I anticipate in this section are ultimately persuasive, this does not constitute a decisive reason to abandon AAP an endorse a rival principle of democratic enfranchisement instead.

for illustrating what a plausible version of AAP is supposed to achieve, what its limitations are, and how and why it must be *constrained* in particular ways. Consider first

> **If You Care About Protecting Interests, Don't Endorse AAP**: It is possible, and indeed likely, that the interests of some of those enfranchised under AAP will not end up being optimally protected once we realise AAP. Implementing AAP may well lead to outcomes which are counterproductive for protecting the interests of particular individuals. So AAP is compatible with decision outcomes that do not protect the very interests that count as relevant under AAP. Therefore, we have consequentialist reasons not to endorse AAP.

I agree with the claim that AAP is indeed not *sufficient* for protecting morally weighty interests, but I deny that this is a fatal objection to AAP's normative desirability. While AAP is not sufficient, it is *necessary* for adequate interest protection: we cannot protect morally weighty interests if we do not have a clear picture of what they are, and the best way of getting a clear picture is to engage *directly* with the actual holders of those interests. As I argued in my response to *Consideration But Not Rights* in the section above, democratic enfranchisement serves the triple purpose of providing a democratic enforcement mechanism for interest protection, of expressing public equality, and of overcoming epistemic challenges related to identifying the nature and scope of morally weighty affected interests. Due to these three advantages of conferring participation rights to interest-holders over merely considering their interests, the direct enfranchisement of all interest-holders is the best chance we have for actually making decisions that serve those interests. Of course, if protecting morally relevant interests was *all* that mattered, we would not need a principle of democratic enfranchisement at all: a benevolent dictator would be enough. But if we are committed democrats, as I think we obviously should be, we need to arrive at good decision outcomes *by implementing a plausible*

democratic principle. Getting the issue of democratic enfranchisement right might not be sufficient for achieving good outcomes, but it is clearly necessary.

My response to this first objection is therefore that we do not have decisive consequentialist reasons to reject AAP, but that we do have consequentialist reasons to endorse AAP *necessarily in conjunction with other principles* which help us secure decision-making *outcomes* that protect interests. As I have also pointed out in my response to *Intrusiveness*, a variant of the overinclusiveness objection, there are a number of functions that such additional principles could plausibly fulfil. They could, for instance, impose constitutional constraints on democratic decision outcomes that wrongfully infringe on morally weighty interests. They could introduce institutional and procedural safeguards against tyrannical majorities, for example by conferring additional veto rights to vulnerable minorities. Finally, these additional principles should stipulate policies for safeguarding social and economic equality alongside fair political equality, which is necessary for securing outcomes that enable the meaningful protection of morally relevant interests. But the crux is that a consequentialist concern for interest protection should not be the primary driver in our effort to identify the most plausible principle of democratic enfranchisement. Instead, we need to face the fact that even the best democratic principle will yield bad outcomes occasionally, or even regularly; but this does not automatically disqualify it as a plausible principle. Those who adopt a hard-line instrumentalist view of democracy must disagree with my stance, so it may seem like my earlier point leaves me vulnerable to a cluster of well-known instrumentalist objections.[67] But bear in mind that even if one thinks that democracy has instrumental value *only*, and that it possesses

[67] For helpful overviews, see Richard J. Arneson, "Democratic Rights at the National Level," in *Philosophy and Democracy: An Anthology*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003), 95-115; Ronald Dworkin, "What Is Equality? Part 4: Political Equality," in *Philosophy and Democracy: An Anthology*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003), 116-137.

that value because it is our best available option for reaching good decision outcomes, one can accept the claim that democratic procedures sometimes lead to suboptimal outcomes. The instrumentalist would simply say that if those suboptimal outcomes are still the best available possible outcomes of any possible decision-making procedure, democracy retains its instrumental value. My view can easily accommodate all of these claims, although I do not wish to commit myself to a purely instrumentalist view of democracy here.

Consider now a similar but distinct worry about democratic outcomes:

> **If You Care About Justice, Don't Endorse AAP**: Implementing AAP does not ensure substantive justice. Therefore, we have justice-based reasons to reject AAP.

Again, similarly to my reasoning above, I agree with the claim that implementing AAP does not ensure substantively just decision outcomes, but I reject the conclusion that we should therefore abandon AAP. The only way to arrive at such a conclusion is by introducing another premise, which is implicit in the formulation above: 'any desirable principle of democratic enfranchisement must ensure substantive justice'. But this is clearly an unreasonably high standard for what makes a democratic principle normatively desirable. Sometimes, democracies make unjust decisions. That is a reality that not only AAP has to face, but any other principle of democratic enfranchisement as well. The least plausible response to that reality, however, is to simply deny that democracies *can* make substantively unjust decisions. Substantive justice and democracy are simply different normative concepts, and they can and do sometimes conflict. As Roemer puts this relatively uncontroversial view,

> [w]e must [...] insist upon a division of labor between the concepts of democracy and justice [...]. Democracy should be defined as a set of institutions and practices whose intention is to implement a certain kind of equal participation of citizens in the political process. Justice, on the

> other hand, consists in a set of relations among persons, and between persons and goods, in society.[68]

What we should *do* when substantive justice and democracy conflict is a separate question, for it depends on our conception of democratic *authority*. As Christiano points out, this view concerning the appropriate normative domain of theories of democratic authority follows directly from the view that "democratic institutions [are] evaluable from two distinct and irreducible points of view that may sometimes conflict. [...] If the results of democratic decision-making are unjust, we might ask, what reason do we have for going along with the decision?"[69] This question can only be settled by a complete account of what makes democratic decisions authoritative: an account which introduces higher-order criteria for evaluating the respective normative weight of "a reason to go along with democratic decisions" against the weight of "the reason associated with the injustice of actions required by the democratic assembly".[70] Developing such an account thus requires more than identifying the correct principle of *democratic enfranchisement*, which is why it is not my ambition here to offer a full-fledged account of democratic authority. The only point I wish to make here is that once we accept that there is a division of labour between democracy and substantive justice, and once we also accept that settling tensions between the two requires an account of democratic authority, we cannot object to a principle of democratic enfranchisement (such as AAP)

[68] John Roemer, "Does Democracy Engender Justice?" in *Democracy's Value*, eds. Ian Shapiro and Casiano Hacker-Cordón (Cambridge: Cambridge University Press, 1999), 57. For a roughly similar point, see Robert E. Goodin, "Democracy, Justice and Impartiality," in *Justice and Democracy: Essays for Brian Barry*, eds. Keith Dowding, Robert E. Goodin, and Carole Pateman (Cambridge: Cambridge University Press, 2004), 98: "Were democracy and justice merely alternative manifestations of impartiality, it would not be open to anyone to complain about the injustice of any genuinely democratic outcome. If democracy couchsafes impartiality, and impartiality is all there is to justice, then no democratic outcome could be unjust. But that is preposterous. Outcomes that are undeniably democratic can be palpably unjust, nonetheless."

[69] Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy* 12, no. 3 (2004): 268.

[70] Ibid.

on the grounds that it fails to fulfil the normative function of *settling* this conflict in a way that guarantees a sufficient degree of substantively just outcomes. Doing so would simply be beyond the scope of the question of democratic enfranchisement.[71]

But it would be too quick to conclude that it is *unnecessary* for AAP supporters to engage with this particular justice-based worry about AAP, just because the view that there must be at least some degree of division of labour between justice and democracy is intuitively appealing, and thus likely to be accepted by most. But clarifying the appropriate place of a democratic principle like AAP in relation to other important values (such as substantive justice) is helpful, both for AAP supporters and for AAP sceptics. If one wants to cast serious doubt on AAP's normative desirability, one has to identify the normative desiderata for any plausible principle of democratic enfranchisement first, and doing so is impossible without clarifying first the extent to which democracy is supposed to serve particular *ends*.

To echo my earlier rebuttal of the objection from *bad*—but not necessarily unjust—outcomes, my position regarding this question is that democracy is necessary, but not sufficient for achieving the end of substantive justice.[72] Why? One prerequisite for achieving substantive justice downstream

[71] Of course, having identified the correct principle of democratic enfranchisement might well be the first step towards developing a robust account of democratic authority: one might think, for instance, that having realised the right principle of democratic enfranchisement gives us at least a pro tanto reason to comply with democratic decisions even if they do not realise optimal substantive justice. As Christiano argues, a robust "conception of democratic authority must show that while decisions can be evaluated from an independent standpoint, the fact that the democratic assembly has made the decision gives each person a *pre-emptive and content-independent reason for complying*" (ibid.) [emphasis added]. However, AAP supporters need not commit themselves on a firm view about what kinds of evaluative conclusions a robust account of democratic authority must reach.

[72] Joshua Cohen attributes a similar position to Rawls: "Though justice as fairness is not a theory of democracy, and says little about the processes of democratic politics, it is a contribution to democratic thought. It argues that a democratic political regime is itself a requirement of [but not a sufficient condition for] justice—and not simply for instrumental reasons." Joshua Cohen, "For A Democratic Society," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 87.

is realising procedural justice first. AAP realises procedural justice in democratic decision-making. As I have argued elsewhere,[73] AAP is best understood as a principle that expresses the equal status of all those enfranchised under AAP, and then fairly distributes participation rights of a different nature and scope in proportion to the extent to which one is relevantly affected. And to echo my rebuttal of the bad outcomes objection in a different way, AAP's conception of procedural justice in democratic decision-making does not preclude us from imposing plausible constitutional, institutional, or procedural constraints—justified by additional principles—that help protect individuals against bad, or in this case, unjust, decision outcomes. This does not undermine proceduralism. In fact, proposals by moderate proceduralists to introduce *minimum outcome standards* are well-known in the philosophical literature defending proceduralist conceptions of democracy: Christiano, for instance, justifies minimum outcome standards by arguing that

> moderate proceduralism implies that the democratic process has intrinsic value but it recognizes limits beyond which some restraints must be placed on the process in order to accommodate a minimum of the interests which are at the foundation of the ideals of democracy. [...] the need to avoid the creation of permanent [vulnerable] minorities is a further requirement of public equality. The minimum outcome standard is a way to satisfy the requirement of public equality in collective decision-making while avoiding a state of affairs that is clearly inconsistent with public equality.[74]

While Christiano's point is concerned with securing a sufficient degree of public equality, an analogous point can be made about securing some level of substantively just outcomes more generally. Of course, constitutional provisions cannot guarantee *fully* substantively just outcomes by preventing wrongful infringements on the interests and rights of our fellow demos

[73] See "Narrow Possibilism about Democratic Enfranchisement".
[74] Thomas Christiano, *The Constitution of Equality*, 298.

members. But they can make it harder to push through policy decisions that would diminish substantive justice.

AAP sceptics may be willing to accept my response that AAP can be supplemented by constraints on decision outcomes designed to prevent egregiously bad or unjust decisions. But what if, one might wonder, implementing AAP would lead to a demos reaching bad or unjust decision outcomes *all the time*? Is there something about reconstituting the demos in accordance with AAP that leads to outcomes that are *uniquely* worrying, in the sense that they lead to bad or unjust outcomes not only in isolated cases?

> **Systematically Bad or Unjust Decision Outcomes**: AAP does not simply lead to one-off substantively bad or unjust outcomes. It *routinely* leads to substantively bad or unjust outcomes. Even we can endorse AAP alongside other principles which impose reasonable constraints on decision outcomes, systematically bad or unjust decision outcomes reveal a deeper flaw in the principle. If this is true, we should endorse an alternative principle of democratic enfranchisement which is not prone to systematically generating bad or unjust outcomes.

To my knowledge, nobody has advanced this particular objection so far, but it is nevertheless an objection worth considering. The question is: does AAP do *uniquely* badly with respect to this issue? In order to answer this question, we have to reflect on *how* AAP changes the group of enfranchised persons, and whether that change might have any adverse effects on the quality of *all or most* decision outcomes. One reason why democratic procedures might routinely lead to bad or unjust decision outcomes is because certain preconditions—such as a basic competence requirement for all enfranchised persons, or the possession of a basic sense of justice—are not fulfilled. Note, however, that these are preconditions for the successful implementation of any principle of

democratic enfranchisement, not just AAP.[75] More importantly, it does not seem plausible to think that *AAP* is the kind of enfranchisement principle that would be uniquely worrisome in the sense that the group of newly enfranchised persons—for example, those who would not be enfranchised on a more conventional, citizenship-dependent account of enfranchisement—is more likely to lack cognitive competence or a sense of justice than other democratic agents. Hence, I doubt that AAP is more vulnerable to this possible objection than its rivals. Of course, there are also other reasons why one might be concerned about *Systematically Bad/Unjust Outcomes*: the worry might express a more general scepticism about the usefulness of *democracy itself* for making qualitatively good decisions. However, that worry—like the previous one—is not one specifically targeted at AAP. Rather, all democratic enfranchisement principles have to grapple with it. Since my goal in this paper is to assess objections *specifically against AAP*, I will not consider this version of the worry in further detail at this juncture. That does not mean, however, that I am committing myself to the view that AAP can never lead to systematically bad or unjust outcomes. If that were the case, then it would indeed give us reason to doubt AAP's desirability. My only point here is that, should such a worry be put forward against AAP, the AAP sceptic would have to demonstrate why AAP, and not its rivals, does *distinctively* badly in this regard.

Consider now one final possible objection, which AAP supporters must respond to even if AAP sceptics accept my responses to all earlier objections in this section:

> **Objection from Procedural Justice**: Let us accept, *arguendo*, the view that AAP does not necessarily have to achieve certain substantive outcomes, such as actual interest protection or substantive justice, and

[75] It is therefore not my aim to develop a complete account of such preconditions here, because such an account would be separate from, and independent of, a commitment to a particular principle of democratic enfranchisement (such as AAP).

> that it only has to realise procedural justice in order to be a plausible principle of democratic enfranchisement. Nevertheless, the problem remains that AAP may not even achieve procedural justice, because AAP fails to track power.

One way in which this problem arises is when it comes to agenda-setting: those who hold social, political, and economic power will be able to shape political agendas, even if their participation rights are conferred to them in fair proportion to the extent to which their interests are affected. Another problem might be the empirically observable mismatch between political participation rights and political impact: a fair distribution of the former does not guarantee a fair distribution of the latter.

But while I agree that these are important problems, I would argue that this is not in fact an objection from procedural justice. Instead, it is an objection from *substantive* justice with respect to the nature of democratic *procedures*. Hence, my earlier rebuttal of the objection from substantive justice applies here as well: we simply need to supplement AAP with additional principles of substantive justice in order to tackle problems of unjust power. AAP's failure to track power by itself is insufficient for casting serious doubt on AAP as a plausible principle of procedural justice.

To conclude this section, AAP is best construed as a principle that *just* concerns *democracy*—and not *democracy that is also at the same time just*. Accepting the claim that democracy is prior to justice in the sense that it is necessary but not sufficient for justice, but that it realises at least procedural justice, means that we can also (as I think we must) accept the empirical reality that democracies sometimes make bad or unjust decisions.

c. Underwhelmingness

At this juncture, one may wonder whether the version of AAP which I support is ultimately underwhelming. Why? In the previous sections of this

paper, I have attempted to clarify what AAP actually demands. By specifying what AAP is and what it is not, I have restricted the scope of the principle in order to defend its desirability. In doing so, I have argued that AAP's function is quite narrow and specific—particularly the version of AAP which I take to be the most plausible (narrow possibilism), and which I have defended elsewhere.[76] Due to its narrow nature, the narrow possibilist AAP is not vulnerable to a range of objections which tackle versions of AAP that are implausibly broad.

In spite of its comparatively large and complicated number of background assumptions, narrow possibilism seems to demand institutional arrangements that are ultimately not all that different from the status quo. For instance, supporters of narrow possibilism can accept the fact that territorially bounded political units, such as states, are currently necessary for enforcing rights.[77] In fact, narrow possibilists can even endorse the view that existing state boundaries, and corresponding boundaries of enfranchisement, are not morally arbitrary, in spite of them being contingent on empirical developments which have not aimed to realise the all-affected principle.[78] Narrow possibilism is compatible with an institutional realisation which relies on existing political units as primary enforcers of the all-affected principle—as long as states enable the political participation of all citizens and non-citizens who are relevantly affected. So while narrow possibilism demands changes concerning the size and make-up of the group of enfranchised persons, it does not *necessarily*

[76] See Narrow Possibilism about Democratic Enfranchisement".

[77] Song, an AAP sceptic, acknowledges this point explicitly: "One might accept my argument about the necessity of the state for securing the substantive conditions of democracy, but nonetheless reject my contention that the demos should be spatially bounded by the modern system of territorial states." Song, "The Boundary Problem in Democratic Theory," 60.

[78] Again, I find myself inclined to *agree* with Song (ibid., 58): "it is a historically contingent but morally relevant fact that the modern state is the primary instrument for securing the substantive rights and freedoms constitutive of democracy." It should worry AAP sceptics that AAP supporters like myself can agree to many of the substantive claims they advance in order to critique AAP, as this may indicate that those critiques miss their target.

require the dismantling of existing states or other self-contained political units. While some might still find narrow possibilism too radical, of course, others may not deem it radical enough. Furthermore, if narrow possibilism can be satisfied by a second-best combination of representation and compensation models in the (very likely) event that it cannot be implemented in its ideal form, narrow possibilism seems even less dissimilar from institutional structures and procedures that are already in place in many currently existing states.

In sum, if one expects narrow possibilism to issue particularly radical recommendations because of its commitment to a range of premises which radically depart from the premises of more conventional accounts of democratic enfranchisement, narrow possibilism may seem underwhelming. Given its costly commitment to one very specific set of assumptions, narrow possibilism underdelivers. One possible objection, then, might be

> **Much Ado About Nothing**: a plausible version of AAP requires a commitment to a combination of several controversial positions, but issues directives which are not all that different from institutional arrangements that we already have. We do not have good reasons to support a complicated and controversial view if we could reach relevantly similar conclusions about what our democratic institutions should look like by endorsing a less complicated and controversial view.[79]

Clearly, this is a worry about parsimony. The objection is not unreasonable: parsimony is indeed an important desideratum for any normative theory. As Valentini states what I take to be a widely shared view, "[a]ll other things being equal, a very parsimonious theory (i.e., one with simpler propositions/a less complex system of axioms) is better, namely more useful and tractable, than a less parsimonious one".[80] But when we compare AAP to rival theories of democratic enfranchisement, are all other things actually equal? Clearly not—

[79] Such as a citizenship-dependent view of enfranchisement, which simply equates the entitlement to participation rights with the entitlement to citizenship.

[80] Laura Valentini, "On the Messy 'Utopophobia vs Factophobia' Controversy: A Systematization and Assessment," in *Political Utopias: Contemporary Debates*, eds. Kevin Vallier and Michael Weber (Oxford: Oxford University Press, 2017), 15.

for two reasons. First, AAP does in fact demand significant institutional changes, and for normative reasons which are significantly different from the kinds of reasons offered by more conventional accounts of democratic enfranchisement. If this can be realised relatively easily and non-disruptively (that is, without dismantling the existing state structure) this is actually a reason to support AAP, not one to be sceptical of it. And—second–even if AAP's second-best and third-best realisation is reasonably close to policies that we already have or that we could implement within existing institutions, that does not mean that AAP is superfluous—at least as long as one is prepared to accept the following slogan:

It is important to do the right thing *for the right reasons*.

Although this simple slogan is unlikely to be controversial, it is worth considering how exactly it would apply to AAP. Even if one does not accept the view that it is intrinsically valuable to do the right thing for the right reasons, I would argue that we have instrumental reasons for endorsing the principle that helps us do the right thing for the right reasons. Let us assume that AAP *does* in fact draw the same conclusions (C1) as rival theories regarding *all possible cases* in status quo S1—which, as I have pointed out above, is not actually the case. AAP might make exactly the same normative demands as rival theories now (in S1) while relying on disproportionately complex assumptions, thus seemingly violating parsimony. But in a different possible empirical situation S2, AAP may well lead to fundamentally different normative conclusions (C2), while AAP rivals do not.

	AAP	**AAP rival**
S1 (status quo)	C1	C1
S2 (future status quo)	*C2*	C1

For this reason, my response to *Much Ado About Nothing* is that we have no reason to reject AAP if parsimony is the *only* reservation we have about it: AAP's complexity is necessary.[81]

II. Is AAP Feasible?

As I have emphasised in this paper, AAP is an *ideal* principle of democratic enfranchisement. One might infer from that claim that AAP simply does not have to grapple with feasibility constraints: one might think that ideal theory is entirely unconstrained by feasibility considerations, whereas nonideal theory is subject to such constraints. But that would be too quick: the ideal/nonideal theory dichotomy does not map neatly onto the desirability/feasibility dichotomy which structures this paper.[82] We can evaluate the overall plausibility of *both* ideal *and* nonideal normative principles in terms of their respective desirability and their respective feasibility, although we may well grant that a lack of concern for feasibility constraints impinges more strongly on the overall plausibility of nonideal principles. As Lawford-Smith puts this point, "the more non-ideal a theory is, the more stringent are the constraints that bear upon it".[83]

[81] Even if one does not accept my defence of 'doing the right thing for the right reasons' above, one has to grapple with one additional reply to *Much Ado About Nothing*: one key reason why rival accounts of democratic enfranchisement, such as citizenship-dependent accounts, are less complex than AAP is because they resemble the empirical status quo more closely. Therefore, they map onto existing conceptual and normative categories (such as 'citizenship') more neatly than a principle like AAP possibly could. Where AAP supporters are forced to develop new and complex conceptual accounts in order to define as precisely as possible the group of persons who ought to be enfranchised, supporters of citizenship-dependent views can simply refer to pre-existing conceptual categories. But this reveals that the parsimonious nature of citizenship-dependent AAP rivals is empirically *accidental*.

[82] For further discussion of this claim, see the *Introduction* to this thesis.

[83] Holly Lawford-Smith, "Understanding Political Feasibility," *The Journal of Political Philosophy* 21, no. 3 (2013): 245.

Most existing feasibility-related critiques of AAP are relatively imprecise in the sense that they reject AAP on the grounds of (alleged) infeasibility without offering a systematic account of what exactly makes a principle infeasible.[84] The problem with this strategy is that the role of feasibility constraints for the overall plausibility of normative principles is highly contested philosophical terrain. Therefore, I begin this part of the paper by constructing precisely such an account, before discussing to what extent AAP is vulnerable to critiques from feasibility. This allows me to reconstruct much more precisely what AAP opponents and sceptics might (hypothetically) say about the feasible implementation of AAP, and to identify the subset of feasibility constraints that can plausibly be invoked to 'fight' AAP.

1. What Does It Mean for an Ideal Principle to be Feasible?

a. Hard and Soft Feasibility Constraints

Asking 'is it feasible to implement normative principle X?' implies a *binary* view of feasibility: the implementation of a normative principle is either feasible, or it is not. Options that are 'not feasible' in this binary sense are often called *hard feasibility constraints*,[85] defined as constraints that *cannot* be overcome by investing time, effort, or resources—because there simply is not enough time to fulfil the task required by a normative principle, or because no amount of effort or motivation will help achieve the task, or because not enough resources or knowledge are available. Normative principles subject to hard feasibility constraints are thus impossible to achieve. In general, the presence of hard constraints constitutes a reason to reject the claim that we

[84] For well-known examples of this kind of critique, see Claudio López-Guerra, "Should Expatriates Vote?", *The Journal of Political Philosophy* 13, no. 2 (2005): 216-234; Whelan, "Prologue," 13-47.
[85] Lawford-Smith, "Understanding Political Feasibility," 252.

ought to try to implement a particular normative principle in its ideal form: this is the view captured by the well-known formula 'ought implies can'.

But *in addition to* this binary view of feasibility, it is useful to also adopt a lesser-known *scalar* view: once we pass the initial threshold of hard feasibility, which of the remaining options is more feasible than other options? Again, I endorse Lawford-Smith's definition of scalar feasibility:

> a proposal is more feasible the less it clashes with the relevant soft constraints. These constraints are all a part of the context in which an agent—individual or collective—acts: economic, institutional, cultural, and religious constraints (including positive morality); and the constraints posed by other agents, such as their motivation and psychology.[86]

b. Synchronic and Diachronic Feasibility Constraints

There is one particularly important complication for the hard/soft feasibility framework: some hard feasibility constraints may turn out to be soft ones over time, and vice versa. Of course, this may not be readily apparent in all cases from the outset: whether a hard constraint turns into a soft one may be conditional upon *trying* to achieve an ideal even if the ideal *seems* to be unachievable.[87] Therefore, it is useful to introduce another conceptual distinction, which cuts across the hard/soft dichotomy: we can distinguish between synchronic and diachronic feasibility constraints.[88] Synchronically feasible acts are feasible here and now, whereas diachronically feasible acts are feasible at some point in the future, and potentially contingent on specific additional actions.

[86] Ibid., 258.
[87] For a similar point, see Pablo Gilabert and Holly Lawford-Smith, "Political Feasibility: A Conceptual Exploration," *Political Studies* 60, no. 4 (2012): 809-825. See also Zofia Stemplowska, "Feasibility: Individual and Collective," *Social Philosophy & Policy* 33, no. 1-2 (2016): 273-291.
[88] I borrow this distinction from Lawford-Smith, "Understanding Political Feasibility," 249.

To illustrate, it may be synchronically infeasible for me to roundhouse kick a burglar if a burglary happens in my house *today*, because I cannot lift my leg high enough to execute the kick. This is a synchronic hard constraint: it is simply impossible for me to do this now. But it may well be diachronically feasible for me to roundhouse kick a burglar in two months, provided that I start karate lessons immediately and practice every day. So roundhouse kicking is at the same time a synchronic hard constraint and a diachronic soft constraint for me. By contrast, roundhouse kicking would be both a synchronic hard constraint *and* a diachronic hard constraint for other agents, for instance, agents whose legs are permanently paralysed.[89]

Of course, when it comes to determining whether a particular hard constraint is a diachronic or a synchronic hard constraint, we may face another feasibility problem: it may be hard, or indeed impossible, to determine whether an ostensible hard constraint is indeed a hard constraint, now or in the future. Therefore, a plausible account of feasibility ought to err on the safe side: we ought not to reject a normative principle prematurely, that is, on the grounds of just about *any* kind of hard constraint. Instead, we ought to restrict the set of normative principles that can plausibly be rejected on feasibility grounds to those cases in which we can be *certain* that a diachronic hard constraint is present, such that hard constraint will remain a hard constraint over time.[90]

[89] Other kinds of (ostensible) hard constraints may turn out to be diachronic soft constraints in a much less foreseeable manner, especially when accidental technological innovations or discoveries are involved. Consider, for instance, Alexander Fleming's accidental discovery of penicillin in 1928 (Fleming had left a stack of bacterial cultures unattended in an untidy laboratory, and discovered upon returning from a holiday that the cultures had happened to be contaminated by a fungus, which turned out to have antibiotic properties).

[90] The synchronic/diachronic dichotomy may not be *sufficient* for showing which normative principles can plausibly be rejected due to their respective infeasibility, but it is necessary. I elaborate on other necessary criteria for infeasibility below.

c. Accessibility and Stability

Another way of thinking about feasibility constraints is to distinguish between *accessibility*—the question of whether it is feasible to take actions that change the status quo such that we achieve the ideal that a normative principle articulates—and *stability*—the question of whether that new status quo can feasibly be maintained over time.[91]

Considerations about accessibility and stability cut across the hard/soft constraints distinction, much like considerations about the synchronic and diachronic nature of feasibility constraints do. Problems of accessibility, for instance, may involve hard feasibility constraints, such as the (hypothetical) need to change the irreversible results of particular policies in order to pursue an ideal. But they may also involve soft feasibility constraints, such as transition costs. Fulfilling the stability requirement, in turn, may be *impossible* due to the presence of hard constraints, such as when the implementation of an ideal becomes self-defeating, or it may be *hard* due to the presence of soft constraints, such as when people's preferences do not converge in a way that affirms the basic requirements of that ideal.[92]

d. Positive or Negative Feasibility Standards?

Having outlined three different ways of thinking about of feasibility constraints, we might now wonder how we should use this conceptual framework to determine whether AAP is feasible. One option would be to try

[91] Buchanan, for instance, defines accessibility as the requirement of finding a "practicable route from where we are now to at least a reasonable approximation of the state of affairs that satisfies its principles". See Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2003), 61. Note, however, that feasibility is distinct from accessibility in Buchanan's view, whereas I see accessibility as one of several dimensions of overall feasibility. For a similar claim that both accessibility and stability are aspects of overall feasibility, see G. A. Cohen, *Why Not Socialism?* (Princeton, NJ: Princeton University Press, 2009), 53-79.

[92] For what is arguably the most influential account to date of the importance of motivational constraints (namely, the sense of justice) for stability, see John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Belknap Press, 1999), 398.

to positively establish that AAP's implementation is feasible across all three dimensions: for instance, that it is not subject to certain and known hard constraints or that any present hard constraints are merely of synchronic, but not of diachronic nature and can thus be overcome over time, and finally, that AAP's implementation would be both accessible and stable. But this positive route is likely to lead into significant difficulties, because we often have only incomplete information about empirical factors which we would need in order to positively establish these claims with certainty. As Valentini persuasively argues,

> positively establishing that an ideal is feasible is often too onerous. Such positive establishment requires the identification of a path from the status quo to a world in which the relevant ideal is fully instantiated or approximated. Given the complexities and contingencies of human existence, this is too much to ask for. If proving feasibility were a necessary condition for an ideal to count as worth pursuing, many ideals that are clearly worth pursuing would lose their normative power and [...] our normative outlooks would thereby become excessively *status quo* biased.[93]

Given that the enduring presence of epistemic gaps concerning key empirical facts makes it hard to establish positive feasibility, the more plausible alternative is to endorse a weaker, negative feasibility standard: 'non-infeasibility'.[94] Non-infeasibility, on my view, marks the threshold above which it is worth pursuing a particular normative principle X in its ideal form to the best of our ability: we ought to strive towards the ideal, or we ought to approximate it by implementing second- and third-best iterations of it.

[93] Valentini, "No Global Demos, No Global Democracy?", 791.

[94] Valentini proposes a similar non-infeasibility standard in her discussion of global democracy: "To establish that an ideal is worth pursuing, then, all we need is enough ground for reasonably hoping that the ideal can be realized or approximated, not a 'full demonstration' of its feasibility." See Valentini, "No Global Demos, No Global Democracy?", 791. What distinguishes my account from Valentini's is that I offer a more detailed account of what it means for a normative principle to be *infeasible*, and that I combine my endorsement of the non-infeasibility standard with a supplementary account of soft feasibility constraints that apply to all principles above the non-infeasibility threshold.

Of course, a negative feasibility standard like 'non-infeasibility' cannot by itself provide a complete plausible account of feasibility: non-infeasibility is merely a *necessary*, but not sufficient condition for all-things-considered feasibility. To develop a fuller picture of feasibility, we can supplement the infeasibility test by an account that determines how we should *compare* available non-infeasible principles once we have determined which normative principles pass the non-infeasibility threshold. Such a supplementary account could, for instance, serve as a basis for comparative assessments regarding the scalar feasibility of implementing AAP in contrast to the implementation of rival principles of democratic enfranchisement.

What is the upshot of this negative feasibility standard for the guiding question in this paper: how (not) to fight AAP? Those wishing to *reject* AAP on the grounds of feasibility must demonstrate that we can say with reasonable certainty that AAP is *infeasible*. If infeasibility cannot be shown, then the only remaining possible critique of AAP is to not reject AAP, but to cast (some) *doubt* on it by offering reasons why the implementation of AAP in its ideal form or in its second- or third-best iteration is subject to comparatively stronger feasibility constraints, which would then constitute one reason—but not necessarily a decisive reason—to prefer one of AAP's rival principles of democratic enfranchisement to AAP itself.

Let us discuss these two possible ways of attacking AAP on the grounds of feasibility in turn. First, how does one establish non-infeasibility? Since both the less appealing positive feasibility standard and the more promising negative feasibility standard ('non-infeasibility') imply a binary view of feasibility constraints, one may be tempted to equate non-infeasibility with the lack of hard constraints. But as I have pointed out above, hard constraints do not always remain hard constraints, which is why our account ought to err on the

safe side. Thus, on my view, only specific hard constraints are necessary for infeasibility. I define infeasibility as follows:

> **Strict Infeasibility**: If and only if a normative principle X is subject to the subset of hard feasibility constraints of which we can say with a reasonable degree of certainty that they are (i) hard constraints both in the synchronic and in the diachronic sense (*time-insensitivity condition*) and (ii) hard constraints for all agents (*agent-neutrality condition*), implementing X is strictly infeasible.

This may strike some readers as an *overly* restrictive account. After all, strict feasibility implies the view that we ought not to exclude a normative principle from our consideration unless we are *certain* that it is *not ever* possible *for anyone* to implement X. But there is a strong rationale for this restrictive account: namely, the epistemic gaps pointed out above. If we already know that establishing positive feasibility is difficult or impossible due to empirical contingencies that we cannot possibly evaluate fully from our present epistemic standpoint, the obvious solution is to simply exclude only those normative principles from further consideration that we *know* to be infeasible. This means that strict infeasibility does *not* include normative principles which are in fact strictly infeasible, but which we do not know to be infeasible. The underlying worry here is that since my account endorses such a strict notion of infeasibility, it implies a remarkably low bar for the non-infeasibility threshold. But this is not a major problem for my account: after all, should a normative principle which seems non-infeasible initially turn out to be (strictly) infeasible, that principle can be included in the set of strictly infeasible principles as soon as we are certain about the relevant empirical facts. Assessments concerning the strict infeasibility of particular normative principles are not set in stone, and can be revised over time.

Having defined (strict) infeasibility, we can now endorse non-infeasibility as a necessary requirement for the all-things-considered plausibility

of all normative principles. Any normative principle that does not meet this strict infeasibility criterion counts as non-infeasible, and thus as in principle worth implementing or approximating, subject to a range of soft feasibility constraints.

> **Non-Infeasibility Requirement**: A normative principle X that is not strictly infeasible cannot be rejected purely for reasons of feasibility.

The set of non-infeasible normative principles encompasses a wider range of cases, but every element of the set can be restated colloquially as the claim 'It is possible to implement X.' In order to ensure coherence with my account of strict infeasibility described above, and in order to specify non-infeasibility further, I propose that either one, or several ones, of the following three statements must be true for any element of the set of non-infeasible normative principles:

> (A) *no hard constraints*: we cannot say with a reasonable degree of certainty that the implementation of X is subject to any kind (synchronic or diachronic) of hard constraints; or
>
> (B) *time-sensitive hard constraints*: synchronic hard constraints are present, but we know that—or cannot with a reasonable degree of certainty deny that—these constraints are not at the same time diachronic hard constraints; or
>
> (C) *agent-relative hard constraints*: diachronic (and synchronic) hard constraints are present, but only for a subset of agents.

Let us now consider how we can make comparative distinctions between the wide set of different normative principles above the non-infeasibility threshold: what would a plausible supplementary account of varying degrees of scalar feasibility look like? First, we can ask whether there is a discernible agent, or a group of agents, who are able to implement a principle X—either now or at some point. Clearly, the subset of non-infeasible normative principles X with a

discernible agent who can feasibly implement X scores higher in terms of scalar feasibility than non-infeasible principles without such an agent.[95]

> **Subset I: 'It is feasible for some agent(s) (a) to implement X *at some point*.'**
> Either (A) or (B) are true, and (C) is true, so that implementing X is subject to a (synchronic or diachronic) *soft* feasibility constraint for some agent(s) (a). (Implementing X may pose a hard constraint for other agents (b...n), and (unrelatedly) it may not be feasible for (a) to implement X right now.)

Based on this, we can identify an even smaller subset of non-infeasible normative principles, which ranks even higher in terms of scalar feasibility:

> **Subset II: 'It is feasible for some agent(s) (a) to implement X *now*.'**
> (A) and (C) are true, so that implementing X is subject to a synchronic soft feasibility constraint for some agent(s) (a).

What is feasible here and now by a discernible agent is a mere subset of a much wider range of non-infeasible normative principles. This point is important because feasibility-related critiques of AAP often point out that there is no agent who can feasibly implement AAP now, or more precisely, that there are no democratic institutions with a sufficiently global reach in which AAP could be implemented.[96] My claim here is that this is not decisive reason to *reject* AAP: just because AAP may not be part of Subset II, that does not mean that it is (strictly) infeasible. Rather, claims of this kind articulate worries about AAP's place in a comparative assessment of scalar feasibility. One might think, for instance, that if we have to choose between implementing AAP and preserving the status quo—say, by adhering to a principle that demands the enfranchisement of, and only of, citizens, irrespective of their respective

[95] On what it means for an agent *to be able to* bring about a particular outcome by implementing a normative principle, see Lawford-Smith, "Understanding Political Feasibility," 247-251.
[96] See, for instance, Song, "The Boundary Problem in Democratic Theory," 39-68; Thomas Christiano, "A Democratic Theory of Territory and Some Puzzles about Global Democracy," *Journal of Social Philosophy* 37, no. 1 (2006): 81-107.

affectedness—implementing the latter principle is comparatively *more* feasible, given that institutions that support its implementation already exist. But it is crucial to note that that claim is not the same as the much stronger claim that AAP is *altogether* infeasible.

2. Is It Plausible to Reject AAP on the Grounds of Feasibility?

a. Does AAP Pass the Non-Infeasibility Threshold?

Having developed a general framework for evaluating feasibility constraints, let us now examine the concrete feasibility constraints that apply specifically to AAP. In order to test whether AAP passes the non-infeasibility threshold, we need to ask whether there AAP is subject to any hard constraints which are certain, time-insensitive, *and* agent-neutral.

One obvious contender for a hard constraint of this kind would be circularity. But as I have already shown above, in my section on AAP's desirability, plausible versions of AAP are not in fact circular. There are, however, two other kinds of hard constraints that merit further scrutiny: *epistemic* and *motivational* ones.[97] Regarding the former, consider first the fact that a plausible version of AAP is going to have a number of defined blind spots, for instance, regarding proportionate distributions of democratic participation rights in the context of (un-)known unknowns about relevantly affected interests.[98] But note that defined blind spots are not necessarily a time-insensitive hard constraint: over time, we may gain more knowledge about the content of defined blind spots, so that (un-)known unknowns turn into empirical factors that we *can* in fact evaluate morally. Thus, defined blind spots

[97] AAP may of course also be subject to *soft* epistemic and motivational feasibility constraints. I discuss these constraints in detail in the subsequent section.
[98] See sections III-IV of "Narrow Possibilism about Democratic Enfranchisement".

are synchronic hard constraints, but not necessarily diachronic ones. And even if (un-)known unknowns remain (un-)known unknowns, and are thus diachronic hard constraints for the first-best implementation of AAP, that does not mean that AAP's second- and third-best implementation will necessarily be subject to diachronic hard constraints in the form of (un-)known unknowns as well. In sum, the presence of defined blind spots does not necessarily render AAP's implementation strictly infeasible.

Consider now another potential epistemic hard constraint: even if we know that some hard constraints turn out to be soft ones over time, and are thus synchronic rather than diachronic hard constraints, we may not know in some cases whether a hard constraint *will* in fact turn out to be a soft constraint (making the ostensible diachronic hard constraint a mere synchronic one). In other words, this is a hard epistemic feasibility constraint about determining the *nature* of feasibility constraints. However, it is unclear whether this particular hard constraint is present in a given situation, for instance, when we try to implement AAP in a particular context. And if this hard constraint does not meet the reasonable certainty requirement for strict infeasibility, we should therefore not reject AAP on these grounds, until—and just if—we do possess reasonable certainty that this hard epistemic constraint is indeed present.

Finally, consider the problem that even if we have a clear picture of an ideal principle of democratic enfranchisement (AAP), and we endorse that ideal and take steps to implement it in practice, we may lack the kind of knowledge that would be required for measuring the proximity of possible outcomes $O_{1...n}$ of our actions in pursuit of the ideal to the outcomes O_i required by the actual ideal.[99] For example, we may not be able to tell exactly *how close*

[99] On why measuring the proximity to the ideal is important for evaluating feasibility constraints, see (amongst many others) A. John Simmons, "Ideal and Nonideal Theory," *Philosophy & Public Affairs* 38, no. 1 (2010): 35: "which of two smaller 'peaks" of justice is the higher (or more just) is a judgment that matters conclusively only if they are both on equally feasible paths

an implementation of AAP's first-best (enfranchisement) for 60% of relevantly affected persons in combination with AAP's second-best (representation without enfranchisement) for the remaining 40% brings us to the ideal (implementing AAP's first-best for 100% of relevantly affected persons). What we do know, however, is that a combined implementation of AAP's first- and second-best moves us into the *direction* of the ideal: proximity measurements are not necessary for determining the direction of possible outcomes $O_{1...n}$.

It is important to bear in mind that this kind of epistemic hard constraint does not apply to all cases. Often, we may not know how far away we are from implementing a particular ideal fully, but we may well have a *comparative* sense of what kinds of actions are likely to bring us closer to the ideal, and which ones move us further away from it.[100] Given that not all acts pursued in order to implement AAP are subject to the epistemic hard constraint that we may not know *to what extent* we fall short of achieving a perfect implementation of AAP, it would be implausible to reject AAP *as a whole* on feasibility grounds.

to the highest peak of perfect justice. And in order to endorse a route to that highest peak, we certainly do need to know which one that highest peak is." For critical discussion, see Gaus's account of the Orientation Condition (defined as follows: "T's overall evaluation of nonideal members of {X} must necessarily refer to their 'proximity' to the ideal social world") in Gerald F. Gaus, *The Tyranny of the Ideal* (Princeton, NJ: Princeton University Press, 2016), 140. Gaus argues that "[i]f the Orientation Condition does not hold, the ideal is unnecessary to orient our search for greater justice".

[100] Some have used precisely this point about comparative normative judgments to dismiss the view that we need a fixed ideal in order to make such comparative judgments. See, for instance, Amartya Sen, "What Do We Want from a Theory of Justice?" *The Journal of Philosophy* 103, no. 5 (2006): 215-238. But note that this is *not* my view here: I *do* think that a clear picture of an ideal state of affairs is necessary for making meaningful comparative judgments. My underlying intuition here is that the *direction* of all comparative judgments matters: option A may be equal to option B in terms of desirability and feasibility, but A is further removed from the ideal (i) than B. We should therefore prefer B. But without knowing (i), we cannot evaluate A and B in a comparative way. Therefore, unless we know which option brings us closer in the direction to the ideal, comparative judgments cannot be made in all cases. Note that my Direction Condition is different from Gaus's Orientation Condition: measuring proximity to the ideal is not *necessary* for determining the direction of particular option, although proximity measurements may of course be *useful* for applying the Direction Condition.

Let us now turn to motivational hard constraints which could render AAP strictly infeasible. First, there is a cluster of individual motivational constraints: persons may have nationalist *preferences*, for instance, and therefore oppose the democratic enfranchisement of persons who are not their co-nationals, but whose interests are nevertheless relevantly affected from the perspective of AAP.[101] These preferences may not change over the course of these persons' lifetime: a person A might authentically believe, and continue to believe for the rest of their life, that enfranchisement in accordance with AAP is wrong; or A might live under the constant influence of other nationalists, which induces and incentivises A to form anti-AAP preferences. The enduring existence of such preferences suggests that this type of motivational feasibility constraint is indeed a hard one. But note that preferences are not agent-neutral: some people may prefer not to implement AAP, whilst others prefer to do precisely that. Indeed, the gradual implementation of AAP itself is likely to have an impact on individual preference formation, since the establishment of a new status quo that (partially) realises AAP will *normalise* AAP. Persons living in that new status quo will have a clear incentive to change their preferences about AAP, provided that AAP's implementation works sufficiently well; or they may change their preferences unconsciously. And even if a new status quo that approximates AAP better than a previous status quo ends up having the opposite effect by triggering or amplifying anti-AAP sentiments, that does not change the fact that any preference-related constraint is by definition not agent-neutral. Therefore, motivational hard constraints related to individual preferences cannot justify the claim that AAP is strictly infeasible.

Another—potentially hard—individual motivational constraint might be facts about *human nature*, such as implicit bias and human fallibility, self-

[101] Analogous examples could be made, of course, about *non*-nationalists who also have preferences that run counter to the implementation of AAP.

interest, and prejudice against or a general lack of trust in people perceived as 'strangers'.[102] These deeply ingrained features of the human psyche may be hard to overcome, since many of them are at least partially unconscious, and since they are the product of being socialised in a world that is still racist, sexist, and otherwise structurally unjust to a considerable degree, which makes individuals less likely to discover and question their ingrained beliefs. This does not mean, of course, that prejudiced, biased, or self-interested agents are blameless for their failure to change their ingrained beliefs and behavioural patterns. But the duties of individuals to address such beliefs and behaviours is a question that is distinct from the question whether the presence of such beliefs and behaviours amounts to a hard feasibility constraint that renders AAP's implementation strictly infeasible. Appeals to human nature as a hard feasibility constraint are widespread in philosophical discussions of different theories of justice, such as socialist or egalitarian ones.[103] It is fairly obvious why potentially insurmountable facts about human nature might be an important worry for any theory of justice that demands a (re-)distribution of benefits and burdens that is contrary not only to individual preferences, but also to what individuals are unconsciously inclined to do. But does the same worry easily translate to normative principles of democratic enfranchisement? Not necessarily. Of course, if a principle of democratic enfranchisement *were* to demand actions that were contrary to human nature, then human nature may well be a hard constraint. But I would argue that a plausible version of AAP does not normally demand any individual actions that are incompatible with what biased and selfish agents are inclined to do. Those enfranchised under AAP are free to articulate their biased and selfish beliefs by using their democratic participation rights. And, as I have

[102] Clearly, I am not offering a complete account of human nature here, since doing so would require expertise in empirical disciplines such as psychology, neuroscience and behavioural economics, which is why such a complete account is far beyond the scope of this paper.

[103] Cohen, for instance, begins his discussion of human nature constraints in his *Why Not Socialism?* by observing that "people are, so it is often said, by nature insufficiently generous and cooperative". Cohen, *Why Not Socialism?*, 55.

argued in the first section of this paper, if doing so leads to democratic decision *outcomes* that hinder the implementation of AAP—such as a majority voting in favour of disenfranchising a minority on prejudiced, morally arbitrary grounds—then AAP can be supplemented by external principles of justice which justify the rectification of such outcomes. So while human nature may be a motivational hard constraint that renders the realisation of other normative principles strictly infeasible, it is not a hard constraint that renders principles of democratic enfranchisement, and specifically, the AAP, strictly infeasible.

Lastly, there are collective motivational hard constraints, which arise whenever a group of people (such as the majority of all those enfranchised in a given polity) collectively opposes the democratic enfranchisement of a particular set of relevantly affected persons, or perhaps even opposes democracy itself. In such an environment, political representatives and other decision-makers will struggle to actually implement AAP, even if they are objectively able to do so. Implementing AAP may seem *politically infeasible* in this situation.[104] Political leaders would face political repercussions which would not only destabilise their own position of power, but which could also trigger wider political unrest, if they were to implement a policy that is largely unpopular. But much like motivational hard constraints arising from particular individual preferences, this feasibility constraint is not agent-neutral. It is specific to a particular political context. But since AAP demands the gradual implementation of *global* democracy, political feasibility in *parts* of the local, domestic, and global institutions is not an insurmountable obstacle for realising AAP. Hence, political feasibility is best construed as an agent-relative soft constraint rather than an agent-neutral hard constraint that renders AAP infeasible.

[104] On the concept of political feasibility, see Juha Räikkä, "The Feasibility Condition in Political Theory," *The Journal of Political Philosophy* 6, no. 1 (1998): 27-40.

These reflections on epistemic and motivational hard constraints suggest that one cannot plausibly *reject* AAP on the grounds of feasibility because none of the hard constraints discussed here render AAP strictly infeasible. Supporters of AAP could therefore conclude their defence of AAP at this juncture. Yet such a defence would not address concerns about the *comparative* feasibility of AAP vis-à-vis rival principles.

In what follows, I outline the relevant soft constraints that may make AAP less feasible. The central point here, however, is that even if AAP is comparatively less feasible than other principles of democratic enfranchisement, its feasibility still has to be weighed up against its desirability as a normative principle of democratic enfranchisement. What does this mean for those who accept my earlier arguments about AAP's desirability, but who remain sceptical of AAP for feasibility-related reasons? In my view, 'fighting' AAP *for feasibility-related reasons only* requires showing why the presence of comparatively weightier soft feasibility constraints in relation to AAP outweighs AAP's comparatively higher desirability in a way that casts doubt on AAP's *overall* plausibility.

b. Which Soft Feasibility Constraints Impact AAP's Comparative Feasibility?

The most obvious soft feasibility constraint on AAP is a *resource* constraint. AAP's first-best realisation of enfranchising all relevantly affected persons is costly because it demands the facilitation of cross-border elections and other democratic decision-making procedures. Ensuring that those decisions are procedurally fair requires investing in new and complex oversight and accountability mechanisms, as well as difficult and costly coordination between already existing institutions. AAP's second- and third-best are also costly, as I have already pointed out in this paper. The reason why the resource

constraint is a soft one is that these costs are unlikely to be *prohibitively* costly. But that does not mean that they are morally insignificant. For this reason, AAP sceptics may (in my view correctly) point out that the resource constraint renders AAP comparatively less feasible. I accept this point, since my aim here is not to show that AAP is comparatively more feasible than *any* other principle of democratic enfranchisement. Evaluating soft feasibility constraints is ultimately a matter of priorities: in my view, realising fair democratic enfranchisement trumps non-prohibitive costs in terms of normative importance. The AAP sceptic may deny that. But it is worth noting that the AAP sceptic then also has to face the question when exactly costs *stop* trumping other important normative principles, democratic or otherwise—and why a normative principle that permits sacrifices of this kind for the sake of costs is desirable, all things considered. Obviously, it is easy to justify our failure to realise demanding normative principles by reference to the costs of their respective realisation. Yet it seems intuitively unappealing to sacrifice a principle as basic a fair democratic enfranchisement.[105]

Secondly, AAP is subject to an *epistemic* soft constraint because democratising global institutions places additional epistemic burdens on ordinary democratic agents. As Christiano points out, "in the absence of established and settled [global] institutions for debate and discussion like political parties and interest groups that are connected to citizens, it is hard to see how the problem of information can be mitigated on the global scale. This is admittedly a problem that need not last forever but it is one that is likely to

[105] Of course, I do not mean to imply here that the morally valuable goal of realising fair democratic enfranchisement trumps *all other* morally valuable goals, such as (amongst many others) reducing global poverty, securing basic decent living standards for all persons, and so on. The point is simply that we ought to be very careful about sacrificing fair democratic enfranchisement, and that we ought to be keenly aware of just how much we would lose should we indeed decide to sacrifice it.

last for a very long time".[106] Of course, the problem of epistemic burdens also applies to any other democratic principle: continuously keeping up with a complex system of political parties and available policy options is challenging for the ordinary voter. But the problem is clearly more pressing in the context of any democratic enfranchisement principle that demands the extension of the franchise beyond the boundaries of already existing institutions, such as the AAP. Added complexity in democratic procedures and institutions makes it harder for democratic agents to become and remain *well-informed* democratic agents. This is an important problem. Implementing AAP therefore requires more than just enfranchising more people in more decision procedures; it also requires changing the global institutional structure so as to strengthen globally operating parties, interest groups, and NGOs, which in turn play an instrumental role in disseminating information about available policy options in an accessible way. Furthermore, there may be a number of institutional *background conditions* that need to be present before we can begin realising AAP. For instance, global and transnational *deliberative* spaces need to be created and sustained: before those enfranchised under AAP exercise their respective democratic participation rights, it is helpful for rights-holders to deliberate with others in order to evaluate and expand the information that is available to them, to compare their policy preference with the preferences of others, and to reflect on different reasons for endorsing different political positions.

Thirdly, there are *motivational* soft constraints which may diminish AAP's comparative feasibility. Changing people's individual and collective preferences about what is a fair principle of democratic enfranchisement may

[106] Christiano, "A Democratic Theory of Territory," 105. For a similar argument, see Robert A. Dahl, "Can International Organizations Be Democratic? A Skeptic's View," in *Democracy's Edges*, eds. Ian Shapiro and Casiano Hacker-Cordón (Cambridge: Cambridge University Press, 1999), 19-36.

well take a significant amount of time and effort—especially if people *perceive* AAP as strictly infeasible in spite of the fact that, as I have argued earlier, it is not.[107] Here, the question of AAP's comparative feasibility becomes a political issue: the challenge is not only to accurately identify a soft feasibility constraint as a soft feasibility constraint, but also to persuade democratic agents that a given feasibility constraint is indeed a soft one, and that AAP *can* therefore be implemented.

Of course, if one does *not* succeed in persuading democratic agents that a particular soft constraint is indeed a soft constraint and that it is worth implementing AAP in light of associated transition costs, the motivational soft constraint persists in a diachronic manner, thus diminishing AAP's comparative feasibility further: implementing AAP may not lead to a new *stable* status quo. But note, again, that this comparative feasibility consideration is conceptually distinct from considerations about AAP's desirability: 'won't do' or 'does not want to do' does not imply 'can't do', and it certainly does not imply 'is not morally required to do'.[108] I suspect that some may object at this juncture that if a normative principle like AAP departs too much from what people 'will do' or 'want to do', it becomes an unattractive principle overall because it loses its action-guiding force. As Miller puts this thought,

[107] As Goodin points out, people's political aspirations *depend* on what they perceive as feasible, which is why perceived impossibility is often used as an excuse for political inaction by political representatives. Goodin aptly calls this tactic "rigging the feasible set". See Robert E. Goodin, *Political Theory and Public Policy* (Chicago, IL: University of Chicago Press, 1982), 125-131. See also Gilabert and Lawford-Smith's discussion of the claim that "[i]t is important to distinguish between *believed* moral costs and *actual* moral costs." ("Political Feasibility," 817).

[108] For a similar argument, see Gilabert and Lawford-Smith, "Political Feasibility," 817: "It might be feasible that a person makes a voluntary donation to poverty relief, because he or she (easily) can if he or she tries, even though it is unlikely, because he or she is not disposed toward charity. But no-one thinks that people should only be required to do what they actually do." See also David Estlund, "Human Nature and the Limits (If Any) of Political Philosophy," *Philosophy & Public Affairs* 39, no. 3 (2011): 208-211. For a view opposed to Gilabert and Lawford-Smith's, see Nicholas Southwood, "Does 'Ought' Imply 'Feasible'?", *Philosophy & Public Affairs* 44, no. 1 (2016): 13, who argues that feasibility should indeed be defined as the set of actions that agents can bring themselves to do: "An agent A can (is able to) X if and only if A is *disposed*, insofar as A tries to X and does not give up trying to X, to (be sufficiently likely to) X" [emphasis added].

> the principles political philosophers propose must be principles that citizens can act upon, not in the sense that they can fully implement them here and now, but in the sense that their present actions can be guided by the longer-term goal of realizing the principles in question. But if they are action-guiding in this way, they cannot contravene the deeply held commitments of present-day citizens.[109]

The question, of course, is whether a plausible version of AAP, including its weaker second- and third-best implementation, is in fact one of those principles that violates the 'deeply-held commitments of present-day citizens', given that the values that underpin AAP are the principle of equal concern combined with a conception of fair political equality. It is also worth asking how far into the future the 'present day' extends: just like many feasibility constraints are synchronic but not diachronic, many preferences can be synchronic but not diachronic. Even the most deeply held beliefs are subject to political change. So, instead of invoking the deeply held beliefs of present-day citizens as a reason to take AAP off the table, it is more plausible to ask whether such beliefs might change once we start implementing AAP, thus converging on a new and stable status quo. Of course, I am not making a speculative empirical claim here that preferences *will* necessarily change and converge in this way. What I am arguing is that, based on the view of feasibility constraints developed in this paper, it would be wrong to reject AAP entirely on these grounds given that preferences *could* potentially change.

Another important part of addressing motivational soft constraints is to negotiate morally weighty transition costs: the costs of changing the current status quo in order to access a new status quo that brings us closer to the ideal implementation of a normative principle.[110] A more specific worry for AAP,

[109] David Miller, *Justice For Earthlings* (Cambridge: Cambridge University Press, 2013), 34.
[110] On transition costs in the context of political feasibility constraints, see Räikkä, "The Feasibility Condition in Political Theory", 27-40.

and any other democratic principle in which the value of fairness plays a decisive role, arise in the form of (in A. J. Simmons words)

> morally impermissible kinds of *transitional unfairness*. In changing even unjust institutional rules, we are generally sensitive to the moral dangers of 'rug-pulling' [...] that is, cases where people base life plans or important activities on the reasonable expectation that the rules will remain unchanged (or, worse, where they are simply *required* to structure their activities around existing rules) and then have the rug pulled from beneath them by sudden institutional change.[111]

If AAP's implementation would be transitionally unfair in the sense of violating reasonable expectations, that would be a serious concern not only for AAP's comparative feasibility, but also for its comparative desirability: it would suggest that AAP's implementation hinders AAP's original aim of establishing a fair system of democratic enfranchisement. However, it is not clear why implementing AAP would mean violating reasonable expectations in an *unfair* way. After all, I might form reasonable expectations about all sorts of things, but that does not mean that those expectations are also legitimate:

> ***Illegitimate Reasonable Expectations***: Jane has red hair, and she is enfranchised in demos D. D's laws require the enfranchisement of people of all hair colours *de jure*, yet for the past few decades, D has *de facto* enfranchised red haired people only. Jane therefore reasonably expects to continue to benefit from this arrangement which privileges her and other red haired people. In a surprising turn of events, D decides to implement a more fair enfranchisement policy that coheres with the *de jure* requirements in D, thus frustrating Jane's reasonable expectation.

Since Jane's expectation was reasonable—but not legitimate—in the first place, Jane cannot reasonably complain that she is burdened with morally unfair transition costs now that D is changing its enfranchisement policy. But even if Jane's reasonable expectations *had* been legitimate—for instance, if Jane had lived in a state that implemented a less morally arbitrary and thus objectionable

[111] Simmons, "Ideal and Nonideal Theory," 20.

enfranchisement principle—and if frustrating Jane's expectations had thus meant imposing morally unfair transition costs on her, that unfairness might well be outweighed by the overall fairness created by implementing an even better enfranchisement policy. Therefore, the relevant question to ask about reasonable expectations as a soft feasibility constraint in the context of AAP is a more nuanced one: first, does implementing AAP actually impose *unfair* transition costs on particular democratic agents; and second, if so, is the unfairness of those transition costs not outweighed by the value of realising fair democratic enfranchisement in accordance with AAP? These considerations about transition costs are likely to be context-specific to some extent, much like any other consideration concerning motivational soft constraints.

The overall upshot of my discussion here is that motivational soft constraints have much more limited force in terms of casting doubt on AAP's *general* comparative feasibility than AAP critics might think. 'Fighting' AAP on the grounds of feasibility thus requires a more nuanced and context-specific engagement with the precise nature and scope of such constraints.

III. Conclusion: What AAP Is, and How (Not) to Fight It

The larger point that has emerged over the course of my discussion is that most critiques of the All-Affected Principle—whether they question its normative desirability or its political feasibility—stem from a higher-order disagreement about the appropriate function of democratic principles in a broader framework of values for a reasonably just society with stable, well-functioning institutions. Plausible versions of AAP, I have argued, restrict AAP's function to articulating who has participation rights in democratic decision-making procedures, and why. What the principle does not, cannot,

and need not achieve, is providing an *all-things-considered* answer to the question what we are morally required to do when realising democracy in accordance with AAP conflicts with other values, such as justice and feasibility. For that matter, AAP is not even all there is to *democracy* itself: a full theory of democracy will require a robust account of democratic authority, as well as a defence of higher-order principles about how to settle conflicts between different kinds of democratic rights, such as the individual right to democratic participation—which is the kind of right that AAP justifies—vis-à-vis the collective right of self-determination, held jointly by all holders of the former individual right. Of course, it would be implausible to think that the question of democratic enfranchisement is all there is to democracy, and I do not know of any contributors to this debate who have defended such a view. Nevertheless, it is useful to emphasise this point, in order to fully identify the appropriate limitations of AAP.

My view is going to disappoint those who think that unjust and unstable (or otherwise comparatively less feasible) institutional arrangements are necessarily incompatible with democracy, in the sense that a principle of democratic enfranchisement must be rejected if it leads to unjust and unstable institutional arrangements. Against that stance, I have argued that separating the question of democratic enfranchisement from the question of what constitutes an all-things-considered just society is necessary, and indeed a virtue of my account rather than a vice. While justice cannot be realised without identifying a plausible principle of democratic enfranchisement first, justice requires far more than democracy. AAP is therefore not a principle of *just democracy*: it is *just* a principle of *democracy.*

Similar arguments apply to the problem of feasibility, and I have developed those arguments in the second part of this paper. Here, I have argued—amongst other things—that AAP is not strictly infeasible, although it is

of course subject to a number of soft feasibility constraints which may render AAP comparatively less feasible than alternative principles of democratic enfranchisement. Of course, we need to have a clear picture of the kinds of feasibility issues that do constrain AAP first before we can embark on the larger task of a comparative feasibility evaluation of AAP and its rivals. This, I have argued, is particularly important because many well-known critiques of AAP reject the principle outright on the grounds that it is (ostensibly) infeasible. These critiques miss their target, and have so far not engaged in the more nuanced philosophical discussion of AAP's comparative merits and pitfalls regarding (soft) feasibility constraints. On my view, contributions to that important discussion must rely on a clear higher-order account—one which is external to AAP—of the extent to which feasibility constraints give us a sufficient reason to modify the content of normative principles like AAP.

If justice (or feasibility) starts with, but does not finish with democracy, we cannot reject AAP purely on the grounds that it fails to generate just (or stable, or otherwise robustly feasible) outcomes by itself. For that reason, the critiques of AAP discussed here are best construed as ways of articulating the proper limitations of AAP and its role as a principle for realising democracy—and not as rejections of the principle itself. Only when it becomes clear what AAP really is can one 'fight' it. Fighting AAP, then, requires more than having a clear picture of what a plausible version of AAP is truly committed to, and attacking that version of AAP directly: in addition, one must also address the higher-order disagreement by providing compelling reasons why we should abandon the view that there is a division of labour between principles of democracy and principles of justice (or feasibility). I doubt that such reasons *can* be provided—and if they can, they are likely to cast doubt on AAP's major rivals as well.

Bibliography

Archibugi, Daniele, and David Held. "Cosmopolitan Democracy: Paths and Agents." *Ethics & International Affairs* 25, no. 4 (2011): 433-461.

Arneson, Richard J. "Democratic Rights at the National Level." In *Philosophy and Democracy: An Anthology*, edited by Thomas Christiano, 95-115. Oxford: Oxford University Press, 2003.

Barry, Brian. *Justice as Impartiality*. Oxford: Oxford University Press, 1995.

Buchanan, Allen E. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford: Oxford University Press, 2003.

Christiano, Thomas. "The Authority of Democracy." *The Journal of Political Philosophy* 12, no. 3 (2004): 266-290.
———. "A Democratic Theory of Territory and Some Puzzles about Global Democracy." *Journal of Social Philosophy* 37, no. 1 (2006): 81-107.
———. *The Constitution of Equality*. Oxford: Oxford University Press, 2008.

Cohen, G. A. *If You're an Egalitarian, How Come You're So Rich?* Cambridge, MA: Harvard University Press, 2001.
———. *Why Not Socialism?* Princeton, NJ: Princeton University Press, 2009.

Cohen, Joshua. "For A Democratic Society." In *The Cambridge Companion to Rawls*, edited by Samuel Freeman, 86-138. Cambridge: Cambridge University Press, 2003.

Dahl, Robert A. *After the Revolution? Authority in a Good Society*. New Haven, CT: Yale University Press, 1970.
———. "Procedural Democracy." In *Philosophy, Politics and Society*, edited by Peter Laslett and James S. Fishkin, 97-133. Oxford: Basil Blackwell, 1979.
———. "Can International Organizations Be Democratic? A Skeptic's View." In *Democracy's Edges*, edited by Ian Shapiro and Casiano Hacker-Cordón, 19-36. Cambridge: Cambridge University Press, 1999.

Elster, Jon. "Mimicking Impartiality." In *Justice and Democracy: Essays for Brian Barry*, edited by Keith Dowding, Robert E. Goodin, and Carole Pateman, 112-126. Cambridge: Cambridge University Press, 2004.

Estlund, David. "Human Nature and the Limits (If Any) of Political Philosophy" *Philosophy & Public Affairs* 39, no. 3 (2011): 208-211.

Frazer, Michael L. "Including the Unaffected." *The Journal of Political Philosophy* 22, no. 4 (2014): 377-395.

Fung, Archon. "The Principle of Affected Interests and Inclusion in Democratic Governance." In *Representation: Elections and Beyond*, edited by Jack Nagel and Rogers Smith, 236-268. Philadelphia, PA: University of Pennsylvania Press, 2013.

Gaus, Gerald F. *The Tyranny of the Ideal*. Princeton, NJ: Princeton University Press, 2016.

Gilabert, Pablo, and Holly Lawford-Smith. "Political Feasibility: A Conceptual Exploration." *Political Studies* 60, no. 4 (2012): 809-825.

Goodhart, Michael. "Democratic Accountability in Global Politics: Norms, not Agents." *The Journal of Politics* 73, no. 1 (2011): 45-60.

Goodin, Robert E. *Political Theory and Public Policy*. Chicago, IL: University of Chicago Press, 1982.
———. *Utilitarianism As A Public Philosophy*. Cambridge: Cambridge University Press, 1995.
———. "Democracy, Justice and Impartiality." In *Justice and Democracy: Essays for Brian Barry*, edited by Keith Dowding, Robert E. Goodin, and Carole Pateman, 97-111. Cambridge: Cambridge University Press, 2004.
———. "Enfranchising All Affected Interests, And Its Alternatives." *Philosophy & Public Affairs* 35, no. 1 (2007): 40-68.
———. "Demandingness as a Virtue." *The Journal of Ethics* 13, no. 1 (2009): 1-13.
———. "Global Democracy: In the Beginning." *International Theory* 2, no. 2 (2010): 175-209.

Guerrero, Alexander A. "Against Elections: The Lottocratic Alternative." *Philosophy & Public Affairs* 42, no. 2 (2014): 135-178.

Huxley, Aldous. *Brave New World*. London: Chatto & Windus, 1932.

Koenig-Archibugi, Matthias. "Fuzzy Citizenship in Global Society." *The Journal of Political Philosophy* 20, no. 4 (2012): 456-480.

Landemore, Hélène. "Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy." *Social Epistemology* 31, no. 3 (2017): 277-295.

Lawford-Smith, Holly. "Understanding Political Feasibility." *The Journal of Political Philosophy* 21, no. 3 (2013): 243-259.

List, Christian, and Mathias Koenig-Archibugi. "Can There Be a Global Demos? An Agency-Based Approach." *Philosophy & Public Affairs* 38, no. 1 (2010): 76-110.

López-Guerra, Claudio. "Should Expatriates Vote?" *The Journal of Political Philosophy* 13, no. 2 (2005): 216-234.

Macdonald, Terry. *Global Stakeholder Democracy: Power and Representation Beyond Liberal States*. Oxford: Oxford University Press, 2008.

Margalit, Avishai, and Joseph Raz. "National Self-Determination." *The Journal of Philosophy* 87, no. 9 (1990): 439-461.

Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2007.
———. "Democracy's Domain." *Philosophy & Public Affairs* 37, no. 3 (2009): 201-228.
———. "Against Global Democracy." In *After the Nation: Critical Reflections on Post-Nationalism*, edited by Keith Breen and Shane O'Neill, 141-160. Basingstoke: Palgrave Macmillan, 2010.
———. *Justice For Earthlings*. Cambridge: Cambridge University Press, 2013.
———. "Is There A Human Right to Democracy?" *CSSJ Working Papers Series, SJ032*. Published online (April 2015), https://www.politics.ox.ac.uk/materials/publications/13731/sj032is-there-a-human-right-to-democracy-final-version.pdf. Accessed: May 24, 2018).

Nagel, Thomas. *Equality and Partiality*. Oxford: Oxford University Press, 1991.

Näsström, Sofia. "The Challenge of the All-Affected Principle." *Political Studies* 59, no. 1 (2011): 116-134.

Nozick, Robert. *Anarchy, State and Utopia*. Oxford: Basil Blackwell, 1974.

Owen, David. "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, no. 3 (2012): 129-152.

Pavel, Carmen. "Boundaries, Subjections to Laws and Affected Interests." In *The Oxford Handbook of Freedom*, edited by David Schmitz and Carmen Pavel, 319-334. Oxford: Oxford University Press, 2007.

Räikkä, Juha. "The Feasibility Condition in Political Theory." *The Journal of Political Philosophy* 6, no. 1 (1998): 27-40.

Rawls, John. *A Theory of Justice*. Revised edition. Cambridge, MA: Belknap Press, 1999.

Risse, Matthias. *On Global Justice*. Princeton, NJ: Princeton University Press, 2012.

Roemer, John. "Does Democracy Engender Justice?" In *Democracy's Value*, edited by Ian Shapiro and Casiano Hacker-Cordón, 56-68. Cambridge: Cambridge University Press, 1999.

Scheffler, Samuel. *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions*. Oxford: Oxford University Press, 1994.

Sen, Amartya. "What Do We Want from a Theory of Justice?" *The Journal of Philosophy* 103, no. 5 (2006): 215-238.

Simmons, A. John. "Ideal and Nonideal Theory." *Philosophy & Public Affairs* 38, no. 1 (2010): 5-36.

Singer, Peter. "Famine, Affluence, and Morality." *Philosophy & Public Affairs* 1, no. 3 (1972): 229-243

Song, Sarah. "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State." *International Theory* 4, no. 1 (2012): 39-68.

Southwood, Nicholas. "Does 'Ought' Imply 'Feasible'?" *Philosophy & Public Affairs* 44, no. 1 (2016): 7-45.

Stemplowska, Zofia. "Feasibility: Individual and Collective" *Social Philosophy & Policy* 33, no. 1-2 (2016): 273-291.

Tamir, Yael. *Liberal Nationalism*. Princeton, NJ: Princeton University Press, 1993.

Valentini, Laura. "No Global Demos, No Global Democracy? A Systematization and Critique." *Perspectives on Politics* 12, no. 4 (2014): 789-807.

———. "On the Messy 'Utopophobia vs Factophobia' Controversy: A Systematization and Assessment." In *Political Utopias: Contemporary Debates*, edited by Kevin Vallier and Michael Weber, 11-34. Oxford: Oxford University Press, 2017.

Vermeule, Adrian. *Mechanisms of Democracy: Institutional Design Writ Small*. Oxford: Oxford University Press, 2007.

Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, 1983.

Warren, Mark E. "The All Affected Interests Principle in Democratic Theory and Practice." *IHS Political Science Series Working Paper* 145: 1-15. Published online (June 2017): http://irihs.ihs.ac.at/4306/15/Warren%20-%20All%20Affected%20Interests%20Principle.pdf. Accessed: May 24, 2018.

Whelan, Frederick G. "Prologue: Democratic Theory and the Boundary Problem." in *Liberal Democracy, Nomos 25*, edited by J. Roland Pennock and John W. Chapman, 13-47. New York, NY: New York University Press, 1983.

Political Wrongdoing, Criminal Disenfranchisement, and Affected Interests

Abstract: Convicted criminal offenders continue to be relevantly affected by the decisions of a demos, so is criminal disenfranchisement necessarily incompatible with AAP? Not quite. While AAP gives us good reasons to remain sceptical of any sort of disenfranchisement in general, AAP is compatible with the criminal disenfranchisement of a very specific, narrow set of criminal wrongdoers. The relevant group of criminals that may justifiably be disenfranchised are persons guilty of committing what I call 'political wrongs'. Political wrongdoing is wrong because it harms all persons enfranchised in a particular democratic polity by eroding the very institutions which enable and enforce the protection of those affected interests. The class of political wrongs includes practices such as *large-scale electioneering, corruption, or collusion with foreign powers*, and any other criminal wrongdoing that is wrong *primarily* because it deliberately erodes or circumvents democratic institutions for private gain. Criminal disenfranchisement in this case may mean that a political wrongdoer forfeits her concrete right to vote while incarcerated, but it may also mean that she loses other concrete democratic participation rights (e.g. the right to remain in a public office, or the right to run for office in the future). One important exception is the concrete right to engage in acts that disrupt the political process with the explicit intention of protesting against an unjust law or policy, and thus ultimately pursue the aim of improving democratic institutions. I conclude that widespread current criminal disenfranchisement policies disenfranchise the wrong set of people from the perspective of AAP. On the one hand, they are overinclusive, because they disenfranchise persons guilty of serious, but non-political, criminal wrongdoing (such as murder or theft) via policies such as the blanket disenfranchisement of all prisoners, or post-incarceration disenfranchisement of felons. On the other hand, they are underinclusive, because they fail to disenfranchise some persons guilty of serious political wrongdoing.

More than one in five adult African Americans in Florida, Kentucky, Tennessee, and Virginia are currently disenfranchised due to a present or past felony conviction.[1] The political impact of criminal disenfranchisement policies is significant, particularly in the US context, where many states disenfranchise not only prisoners, but also parolees and ex-convicts—6.1 million US citizens in November 2016.[2] Recent studies argue that even if the US had enfranchised only those felons who already served their time in prison, it is likely that the Democrats would have controlled the US Senate throughout the 1990s. More alarmingly, enfranchising felons could potentially have swung several US presidential elections—most notably the 2000 election.[3]

But even if the concrete political impact of criminal disenfranchisement is much smaller in a given state than it is in the US context, the practice raises difficult questions from the perspective of democratic theory. In the UK, for instance, where a blanket disenfranchisement policy for all prisoners was imposed until the end of 2017, the prison population is much smaller,[4] and thus, the number of disenfranchised prisoners is much lower. This number will be even lower going forward, since the UK government has now, after twelve years, decided to change its policy so as to comply with a 2005 European Court of Human Rights judgment in the landmark case *Hirst v. UK*, which stated that the UK's blanket ban violated Article 3 of Protocol No. 1 to the European

[1] Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016," *The Sentencing Project* (2016): http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/ (accessed: May 24, 2018)

[2] ibid.

[3] Pamela Karlan, "Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement," *Stanford Law Review* 56, no. 5 (2004): 1157; Hugh LaFollette, "Collateral Consequences of Punishment: Civil Penalties Accompanying Formal Punishment," *Journal of Applied Philosophy* 22, no. 3 (2005): 241.

[4] As of March 2018, there were 83,263 prisoners in England and Wales, but this number includes short-term prisoners, those on remand, and those subsequently acquitted. It also includes foreign nationals. To put this number into perspective, 71,495 prisoners were released from English and Welsh prisons in 2017. See "Offender Management Statistics Bulletin," London: UK Ministry of Justice (2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702297/omsq-q4-2017.pdf (accessed: May 24, 2018).

Convention on Human Rights.[5] Currently, the blanket ban continues to apply to all prisoners in principle, but the new policy introduces a range of exceptions: for those released on temporary licence or on home detention curfew, those on remand, and those committed to prison for contempt of court or for default on paying fines.[6]

Disenfranchising criminals means disenfranchising a group of people in spite of the fact that they are relevantly affected by the decisions of a political community,[7] whilst another group of affected people (non-criminals) continues to be enfranchised. This asymmetry may seem *prima facie* incompatible with the all-affected principle (AAP), the view that all those affected by a decision ought to have a say in that decision. However, just because democratic participation rights ought to be distributed in a certain way initially (for instance, in accordance with AAP), that does not necessarily mean that these rights cannot be forfeited under certain circumstances. Thus, my guiding questions in this paper are: can AAP justify criminal disenfranchisement? And even if AAP itself does not have the resources to justify criminal disenfranchisement, is it compatible with it?

For the purposes of this paper, I define the set of rights that can potentially be forfeited as part of criminal disenfranchisement as the full set of democratic participation rights—including, for instance, the right to vote, or the right to run for office, but also the right to engage in participatory budgeting or

[5] *Hirst v. UK* (No. 2), ECtHR (2005), http://hudoc.echr.coe.int/eng?i=001-70442 (accessed: May 24, 2018).

[6] "Communication from the United Kingdom Concerning the Case of Hirst (No. 2) v. the United Kingdom: Action plan DH-DD(2017)1229," *Council of Europe: Secretariat of the Committee of Ministers* (2017): https://rm.coe.int/1680763233 (accessed: May 24, 2018).

[7] Lippke provides an in-depth discussion of why and how the interests of disenfranchised criminals continue to be affected, and why criminals thus have an interest in being enfranchised. In particular, criminals have a status interest, an outcome interest, an autonomy interest, a developmental interest, and an interest in social support. Of course, as Lippke argues himself, the presence of these interests does not decisively settle the question of whether criminal disenfranchisement is morally justified. See Richard L. Lippke, *Rethinking Imprisonment* (Oxford: Oxford University Press, 2007), 200-204.

the right to contribute financially to political campaigns.[8] This is a broader view of criminal disenfranchisement than the majority of contributors to the philosophical debate on this topic have adopted, many of whom focus exclusively on the right to vote, and thus fail to consider other forms of (dis-)enfranchisement. But there are many other ways of disenfranchising a criminal offender: even if a criminal retains her right to vote, we might punish her by revoking her other democratic participation rights, and in that case, it would be counterintuitive to say that that criminal continues to be fully enfranchised. Her individual set of opportunities to participate in democratic decision-making has been punitively limited to some degree. Therefore, criminal disenfranchisement is best construed as a broader notion that accommodates the intuition that disenfranchisement can be a matter of degree.

I begin my argument in this paper by considering the question of whether the AAP can provide a standalone democratic justification for criminal disenfranchisement, defined as an argument that shows that a commitment to a particular democratic principle—such as a democratic *enfranchisement* principle like AAP—permits or even requires criminal disenfranchisement, *without* having to rely in part on external, non-democratic principles (Part I). I conclude that this is not so, because all standalone democratic justifications of criminal disenfranchisement are in fact incompatible with important aims of the AAP. I therefore argue that *if* one endorses AAP,[9] one can only endorse a

[8] I discuss the nature and scope of democratic participation rights in more detail in my papers "Economic Participation Rights and the AAP" and "Narrow Possibilism about Democratic Enfranchisement".

[9] Note that my aim in this paper is a modest one: here, I do not wish to argue that one *ought to* endorse AAP. I am simply interested in the question what kind of stance on criminal disenfranchisement one must take if one endorses AAP. However, in spite of this modest strategy, my arguments in this paper may be illuminating for AAP opponents as well, since the *implications* of AAP for the applied issue of criminal disenfranchisement might be of interest to them. Furthermore, the concept of political wrongdoing developed in my paper is a contribution to a highly undertheorised, but important, issue in the philosophical debate on the nature of criminal wrongdoing more generally. Hence, my account of this concept may well be useful for AAP opponents interested in the philosophical debate on criminal disenfranchisement.

non-democratic justification for criminal disenfranchisement—supplemented (if necessary) by side constraints which ensure that the justification is compatible with AAP. In Part II of this paper, I examine possible contenders for a plausible non-democratic justification and conclude that only negative retributivism, supplemented by some positive instrumentalist claims, can plausibly justify criminal disenfranchisement in a way that is compatible with AAP. Finally, in Part III, I develop the negative retributivist case for disenfranchisement by arguing that the relevant kinds of wrongs that warrant disenfranchisement are *political wrongs*, a subset of public wrongs (i.e. crimes). Since no contributor to this debate has so far defined and developed the concept of political wrongdoing, I give a systematic account of this type of wrongdoing, and show why disenfranchising political wrongdoers fulfils both the negative retributivist desert criterion and the instrumentalist condition for justifiability. I conclude my argument by summarising why this solution is compatible with AAP.

I. Can the AAP Provide a Standalone Democratic Justification for Criminal Disenfranchisement?

1. What Are Standalone Democratic Justifications of Criminal Disenfranchisement?

Criminal disenfranchisement raises challenging questions for democratic theory: first, if democratic decision-making procedures exclude a considerable number of people who normally have participation rights, and if that procedure leads to different outcomes than it would otherwise have (had the disenfranchised been enfranchised), is it right to call the outcome of the

decision democratically legitimate?[10] Second, if it turns out that criminal disenfranchisement exacerbates existing background injustices in a given society, such as racial inequality,[11] by disproportionately disenfranchising members of a disadvantaged minority, does criminal disenfranchisement undermine one of the central pillars of liberal democracy, namely, the principle of equal concern for all democratic agents?

This may suggest that providing a standalone *democratic* justification for criminal disenfranchisement—that is, a justification that shows why criminal disenfranchisement is not only *not contrary to* democratic principles, but is in fact justified *directly by* democratic principles—is not straightforward. Democratic justifications of criminal disenfranchisement have to show not only that disenfranchisement is compatible with democratic principles, but also that disenfranchisement can be justified purely by those democratic principles, that is without drawing on principles external to democratic theory (thus, 'standalone'). The alternative to such democratic justifications would be an account that justifies disenfranchisement by drawing on a particular theory of

[10] Arguments expressing scepticism about the democratic legitimacy of criminal disenfranchisement can be found, for instance, in the ECtHR ruling in *Hirst v. UK,* §62: "Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws which it promulgates". For related arguments, see Bennett and Viehoff, "Written evidence for the UK's Joint Committee on the draft Voting Eligibility (Prisoners) Bill," https://www.parliament.uk/documents/joint-committees/Draft-Voting-Eligibility-Prisoners-Bill/prisonervoting-evidvol%20(4).pdf, 97 (accessed: May 24, 2018).

[11] Several scholarly contributions suggest that it does. Uggen, Behrens, and Manza examine state attempts to undermine non-discrimination provisions in the 14th and 15th amendment: Christopher Uggen, Angela Behrens, and Jeff Manza, "Criminal Disenfranchisement," *Annual Review of Law and Social Science* 1, no. 1 (2005): 307-322. Regarding the same issue, see also J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880–1910* (New Haven, CT: Yale University Press, 1974); Michael Perman, *Struggle for Mastery: Disenfranchisement in the South, 1888–1908* (Chapel Hill, NC: University of North Carolina Press, 2001); and Andrew L. Shapiro, "Challenging criminal disenfranchisement under the Voting Rights Act: A New Strategy," *The Yale Law Journal* 103, no. 2 (1993): 537-566. Relevant case law also demonstrates the role of racial discrimination for disenfranchisement policies. See, for instance, *Hunter v. Underwood,* 471 U.S. 222 (1985): as Uggen, Behrens, and Manza argue, the US Supreme Court "invalidated Alabama's disenfranchisement law because of the clear record evidencing a racially discriminatory intent when an all-white constitutional convention passed a restriction in 1901." (Uggen, Behrens, and Manza, "Criminal Disenfranchisement," 314.)

punishment—such as retributivism, expressivism, or deterrence theories—and then shows why the punitive sanction of disenfranchisement is compatible with democratic values. I call such alternative justifications 'non-democratic' to highlight the fact that what does the justificatory work in this case is not directly a democratic principle itself, but rather an argument external to AAP—or another principle of democratic enfranchisement—about why and how we are justified in *punishing* particular offenders. By this, I do not mean to suggest that non-democratic justifications of disenfranchisement are contrary to democratic values: they are not necessarily *anti-democratic*. In fact, a plausible non-democratic justification for disenfranchisement would have to be constrained in such a way that it does not undermine important democratic principles, such as a commitment to the principle of equal concern for the interests of all democratic agents. [12]

> **Democratic Justification for Disenfranchisement**:
> Disenfranchisement is justified *by reference to* democratic principles, *and* it is compatible with such principles.
>
> **Non-Democratic Justification for Disenfranchisement**:
> Disenfranchisement is justified by reference to normative principles outside of democratic theory (theories of punishment), *but* it is compatible with democratic principles, as long as it is constrained in particular ways.

In spite of the potential challenges for democratic justifications sketched above briefly, it would be wrong to start with the assumption that democratic justifications of criminal disenfranchisement are destined to fail. Democratic theory may well provide a promising strategy for justifying criminal disenfranchisement, and indeed the only one if non-democratic justifications within the framework of theories of punishment fail to respond to major

[12] As I have argued in my paper "Narrow Possibilism about Democratic Enfranchisement", a plausible reading of AAP requires that this commitment be combined with a commitment to *Fair Political Equality* (FPE), which demands the *proportionate*, risk-sensitive conferral of concrete participation rights to all holders of affected interests.

objections, such as the point that criminal disenfranchisement is ineffective as a deterrent, that it is counterproductive for rehabilitation, or that it is disproportionate in a way that contradicts retributivist principles.[13] After all, one may argue, political communities have a right to democratic self-determination, and even if criminal disenfranchisement cannot be justified purely on punitive grounds, it may be justified on the grounds that punitive sanctions like criminal disenfranchisement are the outcome of a legitimate democratic procedure.[14] This democratic line of argument has gained considerable popularity in political and legal philosophy in recent years, and comes in two variations: one grounded in self-determination, and one grounded in social contract theory. As Altman puts the—what he calls 'non-traditional'—view, members of a demos hold

> the collective right [...] to define the distinctive political identity of their community through, among other authoritative decisions, official policies regarding criminal disenfranchisement. [... T]he existence of the right does entail that democracies are free to define themselves in different ways by adopting, within limits, differing standards for determining when a citizen is to be deprived of the franchise.[15]

Call such a view a *self-determination view*. Similar arguments have also been advanced by the UK government in *Hirst,* the landmark European Court of Human Rights case mentioned in the introduction of this paper. As the government argued, "a wide margin of appreciation was to be allowed to

[13] In fact, a possible democratic justification could be plausible irrespective of whether non-democratic justifications are plausible or not—the potential plausibility of the former does not depend on the potential failure of the later.

[14] For recent defences of this position, see Andrew Altman, "Democratic Self-Determination and the Disenfranchisement of Felons," *Journal of Applied Philosophy* 22, no. 3 (2005): 263-273; and Peter Ramsay, "Voters Should Not Be in Prison: The Rights of Prisoners in a Democracy," *Critical Review of International Social and Political Philosophy* 16, no. 3 (2013): 421-438. See also William Bülow, "Felon Disenfranchisement and the Argument from Democratic Self-Determination," *Philosophia* 44, no. 3 (2016): 759-774, p. 773, but note that strictly speaking, Bülow's view is not a *standalone* democratic justification, because it partially rests on additional, expressivist arguments. I mention it here in order to illustrate the specific claim about self-determination, but I do not wish to suggest that Bülow is necessarily committed to the kinds of standalone democratic accounts which I later reject.

[15] Altman, "Democratic Self-Determination," 263.

Contracting States in determining the conditions under which the right to vote was exercised",[16] that there is "extensive variation between Contracting States on the issue of voting by convicted prisoners, ranging from no prohibition to bans extending beyond the term of the sentence",[17] and, emphasising the UK's right to self-determination, that "the matter had been considered *fully* by the *national* courts applying the principles of the Convention under the Human Rights Act 1998".[18] The 2005 ECtHR ruling in this case acknowledged the UK's right to democratic self-determination, but still rejected the idea that the UK's policy of a blanket ban on prisoner voting was justifiable all things considered.

In addition to such self-determination views, there are democratic justifications of criminal disenfranchisement grounded in the social contract.[19] According López-Guerra's influential (critical) characterisation of such views, "[t]o break certain laws, the argument goes, is to breach the agreement that binds us to society. [...] In seriously failing to respect this agreement by violating some governmental decisions, criminals can be legitimately severed from society".[20] While older versions of the social contract argument for criminal disenfranchisement insist on actual civil death, that is, the expulsion from society, modern versions can use the idea of expulsion as a thought experiment. López-Guerra's reconstruction of a possible democratic social contract argument—which he later rejects—is the following:

> states should not be forced to enfranchise persons that would not be in the polity if certain matters of fact, which the polity is not responsible for, were a bit different. If we could legitimately expel and thereby indirectly disenfranchise a certain individual, except for

[16] *Hirst v. UK*, §47.
[17] Ibid.
[18] *Hirst v. UK*, §48 [emphases added].
[19] Of course, not all social contract arguments in political philosophy are necessarily *democratic* arguments. Here, however, I focus specifically on the subset of social contract views which rely on the notion that there is a social contract *between members of a democratic polity*, and which see criminal offences as sufficiently weighty violations of that contract in order to justify the disenfranchisement of criminals.
[20] Claudio López-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusion* (Oxford: Oxford University Press, 2014), 110.

> the fact that no country would take him and no unclaimed livable land remains in the world, why should he get a voice in our affairs? Why would it be wrong to approximate banishment as much as possible by keeping these persons in prison without participation rights?[21]

In sum, standalone democratic justifications of criminal disenfranchisement have been put forward in one of the following two versions:[22]

> **Democratic Arguments from Self-Determination**: Criminal disenfranchisement is justified just if, and on the grounds that, it is the result of a legitimate democratic decision-making process, because democratic polities have a right to engage in self-determination, which includes the right to restrict the franchise.
>
> or
>
> **Democratic Arguments from Democratic Social Contract Theory**: Criminal disenfranchisement is justified just if, and on the grounds that, criminals have violated the social contract between all persons who are enfranchised as members of a democratic polity, and thus cease to be (full) parties to it.

I will examine the compatibility of both of these views with AAP in the next section.

2. Why AAP Supporters Need Not, and Ought Not to, Endorse a Standalone Democratic Justification for Disenfranchisement

One may be tempted to think that, since AAP is a principle of democratic enfranchisement, AAP supporters have to—for the sake of consistency—endorse (standalone) democratic justifications of criminal *dis*enfranchisement as well. But there is nothing inconsistent about endorsing a democratic principle of ex ante enfranchisement in conjunction with a non-democratic principle of ex post disenfranchisement, provided that the non-

[21] López-Guerra, *Democracy and Disenfranchisement*, 111.

[22] Of course, other kinds of democratic justifications may be possible, but (to my knowledge) all existing democratic justifications of criminal disenfranchisement to date fall into one of these two clusters.

democratic principle is constrained in such a way that it remains *compatible* with AAP. My claim here is that just because one endorses AAP, one does not necessarily have to commit oneself to the view that AAP has to fulfil a whole range of other justificatory tasks: it may work better as a minimal principle that justifies only the initial distribution of participation rights, but it may not be able to do the main justificatory work when it comes to providing an adequate justification for disenfranchisement. Instead, AAP may simply provide plausible constraints on a separate, non-democratic justification which is external to, and in principle independent of, AAP.

So far, I have articulated a weak claim: the view that AAP supporters do not need to endorse a standalone democratic justification for disenfranchisement. However, I wish to defend a stronger claim here: the view that AAP supporters *cannot* endorse democratic justifications of disenfranchisement. I will offer two arguments for this stronger claim: the *Insufficiency Objection*, and the *Incompatibility Objection*.

First, the claim that we have the right to make a decision does not necessarily[23] entail the—conceptually distinct—claim that the reasons given during that decision-making process are in fact good reasons. But 'good reasons' are exactly what is at stake when it comes to *justifying* criminal disenfranchisement. The claim that democratic polities have the right to engage in self-determination does not necessarily entail that just about *any* democratic decision is also justified all things considered. Normally, we think that only some democratic decisions meet that criterion of all-things-considered moral justifiability. For instance, the democratic decision to round up and incarcerate a minority (say, all blue-eyed people) without a trial may have originated in a legitimate democratic procedure, but it leads to an outcome that undermines

[23] I say 'not necessarily' because reaching a democratic decision by having exercised one's right to self-determination may be *one* good reason, but it may not be decisive.

the status of blue-eyed people as free democratic agents of equal status whose interests are owed equal concern, and thus cannot be infringed upon arbitrarily. For AAP supporters, this outcome therefore cannot count as all-things-considered morally justifiable.[24]

This *general* issue raises a problem for standalone democratic justifications of criminal disenfranchisement *in particular*, because they have to show *why* invoking the self-determination argument leads us to the conclusion that *criminal disenfranchisement in particular* is all-things-considered justifiable.[25] Supporters of standalone accounts have attempted to do so by introducing plausible constraints, such as a non-arbitrariness criterion:

> while there are strong reasons against disenfranchisement based on sex, race, or religion, there are no such reasons in the case of felon disenfranchisement. [...]it is the violation of important normative constraints that is held to provide a justificatory reason of this sort. This is so because these normative constraints have political significance, whereas sex, race, or religion does not.[26]

However, this is not a convincing response to my objection. While I grant that introducing constraints of this kind helps supporters of standalone democratic justifications to exclude some *bad reasons* for criminal disenfranchisement, this does not show why democratic decisions to disenfranchise persons not subject to these constraints are necessarily *good*. The normative connection between the right to decide to disenfranchise a person A and the justifiability of the decision to disenfranchise A remains tenuous, because it is unclear why the former is sufficient for justifying the latter.

[24] For my stance on basic equality and equal status, see the Introduction to this thesis. For a defence of my view that the principle of equal concern must necessarily be integrated into AAP, see my paper "Narrow Possibilism about Democratic Enfranchisement".

[25] Here, I focus on the subset of standalone democratic justifications of criminal disenfranchisement that rely on self-determination views; but analogous arguments could be made by relying on the other subset (social contract views).

[26] See Bülow, "Felon Disenfranchisement," 762.

> **Insufficiency Objection**: The right to democratic self-determination does not by itself justify criminal disenfranchisement.

The Insufficiency Objection is of course particularly damaging for any account that claims to provide a *standalone* justification. Even though accounts that are vulnerable to the Insufficiency Objection are not in direct tension with AAP specifically, the objection gives AAP supporters good (general) reasons to reject such accounts.

Second, even if we were able to construct a clear account of why the right to decide—subject to particular constraints—is sufficient for showing that the resulting decision to disenfranchise is justified all things considered, such an account would undermine the central fact-insensitive norms which underpin AAP: the *Principle of Equal Concern* for the interests of all relevantly affected persons, combined with *Fair Political Equality* (FPE). Why? These norms apply *whenever* affected interests are objectively present—irrespective of whether the outcomes of democratic decisions made by the holders of affected interests turn out to affirm or deny those norms. Standalone democratic justifications of disenfranchisement, by contrast, make adherence to those norms *contingent* on the outcomes of particular democratic decisions. This is incompatible with AAP.[27] While the AAP does not prescribe particular substantive outcomes, it does have an important substantive component: the claim that the lasting presence of some fundamental protections for the rights of holders of affected interests *ought not to be up for debate*, so that procedural fairness in democratic decision-making can be realised in the first place. As I

[27] It is incompatible with AAP even if a decision about whom we should disenfranchise turns out to be *morally right*, all things considered. The concern here is not only that some decisions about disenfranchisement will be *morally wrong* or otherwise *bad*—recall the example about disenfranchising blue-eyed people mentioned above—but rather that even *right* decisions are objectionable if they rely on the *wrong* reasons. My claim here is that AAP supporters must treat the reason that 'the members of the demos have collectively expressed a preference to disenfranchise the group of criminals of type X' as a bad reason for disenfranchisement, precisely because it makes disenfranchisement contingent on decisions.

argue elsewhere,[28] democratic decision-making outcomes which threaten this substantive component must be subject to appropriate constraints. Any standalone democratic justification for disenfranchisement that denies this must count as incompatible with AAP. The key intuition behind this claim is that, from the perspective of AAP, we can only make democratic decisions about issues that are not already a precondition for making those same democratic decisions.[29]

> **Incompatibility Objection**: Standalone democratic justifications of criminal disenfranchisement are incompatible with AAP because they allow for implications that undermine key commitments of AAP.

Of course, it is possible that we may be all-things-considered justified in infringing on the democratic values realised by AAP on other, *non-democratic* grounds—for instance, by drawing on principles of justice, principles of punishment, or concerns like security or feasibility. But infringements of this kind cannot be justified by principles of democratic enfranchisement like AAP if the democratic justification itself undermines AAP. This is a conceptual, not a normative point: a decision cannot count as a democratic decision if it calls into question the preconditions for democratic decision-making.

Here, I do not wish to deny that it is possible to construct *any* plausible standalone democratic justification for criminal disenfranchisement. It may well be possible, for instance, to develop a democratic justification that is not vulnerable to my *Insufficiency Objection* developed above. My only claim here, in the context of my second critique, is that it is impossible to construct a plausible standalone democratic justification *in a way that is compatible with*

[28] See my paper "What AAP Is, and How (Not) to Fight It", where I discuss how decision outcomes must be constrained through constitutional or institutional safeguards in order to ensure basic protections for everyone enfranchised under AAP.

[29] For a defence of this view, see the sections of my paper "What AAP Is, and How (Not) to Fight It" which discuss how AAP can plausibly respond to objections from circularity and indeterminacy.

AAP. AAP supporters must therefore endorse a plausible non-democratic justification for criminal disenfranchisement which is external to AAP—such as retributivism, expressivism, or deterrence theory, for example[30]—and subsequently examine whether the implications of such non-democratic justifications are compatible with AAP. The problem with standalone democratic justifications of criminal disenfranchisement is that they are inherently incompatible with AAP, whereas non-democratic ones are not necessarily incompatible with it, depending on what kinds of side constraints they introduce.

3. What Does Compatibility with AAP Require?

Having shown why we ought not to endorse standalone democratic justifications of criminal disenfranchisement if we are committed to AAP, we have to ask: what kinds of *non*-democratic justifications of disenfranchisement are compatible with AAP?

Firstly, such justifications must consider, and weigh, affected interests during sentencing. Secondly, they must not be compatible with institutional arrangements that undermine AAP's central commitment to equal concern and Fair Political Equality.

a. Consideration of Affected Interests

Empirically, the consideration of all affected interests during sentencing is by no means a universally established norm: it is not clear, for instance, whether the UK government has treated the consideration of all affected interests as one of the guiding normative principles for the imposition of criminal disenfranchisement as a sanction so far. As stated in the *Hirst* ruling,

[30] I do not claim that *all* of these accounts can provide a plausible justification for criminal disenfranchisement. I examine the respective approaches in turn in part II of this paper.

"[a]s to the weight to be attached to the position [regarding criminal disenfranchisement] adopted by the legislature and judiciary in the United Kingdom, there is no evidence that Parliament has ever sought to weigh the competing interests".[31] The interests that are eligible for consideration are the ones of every person enfranchised under AAP in a particular polity. This includes, most obviously, the interests of criminals, but also the affected interests of all non-criminals who hold participation rights in the same polity as the criminal in question. In addition, we need to consider the interests that *all* persons who hold participation rights in that polity have *regardless* of their individual conduct, criminal or not. This last consideration is important because it helps anticipate objections of the kind put forward recently by standalone democratic justifications of criminal disenfranchisement: if our only consideration of affected interests involves simply weighing up the interests of criminals regarding the issue of criminal disenfranchisement against the interests of non-criminals, without considering possible shared interests, this inevitably leads to the interests of the minority (usually, criminals) being overridden. In that case, a critique of criminal disenfranchisement may examine how criminals are *harmed* when their interests are overridden in this way.[32] But while identifying harms caused by criminal disenfranchisement is morally important, the presence of individual harms does not respond directly enough[33] to the standalone democratic justification for criminal disenfranchisement that polities have a right to self-determination, which (ostensibly) means that "[t]he citizens of a legitimate democratic state have a broad collective right to order their affairs as they so choose", including the choice to disenfranchise criminals.[34] One way of engaging with this particular

[31] *Hirst v. UK*, §79.
[32] One influential account which makes a harm-based argument regarding criminal disenfranchisement is López-Guerra, *Democracy and Disenfranchisement,* 1-22 and 109-132.
[33] This potential weakness of López-Guerra's account has recently been pointed out by Whitt, "Felon Disenfranchisement and Democratic Legitimacy," 285.
[34] Altman, "Democratic Self-Determination," 264.

view is to examine whether there are interests that *both* criminals *and* non-criminals have, and whether those interests in fact give us a reason to be critical of disenfranchisement. This may be the case, for example, when criminal disenfranchisement actually undermines democratic legitimacy and self-determination. In that case, the argument that states have a right to self-determination which includes the right to decide whom to disenfranchise[35] would be unpersuasive, because the exercise of that state's right to democratic self-determination would be self-defeating.

Interests that criminals and non-criminals both have include each individual's fundamental interest in personal autonomy and well-being.[36] These interests cannot be adequately protected without functioning democratic procedures and institutions, because such institutions ensure that all relevant interests are being *considered* by giving the holders of affected interests the opportunity to voice their political preferences in an autonomous way. Fair and well-functioning democratic procedures are a necessary condition for the legitimacy and bindingness of the outcomes of democratic decision-making, and justify (in part) the authority of democratic institutions to enforce rights and duties which protect vulnerable interests.

When it comes to considering affected interests, we have to remember that not all holders of concrete voting rights necessarily have a similarly large set of other concrete rights. As I have argued in my paper on narrow possibilism, the conception of Fair Political Equality which underpins AAP demands a proportional distribution of concrete rights in bundles of different sizes. On this view, depending on their respective set of affected interests, one criminal's set of concrete participation rights may only include a right to protest

[35] See ibid.
[36] See also my paper "Economic Participation Rights and the AAP" for my account of why autonomy and wellbeing are morally relevant interests in the context of AAP.

and a right to vote in particular elections, whereas another criminal's set of rights includes the right to protest, the right to vote in all elections taking place in a given polity, and the right to run for political office. Restricting the former criminal's right to vote will have a more drastic impact on her than restricting the latter criminal's right to vote. If this is the case, disenfranchisement seems unfair, which suggests that there is at least a prima facie presumption against disenfranchising criminals with a comparatively more limited set of concrete rights. If this presumption is not accounted for, then we cannot plausibly argue that, as a matter of principle (i.e. in *all* cases irrespective of context), punitive restrictions of the right to vote do not wrong, or only trivially wrong, a criminal because of the criminal's access to other concrete participation rights.

b. Fair Political Equality

Since I have already developed FPE elsewhere, I will not defend it here. However, the *specific* problem arising in the context of justifying criminal disenfranchisement in a way that is compatible with FPE is this: can we simply aggregate the interests of criminals, and compare them to the aggregate interests of non-criminals? This problem merits further discussion at this juncture.

One may think that criminals have similar interests, *and* that they also have similar political preferences in virtue of the similarity of their interests.[37] One may therefore suspect that enfranchising criminals could undermine the democratic decisions made by a non-criminal majority. This claim assumes that criminals may vote as a bloc, and against the bloc of non-criminals. Assuming for the sake of the argument that this is true, this still does not give us a sufficient reason to disenfranchise criminals. If we agree that there is a general

[37] Note that, on *my* account, AAP supporters are not committed to any claims about similar political preferences amongst holders of similarly affected interests. A plausible version of AAP must rely on a commitment to objectivism about interests in my view. See "Narrow Possibilism about Democratic Enfranchisement" and "Economic Participation Rights and the All-Affected Principle" for further discussion of this stance.

presumption in favour of universal suffrage, we must reject any disenfranchisement of persons exclusively on the grounds that they may have voting preferences which differ from the voting preferences of the majority. The US Supreme Court's ruling in *Carrington v. Rash*, which overturned the wrongful use of residency requirements for voters on the grounds that they violated the 14th amendment's equal protection clause, usefully illustrates this idea:

> 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible. '[T]he exercise of rights so vital to the maintenance of democratic institutions',[38] cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents.[39]

In addition to the normative concern that disenfranchisement on the grounds of preferences would—quite drastically—diminish procedural fairness in democratic decision-making and thus undermine FPE, the empirical assumption that criminals tend to vote as a bloc is implausible in the first place. Given that persons from a variety of social backgrounds with a variety of political preferences commit crimes, it is unlikely that the mere fact that a person has been convicted of a crime makes that person change their political preference in the *same* way as, and in *coordination* with, other criminals. The only exception to this might be a preference for a more lenient prosecution—but this only applies in jurisdictions in which district attorneys on other prosecutors are elected, for example, in the US.

One may object that if it is true that members of a particular social group, such as African Americans in the United States, are incarcerated at higher rates, prisoners may indeed vote as a bloc, for example, for Democrats. But in that case, the reason why prisoners have similar political preference is

[38] Citing *Schneider v. State*, 308 U.S. 147, 161 (1939) and *Gray v. Sanders*, 372 U.S. 368 (1963).
[39] *Carrington v. Rash*, 380 U.S. 89 (1965), Justice Stewart's majority opinion.

not primarily due to the fact that they are prisoners, but rather the fact that they favour political candidates who want to address issues that disproportionately and adversely affect members of their social group, such as racial inequality. For that reason, my earlier argument about not disenfranchising people solely in virtue of their political preferences applies here as well.

4. Forfeiture, Permissibility, and Justification

Before examining non-democratic justifications of criminal disenfranchisement, we need to consider the general justificatory move on which any plausible justification must rest.

First, such a justification has to provide an argument as to why specific criminals *forfeit* the right not to be punished, and why they forfeit the right not to be punished by the specific measure of criminal disenfranchisement. Second, we need to show why it is *permissible* for the state to restrict the criminal's concrete participation rights. But this point about permissible restrictions of rights is not sufficient for showing that criminal disenfranchisement is *justified* all things considered—though it is a necessary step for doing so.

While I will show in Parts II and III of this paper how one particular non-democratic justification for criminal disenfranchisement—negative retributivism, supplemented by additional principles—can fulfil these justificatory tasks, there are two general clarifications to be made at this juncture, because they are relevant irrespective of which kind of non-democratic justification for criminal disenfranchisement one endorses.

a. Persons Forfeit Concrete Democratic Participation Rights

As I have argued elsewhere, AAP justifies who has an abstract right to democratic participation, and this abstract right may be translatable into several

concrete democratic participation rights.[40] The aim of this paper is to provide an argument about particular circumstances (specific kinds of criminal wrongdoing) in which the restriction of *concrete* participation rights via criminal disenfranchisement is justified. I say 'concrete' democratic participation rights because I do not wish to commit myself to a view about whether, and under what circumstances, the *abstract* right to democratic participation can also be forfeited.

There are two reasons for bracketing the issue of abstract democratic participation rights here: firstly, it is a conceptual necessity for a person A to have a right R before we can determine the conditions under which A can be reasonably said to have forfeited R. We cannot say that A forfeits a particular concrete right of participation if the distribution of concrete rights has not been initially justified by determining who qualifies for an abstract right to participation. Thus, the group of persons that is eligible for criminal disenfranchisement has to correspond to the group of persons that is enfranchised under AAP, and thus has abstract rights of democratic participation. Knowing who has the abstract right of democratic participation is necessary for determining which agents can forfeit concrete democratic participation rights. However, it would be too quick to say that, in turn, those who forfeit concrete rights also automatically forfeit their abstract right.

My second reason for separating abstract and concrete participation rights in the way outlined above is that this allows us to disentangle voting rights from other concrete participation rights. This is important because, as I have pointed out above, the majority of contributions to the contemporary academic debate on criminal disenfranchisement conflates the loss of voting rights with the much broader term disenfranchisement, and often focuses exclusively on

[40] See "Introduction" and "Economic Participation Rights and the AAP".

the former. The problem with this approach now becomes particularly clear in the context of the distinction between abstract and concrete democratic participation rights: the 'disenfranchisement means loss of voting rights' view fails to consider whether *different kinds of criminal wrongdoing* should result in the forfeiture of *different sets of concrete rights*. This is an important but undertheorised question in the current philosophical and legal debate on the topic. In particular, it is important to consider the spillover effects of disenfranchisement (narrowly construed, i.e. the loss of voting rights) on other concrete rights. By 'spillover effects', I mean the fact that forfeiting one's concrete right to vote due to criminal disenfranchisement often leads to the loss of other concrete participation rights. For example, in 25 states in the US, convicted felons are not allowed to hold public office at any point during or after their incarceration, and in 31 states felons can never serve on juries.[41] Spillover effects on concrete participation rights apart from voting can occur either when criminal disenfranchisement involves collateral sanctions, for example the loss of eligibility for particular positions. But they can also occur when unrelated administrative policies *de facto* lead to further loss of concrete rights: for instance, when states do not explicitly bar felons from serving on juries, but do bar felons from voting, and then choose to draw jury registers based on the electoral roll, which obviously excludes felons.[42] My point here is that a plausible justification for criminal disenfranchisement needs to justify the loss of *each* concrete participation right separately by showing first how criminals can forfeit the right not to lose each individual concrete right due to criminal disenfranchisement, and why the restriction of each right by the state

[41] LaFollette, "Collateral Consequences of Punishment," 241.
[42] For discussion of the exclusion of ex-felons from juries in the US, see Brian C. Kalt, "The Exclusion of Felons From Jury Service," *American University Law Review* 35, no. 1 (2003): 65-189.

is permissible. Only then can a complete all-things-considered justification for criminal disenfranchisement be provided.

b. Why Concrete Participation Rights are Not Inalienable

The claim that it is *possible* to forfeit concrete democratic participation rights is a necessary assumption in order to be able to engage seriously with the debate on criminal disenfranchisement, and in particular, with arguments that support criminal disenfranchisement.

To be clear, accepting the view that concrete participation rights are possibly alienable does not require abandoning the widely shared general *presumption in favour of* universal suffrage, which requires that any deviation from universal suffrage must be justified carefully: the burden of proof rests on the shoulders of those who wish to deny the vote to a particular person. The plausibility of this general presumption is illustrated by our historical experience with many cases of gravely unjust disenfranchisement, especially of women and persons of colour. A similar view was expressed by the ECtHR in its ruling on *Hirst*:

> [a]s pointed out by the applicant, the right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion, as may be illustrated, for example, by the parliamentary history of the United Kingdom and other countries where the franchise was gradually extended over the centuries from select individuals, elite groupings or sections of the population approved of by those in power. Universal suffrage has become the basic principle.[43]

[43] *Hirst v. UK*, §59.

II. Which Theory of Punishment Can Provide a Plausible Justification of Criminal Disenfranchisement?

As I have argued in part I of this paper, democratic justifications of criminal disenfranchisement are incompatible with AAP. But do non-democratic justifications—that is, those relying on an initial commitment to a particular theory of punishment—fare any better?

Contributions from constitutional and criminal law scholars have cast doubt on the notion that prisoner disenfranchisement is justifiable in light of existing laws and constitutional provisions. In the US context, criminal disenfranchisement has been subject to particular scrutiny[44] because of its possible violation of the 14th amendment's Equal Protection Clause,[45] the 8th amendment's ban of cruel and unusual punishment,[46] and various laws prohibiting disenfranchisement on racial grounds, such as the 15th amendment and the US Voting Rights Act (1965). In the UK, prisoner disenfranchisement has come under particular scrutiny since 2005 in the aforementioned *Hirst*

[44] This critical body of scholarship has far earlier origins than one might expect: for instance, several contributions to the very first issue of the APSR (1906) considered the role of racial inequality, and specifically of racially motivated discriminatory intent, for criminal disenfranchisement policies. See John C. Rose, "Negro Suffrage: The Constitutional Point of View," *American Political Science Review* 1, no. 1 (1906): 17-43; Gilbert T. Stephenson, "Racial Distinctions in Southern Law," *American Political Science Review* 1, no. 1 (1906): 44-61.

[45] Legal scholarship in this area has mainly reacted to the US Supreme Court's ruling in the landmark case *Richardson v. Ramirez* 418 U.S. 24 (1974), which stated that felon disenfranchisement does not violate the 14th amendment if voting restrictions are necessary due to the presence of a "compelling state interest". For an influential critique, see Karlan, "Convictions and Doubts," 1147-1170. For cases which unsuccessfully challenged felon disenfranchisement on 14th amendment grounds (specifically, the Equal Protection clause), see *Cotton v. Fordice*, 157 F.3d 388 (1998), *Owen v. Barnes*, 711 F.2d 25, 27 (1983).

[46] Gabriel J. Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," *University of Pennsylvania Law Review* 160, no. 6 (2012): 1789-1833; Mark E. Thompson, "Don't Do the Crime If You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment," *Seton Hall Law Review*, 33, no. 1 (2003): 167-205. Relevant US case law on this issue includes *Woodruff v. Wyoming*, 49 Fed. Appx. 199, 201 (2002); *Farrakhan v. Locke*, 987 F. Supp. 1304, 1307 (1997); *McLaughlin v. City of Canton*, 947 F.Supp. 954 (1995).

case, when the European Court of Human Rights ruled that the UK's blanket ban on prisoner voting violated the right to free elections and the presumption in favour of universal suffrage.

While a possible clash between contemporary empirical practices of disenfranchisement and empirical legal provisions and values does carry moral significance, and gives us a prima facie reason to be sceptical of criminal disenfranchisement, it does not decisively settle the *normative* question of which theory of punishment can plausibly justify criminal disenfranchisement, irrespective of what kinds of empirical practices are currently in place. In order to address this normative question, I will consider several possible justifications of criminal disenfranchisement: deterrence accounts, expressivist accounts, rehabilitative accounts, and retributivist accounts.

1. Worries about Deterrence Accounts

Deterrence theories of punishment claim that punishment is justified if it reduces the likelihood that potential offenders will actually offend.[47] The point of punishment, then, is forward-looking crime reduction. In the context of justifying criminal disenfranchisement as a specific form of punishment, deterrence theorists must show that disenfranchising criminals will in fact serve these aims.

Unfortunately, there are empirical grounds for doubting whether criminal disenfranchisement is conducive to the deterrentist aim of crime

[47] Examples of recent accounts of deterrence theory include Anthony Ellis, "A Deterrence Theory of Punishment," *Philosophical Quarterly* 53, no. 212 (2003): 337-351; Zachary Hoskins, "Deterrent Punishment and Respect for Persons," *Ohio State Journal of Criminal Law* 8, no. 2 (2011): 369-384; Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011). For some important early normative foundations of deterrence theory, see Cesare Beccaria, *On Crimes and Punishments*, trans. David Young (Indianapolis: Hackett, 1986); Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*, eds. James H. Burns and H. L. A. Hart (Oxford: Clarendon Press, 1996).

reduction: a person plotting a murder will typically not be deterred by the prospect of losing her right to vote should she be convicted, though she may well be deterred by the prospect of other punitive sanctions, such as prolonged incarceration. More specifically, it is unclear whether criminal disenfranchisement would be an effective deterrent for persons intending to use their democratic participation rights themselves in a fraudulent or harmful way, given that disenfranchisement would deprive them of *lawful* means of democratic participation *only*.

While these objections from ineffectiveness are insufficient for showing why deterrence theories are *morally* unappealing, they ought not to be dismissed entirely: if we have evidence that a particular kind of punishment (criminal disenfranchisement) usually does not help us achieve a particular aim (deterrence), we have at least a prima facie reason for rejecting either the kind of punishment or the theory about its aims. Given that the aim of this paper is to identify the theories of punishment that *can* justify criminal disenfranchisement, before testing their respective compatibility with AAP, this counts as a prima facie reason to dismiss deterrence theories, at least when it comes to justifying criminal disenfranchisement.

But let us move on to a consideration of *normative* arguments against deterrence theories, i.e. arguments that move beyond the claim that 'deterrence simply does not work'.

In principle, deterrence views are compatible with punishing the innocent, and with disproportionately punishing the guilty.[48] But deterrence theorists can respond to this problem by arguing that in a well-functioning

[48] On this point, see David Boonin, *The Problem of Punishment* (Cambridge: Cambridge University Press, 2008), 41-52; Igor Primoratz, *Justifying Legal Punishment* (Atlantic Highlands, NJ: Humanities Press, 1989), 33-72; William D. Ross, *The Right and The Good* (Oxford: Clarendon Press, 1930), 56-64; H. J. McCloskey, "An Examination of Restricted Utilitarianism," *The Philosophical Review* 66, no. 4 (1957), 466-485.

democratic society, there are protections in place which prohibit unjust punishments of this kind.[49] While this response may be persuasive when it comes to constructing a deterrentist justification of punishment in general, it fails in the particular context of justifying criminal disenfranchisement. Why is this so?

> **No Incentives Objection**: According to the deterrence theorist, protections from unjust punishment rely on the intervention by elected public officials. If democratic states disenfranchise some of their incarcerated members (including some innocent ones), those members cannot appeal their own disenfranchisement, or lobby for protections against unjust punishment. Elected officials have no incentive to consider the interests of the unjustly punished in having protections against unjust punishment, since the latter will not be able to penalise them at the ballot box anyway.

The deterrence theorist can of course respond that other members of the democratic state—those who remain enfranchised—can pressure elected officials to create and uphold protections against unjust punishments. Doing so would be in their self-interest, given that they themselves may be unjustly disenfranchised in the future.

However, this response tells us nothing about why unjust punishments are morally permissible. Instead, it simply acknowledges that unjust punishments are a morally relevant problem, and then proceeds to point out that it is possible (though not certain) that the problem can be rectified during the democratic process. A theory of punishment that excludes the possibility of punishing the innocent from the start would be more plausible. But such a

[49] For similar arguments, see Richard M. Hare, *Moral Thinking: Its Levels, Methods and Point* (Oxford: Oxford University Press, 1981); John Rawls, "Two Concepts of Rules," *The Philosophical Review* 64, no. 1 (1955): 3-32; John Braithwaite and Philip Pettit, *Not Just Deserts* (Oxford: Oxford University Press, 1990). See also Tadros, *The Ends of Harm*, 42, where he states explicitly that one of the central strengths of his constrained deterrence account is its ostensible ability to avoid punishing the innocent. But see Patrick Tomlin, "Innocence Lost: A Problem for Punishment as Duty," *Law and Philosophy* 36, no. 3 (2017): 225-254 for an argument (which succeeds, in my view) about why the most plausible version of Tadros's account is in fact compatible with punishing the innocent.

theory cannot be a pure deterrence theory, for it would have to introduce additional principles that justify why unjust punishment is intrinsically wrong in all cases. This kind of judgment is not possible if a theory of punishment makes the justification for criminal disenfranchisement contingent on its context-dependent effects, and not on the context-independent wrongness of punishing the innocent.

2. Worries about Expressivism

The possession of voting rights and other concrete participation rights carries symbolic significance. As one of the evidence submissions to the UK's Joint Committee on the draft Voting Eligibility (Prisoners) Bill argued recently,

> [t]he democratic presumption in favour of enfranchisement reflects in part a further, non-outcome-related dimension of the value of the franchise. The right to vote has great symbolic significance, serving as a 'badge of dignity' that identifies its bearer as someone who counts. [... B]y enfranchising someone we publicly affirm that her interests are worthy of the protection that the right to vote provides. [...] Each of us has an interest in receiving such public affirmation of our equal status.[50]

Even if disenfranchisement is trivial in terms of the actual interest being affected by it, it may constitute a communicative wrong against the rights-holder. As such, the loss of voting rights cannot be seen as non-trivial. As Kleinig and Murtagh argue (plausibly, in my view)

> [p]ractically, one's protests and other political acts are enhanced by—one might say, are conditional upon—one's status as a voter. Symbolically, voting rights mean something even if they are not exercised—just as rights to freedom of association, speech, and religion are important *even if they are never asserted*.[51]

[50] Christopher Bennett and Daniel Viehoff, "Written Evidence," 97.
[51] John Kleinig and Kevin Murtagh, "Disenfranchising Felons," *Journal of Applied Philosophy* 22, no. 3 (2005): 222.

Contemporary expressivist justifications of criminal disenfranchisement[52] may disagree with the claim that disenfranchisement constitutes an expressivist wrong against the criminal, and indeed insist that the expressivist wrong truly at stake here goes in the opposite direction: enfranchising criminals would communicate disrespect to the law-abiding members of the demos. Therefore, disenfranchising criminals would be justified because it would express or reaffirm a democratic polity's commitment to its own laws.[53]

There are at least two reasons to reject this kind of argument. First, criminal disenfranchisement is not *necessary* to achieve expressivist aims: we can communicate our disapproval of criminal behaviour in many other ways which do not involve the infringement of key political rights, for instance, during sentencing. Furthermore, other kinds of punishment, like incarceration, can express the same message. Unless the expressivist can introduce additional criteria that show why *criminal disenfranchisement in particular*—as opposed to other kinds of punishment—is necessary for communicating disapproval, there is no expressivist justification for criminal disenfranchisement. Second, criminal disenfranchisement is also not *sufficient* to achieve expressivist aims. After all, the expressivist message may get 'lost in translation'—for instance, in

[52] Here, I am mainly concerned with pure expressivist justifications. For a classic statement of expressivism, see Joel Feinberg, "The Expressive Function of Punishment," *The Monist* 49, no. 3 (1965): 397-423. For other influential versions of expressivism (also known as 'communicative theories of punishment') see Elizabeth S. Anderson and Richard H. Pildes, "Expressive Theories of Law: A General Restatement," *University of Pennsylvania Law Review* 148, no. 5 (2000): 1503-1575 (for a critique of Anderson and Pildes, see Simon Blackburn, "Group Minds and Expressive Harm," *Maryland Law Review* 60, no. 3 (2001): 467-491); R. A. Duff, *Punishment, Communication, and Community* (Oxford: Oxford University Press, 2001); Jean Hampton, "The Moral Education Theory of Punishment," *Philosophy & Public Affairs* 13, no. 3 (1984): 208-238; Dan M. Kahan, "The Anatomy of Disgust in Criminal Law," *Michigan Law Review* 96, no. 6 (1998): 1621-1657; Nicola Lacey, *State Punishment: Political Principles and Community Values* (London: Routledge, 1988). There are also a few recent expressivist arguments *specifically about criminal disenfranchisement* that combine their commitment to expressivism with a commitment to a democratic justification of the kind that I have already rejected in part I of this paper on grounds of incompatibility with AAP. One example of such a view is Bülow, "Felon Disenfranchisement and the Argument from Democratic Self-Determination," 759-774.

[53] For a critical account of this view, see López-Guerra, *Democracy and Disenfranchisement*, 116-117.

societies facing pervasive disagreement about the justness of existing laws, and the duty to expressively affirm them as a collective. If an offender does not understand, or does not want to understand, the expressivist message, this poses a problem for expressivism, unless expressivists can show that there is an *intrinsic* value to affirming democratic values *specifically by disenfranchising criminals*.

In addition to the first argument about expressing disapproval of disrespectful law-breakers, which I have rejected above, expressivists may make a further claim about criminal disenfranchisement: in addition to simply expressing a demos's judgment, it may also serve the aim of morally motivating or educating disenfranchised criminals to adhere to the laws of the demos. Sigler, for instance, claims that criminal disenfranchisement "is meant to heighten offenders' sense of civic responsibility by establishing the expectation of restored political participation",[54] and Hampton states that "the suspension of voting rights [has] the potential for provoking thought that can bring about a change in the wrongdoers' way of thinking about himself and society".[55] So if an offender does not want to receive the expressivist message of disapproval, the hope is that a temporary loss of participation rights will promote civic virtue in the offender. Aside from the fact that this claim sounds wildly speculative regarding the actual empirical consequences of criminal disenfranchisement, it reveals a deeper normative tension within expressivism. On the one hand, expressivists are committed to the view that the collective *exercise* of democratic participation rights educates people, and instils civic virtue in them because participation involves an inherent expressive re-affirmation of

[54] Mary Sigler, "Defensible Disenfranchisement," *Iowa Law Review* 99, no. 4 (2014): 1728.
[55] Jean Hampton, "Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of the Law," *The Canadian Journal of Law & Jurisprudence* 11, no. 1 (1998): 43.

democratic values.[56] On the other hand, expressivists claim that it is exactly the deprivation of participation rights that instils civic virtue in the members of a demos. Which is it? In sum, my arguments give us sufficient reasons to reject the idea that expressivism can provide a plausible justification for criminal disenfranchisement. In fact, there seems to be a stronger expressivist case to enfranchise criminals than to disenfranchise them, if doing so would allow them to join the rest of the demos members to express their commitment to democratic values.[57]

3. Worries about Rehabilitative Theories

Empirically, rehabilitative justifications of criminal disenfranchisement usually argue that disenfranchisement helps curb recidivism. In *Hirst*, for instance, the UK government pointed to the rehabilitative purpose of criminal disenfranchisement by claiming that

> the disqualification in this case pursued the intertwined legitimate aims of preventing crime and punishing offenders and *enhancing civic responsibility and respect for the rule of law* by depriving those who had breached the basic rules of society of the right to have a say in the way such rules were made for the duration of their sentence.[58]

However, this claim is called into question by a number of recent empirical studies which suggest that (ex-)prisoners who continue to have democratic participation rights and use them are actually much less likely to reoffend. For example, Uggen and Manza find that former felons who voted in Minnesota in 1996 were less likely to be arrested again in 1997–2000 as non-voting ex-

[56] Hampton, "Punishment, Feminism, and Political Identity," 40-44. For critical discussion, see Alec C. Ewald, *Punishing at the Polls: The Case Against Disenfranchising Citizens with Felony Convictions* (New York, NY: Demos, 2003), 25-26 and 35.
[57] For a similar argument similar, see Ewald, *Punishing at the Polls*, 35.
[58] *Hirst v. UK*, §50 [emphasis added]

felons.[59] And indeed, Plaintiff's argument in *Hirst* (in my view, plausibly) denied the rehabilitative claim directly: "the applicant argued that the ban took away civic responsibility and eroded respect for the rule of law, serving to alienate prisoners further from society".[60]

Of course, these empirical worries about criminal disenfranchisement as an effective rehabilitative measure do not give us sufficient reasons to dismiss rehabilitative theories of punishment *in general*.[61] In order to do so, one would have to offer a complete normative critique of such theories, which is not the aim of this paper. Here, I merely wish to point out that when it comes to justifying punishment *specifically in the form of criminal disenfranchisement*, rehabilitative theories do not look like a promising contender in light of current empirical evidence. *If* it could be shown that criminal disenfranchisement *does* in fact promote rehabilitation, this would of course give us sufficient reason to re-examine the normative merits of rehabilitative accounts for justifying criminal disenfranchisement.

4. Worries about Positive Retributivism

Positive (or 'pure') retributivists are committed to two basic assumptions: the guilty *deserve* to be punished in a way that *fits* their crime,

[59] Christopher Uggen and Jeff Manza, "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample," *Columbia Human Rights Law Review* 36, no. 193 (2004): 193-215.

[60] *Hirst v. UK,* §44

[61] For general defences of rehabilitative theories of punishment, see Christopher Bennett, *The Apology Ritual: A Philosophical Theory of Punishment* (Cambridge: Cambridge University Press, 2008); John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989); Andrew von Hirsch, Andrew Ashworth, and Clifford Shearing, "Specifying Aims and Limits for Restorative Justice: A 'Making Amends' Model?" in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, eds. Andrew von Hirsch, Julian V. Roberts, Anthony Bottoms, Kent Roach, and Mara Schiff, (Oxford: Hart Publishing, 2003), 21-42; Peter Raynor and Gwen Robinson, *Rehabilitation, Crime and Justice* (Basingstoke: Palgrave Macmillan, 2005). Note that this list also includes accounts of *restorative* punishment, which are distinct from rehabilitative accounts: I mention them here because they also discuss the goal of rehabilitation. For influential *critical* contributions to the debate on rehabilitative accounts, see Francis A. Allen, *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose* (New Haven, CT: Yale University Press, 1981); Herbert Morris, "Persons and Punishment," *The Monist* 52, no. 4 (1968): 475-501.

that is, in a way that is proportionate to the crime, and no moral consideration relevant to punishment *outweighs* the offender's criminal desert.[62]

Positive retributivist accounts are faced with the difficult problem of identifying what it is about an act of criminal wrongdoing that makes disenfranchisement a *proportionate* punishment, in order to explain why the criminal *deserves* disenfranchisement—instead of, or in addition to, other available punitive sanctions. This problem has been explicitly discussed in the ECtHR ruling in *Hirst v. UK*, which reiterates the widely shared view that "the principle of proportionality requires a *discernible and sufficient link* between the sanction and the conduct and circumstances of the individual concerned".[63] Of course, this problem becomes even more acute if its effects are potentially arbitrary in the sense that they are empirically contingent on whether a criminal is imprisoned during an election.[64]

One way of justifying why criminal disenfranchisement is indeed a fitting response to criminal wrongdoing is the view that criminals have, by breaking the law, shown that they are *morally*—but not necessarily rationally—*unfit* to participate politically. In the US context, the most influential statement of the moral fitness view which is still often invoked today can be found in the 1884 ruling of the Alabama Supreme Court in *Washington v. Alabama*, according to which the aim of disenfranchisement is to

> preserve the *purity of the ballot box*, which is the only sure foundation of republican liberty [...] one rendered *infamous* by conviction of felony [...] is *unfit* for the *privilege* of suffrage, or to

[62] Primoratz, *Justifying Legal Punishment*; Michael S. Moore, "The Moral Worth of Retribution," in *Responsibility, Character, and the Emotions: New Essays in Moral Psychology,* ed. Ferdinand D. Schoeman, (Cambridge: Cambridge University Press, 1987), 179-219; Morris, "Persons and Punishment", 475-501; Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (New York: Hill & Wang, 1976). Not all positive retributivists are desert theorists, but I focus on this variant of positive retributivism here, as it is the most widely endorsed.

[63] *Hirst v. UK,* §71.

[64] A similar argument has been put forward by plaintiff in *Hirst v. UK,* §45, and was then endorsed in the Court's ruling (§76).

> hold office, upon terms of equality with freemen who are clothed by the State with the toga of political citizenship. [...] It is proper, therefore, that this class should be denied a right, the exercise of which might sometimes hazard the welfare of communities, if not that of the State itself.[65]

Contemporary versions of the moral fitness argument rely on the intuition that committing a serious criminal offence is sufficient to show that a criminal is morally unfit to participate politically in society. If a person willfully or recklessly breaks democratically made laws, the intuition goes, then it would be fitting to (temporarily or permanently) revoke that person's right to participate in the democratic making of laws.[66] Even if the criminal's *primary* intention was not to express disregard for the moral value of democratically made laws, the criminal has in effect *acted* out of disregard for that value. Importantly, what does the normative work motivating this version of the fittingness intuition is *not* the severity of *harm* inflicted by perpetrators of criminal wrongdoing, such as the harm inflicted by murder or assault, but the (supposed) moral wrong of breaking a law that has been democratically agreed upon: criminal disenfranchisement is a *fitting* punishment, on this view, not because the crime in question is particularly morally serious and because disenfranchisement is a weighty punitive sanction that is on par with the seriousness of the crime, but because disenfranchisement deprives the criminal of the opportunity to continue to be a co-author of the system of laws contrary to which she has acted, and thus of the opportunity to exercise power, to some extent, over what *other* members of society may and may not do.

But this intuition is not uncontroversial. First, not all criminal wrongdoing is morally objectionable to an extent that sufficiently demonstrates

[65] *Washington v. State*, 75 Ala. 582, 585 (1884) [emphases added].
[66] This is commonly taken to imply that positive retributivism points towards a *broadly defined desert basis* for criminal disenfranchisement, which extends to *all* perpetrators of serious criminal wrongdoing.

a *general* moral unfitness, rather than a specific instance (if at all) of moral wrongdoing. Consider, for instance, traffic violations, or petty theft out of necessity. But even in cases of morally serious criminal wrongdoing, such as murder, it is unclear whether the fact that a criminal has violated one democratically made law can actually substantiate the view that the criminal has in effect acted in disregard of *all* democratically made laws. A murderer, for instance, might genuinely believe in the legitimacy of the rule of law as a whole, and she might therefore agree that breaking any democratically made law—for instance, by committing murder—is morally wrong. For this reason, it seems like a stretch to equate individual instances of moral wrongdoing with a more general moral unfitness. Here, I do not wish to imply that criminal wrongdoing like murder is *not morally serious*. By contrast, I merely wish to emphasise that there is a qualitative difference between acting out of disregard for one democratically made law and acting out of disregard for all democratic laws, and that we cannot necessarily infer the latter from the former. While it may well be true that *some* murderers or perpetrators of other morally serious criminal wrongdoing act out of disregard for *all* democratically made laws, which would lend support to the intuition that *those specific criminals* are morally unfit to participate in demoratic decision-making, it is hard to see why this would be the case for *all* perpetrators of morally serious crime.[67]

Second, the moral fitness argument fails to take into account the fact that there are a number of morally unfit wrongdoers who have successfully

[67] One interesting upshot of this point is that, if morally serious criminal acts do not *necessarily* imply moral unfitness, it is hard to see how exactly the appropriate desert basis for criminal disenfranchisement ought to be *defined* (or rather, restricted) on the positive retributivist view. If the moral seriousness of crime is not sufficient for justifying the fittingness of disenfranchisement—if, that is, perpetrators of morally serious crime also have to hold particular negative attitudes about the value the system of democratically made laws as a whole in order to be deserving of disenfranchisment–this implies that a *blanket* policy of criminal disenfranchisement for all perpetrators of morally serious crime regardless of intent would not be compatible with positive retributivism. This is surprising, given that positive retributivist justifications have so far usually been invoked to justify precisely such blanket policies.

avoided conviction, and thus continue to be enfranchised. In addition to that case, we might imagine a person who never commits any kind of criminal wrongdoing, but who nevertheless holds a disregard for the system of democratically made laws. She might act in a way that does not violate existing laws, but her reason for acting in this way has nothing to do with the presence of these laws: the fact that democratically made laws possess democratic legitimacy may not constitute a reason to act in a certain way from her point of view.

For these two reasons, the moral fitness argument is both underinclusive, because it does not capture all relevant cases, and overinclusive, because it captures some cases in which moral unfitness cannot plausibly be shown.

Some positive retributivists combine the moral fitness argument with a claim about fairness: as Herbert Morris puts it, "[i]f a person fails to exercise self-restraint even though he might have [...] he renounces a burden which others have voluntarily assumed and thus gains an advantage which others, who have restrained themselves, do not possess",[68] in which case it would be unfair not to punish the criminal.

The *combined* argument from moral fitness and fairness rests on the assumption that all criminals derive a benefit from breaking the law. The relevant 'advantage' in this case seems to be the fact that the criminal has allowed herself to pursue an action, usually (though not always) for self-interested reasons, which is criminalised in society X and which other members of X have—on this basis—restrained themselves from pursuing. If members of

[68] Morris, "Persons and Punishment," 477.

a democratic polity have collectively decided to restrain themselves in such a way, the argument goes, then it would be unfair of criminals to renege on this democratic agreement.

In my view, however, the notion that criminals derive an unfair advantage from criminal wrongdoing, and that this is what justifies the imposition of a punishment—such as criminal disenfranchisement—faces serious problems: while it is true that many crimes are committed with the specific intent of deriving a benefit, many other crimes being committed—including morally serious ones—arise out of ignorance, or negligence, where the criminal does not break the law with the intention to unfairly benefit from law-breaking. While the sentence in those latter cases may be more lenient, the offence may still be serious enough to result in a conviction that triggers disenfranchisement.

But more importantly, there are good reasons to doubt whether a concern for fairness helps justify criminal disenfranchisement in the way that positive retributivists endorsing a fairness-based argument like Morris's may think.[69] Criminal disenfranchisement comes with the significant *democratic cost* of making it impossible for prisoners to have a say in the way in which democratic decisions affect their interests—not only democratic decisions in general, but also specific decisions which affect them more directly, such as the use of public funds towards improving prison conditions.[70] Furthermore, criminal disenfranchisement seems to be unfair especially in cases where persons reasonably disagree about the content and scope of criminal law. If the questions of what constitutes a crime, and why, are subject to democratic

[69] A commitment to fairness as a side constraint for punishment does, however, help us determine the correct scope of disenfranchisement once it has been justified—see my arguments in Part III of this paper.

[70] For a similar critique of disenfranchisement depriving prisoners of a say in prison conditions—also on the grounds of affected interests—see Kleinig and Murtagh, "Disenfranchising Felons," 229.

debate, then democratic societies must be particularly careful about depriving lawbreakers of the opportunity to voice their disagreement.[71] For both of these reasons, and contrary to Morris's view, *dis*enfranchisement seems intuitively unfair, not enfranchisement—at least from the perspective of the AAP, which is incompatible with Morris's pure retributivist perspective in this regard.[72] For this reason, and for the reasons outlined above, AAP supporters cannot endorse pure retributivist justifications of criminal disenfranchisement.

5. Negative Retributivism: A Solution

Negative retributivism rejects the standard ('positive', or 'pure') retributivist view that desert provides a *sufficient positive reason to punish* the guilty.[73] Instead, negative retributivism imposes *constraints* on a particular justification of punishment (or in this case, criminal disenfranchisement): we should only enfranchise those criminals who deserve it, and only in proportion with their desert.[74]

---

[71] Of course, some crimes are *uncontroversially* morally wrongful, such as murder or torture. But the point still holds that as long as the morally wrongfulness of some crimes is controversial, we have strong reasons from fairness to be cautious about disenfranchisement, given that disenfranchisement would prevent the participation of a subset of people in democratic deliberations and decision-making procedures concerning the wrongfulness of controversially wrongful crimes.

[72] For another recent argument from fairness, see Jeffrey Reiman, "Liberal and Republican Arguments Against the Disenfranchisement of Felons," *Criminal Justice Ethics* 24, no. 1 (2005): 3-18. Some supporters of Morris's view will of course simply not share the intuition that disenfranchisement, not continued enfranchisement, would be unfair, and will therefore insist that disenfranchisement would be a *fitting* punishment for fairness-based reasons. The problem of diverging intuitions about fittingness is notorious in the philosophical debate on this topic, and this paper cannot and does not attempt to resolve that problem entirely: intuitive disagreement of this kind is likely to persist. My aim here is simply to identify what kinds of intuitions underpin the positive retributivist view, to assess whether they are compatible with an endorsement of AAP, and to subsequently articulate my own intuitions on this matter including their normative implications for the moral justifiability of criminal disenfranchisement.

[73] John D. Mabbott, "Punishment," *Mind* 48, no. 190 (1939): 150-167; Anthony M. Quinton, "On Punishment," *Analysis* 14, no. 6 (1954): 133-142; Richard L. Lippke, "Some Surprising Implications of Negative Retributivism," *Journal of Applied Philosophy* 31, no. 1 (2014): 49-62.

[74] A classic statement of negative retributivism can be found in J. L. Mackie, "Retributivism: A test case for ethical objectivity," reprinted in *Philosophy of Law*, eds. Joel Feinberg and Hyman Gross, fourth edition (Belmont CA: Wadsworth, 1991), 677-684. See also Duff, *Punishment, Communication, and Community*, 11-12; and Ted Honderich, *Punishment: The Supposed Justifications Revisited,* fifth edition (London: Pluto Press, 2005), 20-21.

Negative retributivism thus articulates whenever persons have *not* forfeited their right not to be punished via criminal disenfranchisement. Of course, this does not by itself amount to a full justification of why, and when, criminal disenfranchisement is justified.[75] Therefore, negative retributivism needs to be supplemented by additional principles, which can perform this normative task. This, however, is a strength of the account, not a weakness. Unlike positive retributivism, negative retributivism is able to incorporate plausible forward-looking instrumentalist concerns—such as deterrence but also incapacitation, or more specifically in the context of the AAP, the concern for the integrity of the democratic procedures and institutions which enable the implementation of AAP in the first place.[76] At the same time, negative retributivism remains immune to my earlier objections to pure deterrence accounts, as negative retributivism is incompatible with punishing the innocent. Moreover, negative retributivism is not internally contradictory like expressivism. Furthermore, negative retributivism is compatible with side constraints introduced *specifically in order to ensure coherence with AAP*.

But what exactly would a plausible mixed justification for criminal disenfranchisement built on negative retributivist foundation look like? Regarding this issue, as a negative retributivist who also supports AAP, I propose the following two claims, which will be combined with additional

[75] For a more general point about problems related to (pure) forfeiture accounts of punishment, see Lippke's argument that "serious problems continue to plague the forfeiture doctrine. These problems should lead us to consider alternative explanations of the moral permissibility of legal punishment, ones that do not rely upon the notion of right forfeiture. [...] [T]he notion of right forfeiture is neither necessary nor useful in explaining why it is permissible to impose harms or losses on criminal offenders." Richard L. Lippke, "Criminal Offenders and Right Forfeiture," *Journal of Social Philosophy* 32, no. 1 (2001): 78.

[76] Note that this does not mean that I endorse a complete instrumentalist account of punishment, such as standard deterrence theory, which I have rejected above. But I do endorse the *aspects* of that theory which are plausible, without having to endorse its less compelling aspects (the view that it is sometimes morally justifiable to punish the innocent, and to disproportionately punish the guilty).

claims to ultimately provide a negative retributivist argument about criminal disenfranchisement:

1. *Negative Retributivism*: Those, and only those, who are guilty of wrongdoing of type X deserve to be punished in proportion to their desert.
2. *Compatibility Claim*: Criminal disenfranchisement can be compatible with AAP in principle, provided that (i) it adheres to particular additional constraints which do not undermine AAP, and that (ii) it disenfranchises only those members of X who deserve *disenfranchisement* specifically (not just punishment in general).

In the final part of the paper, I will develop this argument by distinguishing between different types of criminal wrongdoing, and arguing that there is a special type of crime which is of particular importance to AAP supporters: political wrongdoing (section III.1). Then, I will show why negative retributivism justifies the criminal disenfranchisement of political wrongdoers—and political wrongdoers only (III.2). Finally, I will show why the negative retributivist argument for the criminal disenfranchisement of political wrongdoers is compatible with AAP (III.3).

III. The Relevant Kind of Wrongdoing: Political Wrongs

1. What is Political Wrongdoing?

a. Crimes as Public Wrongs: Not All Public Wrongs Are Created Equal

Contemporary practices of criminal disenfranchisement in the UK, the US, and many other states operate on the assumption that the relevant kind of wrongdoing for which we may justifiably disenfranchise offenders is the set of serious crimes (or 'felonies' in the US context) that also justify incarceration. This includes, most obviously, standard *mala in se* crimes such as murder, but it also includes *mala prohibita* such as the illegal use of (some) drugs. But aside

from the empirical fact that criminal disenfranchisement is used as a punitive sanction for this wide set of criminal wrongdoing, what is the normative case for doing so?

As Duff and many others have argued, what distinguishes crimes of the kind mentioned above from other kinds of wrongdoing (e.g. torts) is that they are public wrongs: "[w]rongs done to individual members of the community are then wrongs against the whole community [...] insofar as the individual goods which are attacked are goods in terms of which the community identifies and understands itself".[77]

This makes crime *everybody's* business.[78] Public wrongs thus necessarily affect the interests of every member of a democratic polity. However, it would be wrong to infer from this that if we endorse AAP, we ought to simply endorse the view that the relevant kinds of wrongdoing *for justifiable criminal disenfranchisement* are public wrongs. Why?

While I do not wish to reject the widely shared view that crimes are public wrongs, I do not think that all public wrongs are *primarily* wrong because they wrong the public. To see the force of this intuition, contrast the following two crimes:

> ***Jane the Murderer***: Jane murders Gary. Her only reason for murdering Gary is her personal feeling of hatred towards him. Jane is not trying to make a public statement by murdering Gary—in fact, she

[77] Sandra E. Marshall and R. A. Duff, "Criminalization and Sharing Wrongs," *The Canadian Journal of Law and Jurisprudence* 11, no. 1 (1998): 20.

[78] For a direct statement of this point in Duff's work, see R. A. Duff, "Responsibility, Citizenship, and Criminal Law," in *Philosophical Foundations of Criminal Law*, eds. R. A. Duff and Stuart P. Green (Oxford: Oxford University Press, 2011), 139: "Public wrongs are our wrongs as citizens—wrongs in which we take a proper *interest*, to which we should collectively respond, for which we claim the right [...] to call the perpetrator to answer to us. Some such wrongs are public in their material impact: if we ask who is wronged the answer is 'the public'; this is true of, for instance, some wrongs of general endangerment and environmental damage; of wrongs that threaten public institutions; of frauds committed against the public purse. Others take individuals as their direct victims, but count as 'our' wrongs because they violate our public values, and because we share them with the victim: our concern for the victim as our fellow citizen *makes them our business*." [emphases added]

> will try everything possible to avoid becoming a publicly known suspect in the subsequent investigation.

By committing the murder, Jane has not only wronged Gary as an individual, but also the public. Murder is a public wrong because it is in everybody's interest to punish murderers. But this is not the primary reason why it was wrong for Jane to murder Gary. Murder is in and of itself morally wrong (hence, *malum in se*). Arguably, this is the more obvious reason why we call murder a wrongful act. The additional wrong towards the public is secondary to this initial wrong. The public has an interest in punishing murderers, but it has this interest *on behalf of murder victims*: murders are "[public] wrongs that the victim ought to pursue—that it would be wrong to shrug off or ignore: [he] might be disinclined to pursue it, but (we might say) that response is now wrong or unreasonable".[79]

Contrast *Jane the Murderer* to

> ***Jane's Get Out of Jail Free Card***: Jane is a suspect in the investigation of Gary's murder. The prosecutor in Jane's case, Mary, knows about Jane's crime. Jane knows that Mary knows. Jane bribes Mary to lie in court in order to protect Jane, so that Jane will not be convicted of murder. Mary accepts the bribe. Jane does not get convicted of Gary's murder.

Strictly speaking, there are two public wrongs in this case, but the point is that both of them are relevantly different to the murder case above. First, Jane's criminal wrongdoing (bribery of a public official for private gain) is wrong primarily because it obstructs the course of justice, which is a vital feature of well-functioning democratic institutions. So Jane's wrongdoing here is in fact primarily wrong because it wrongs the public, and thus differs in this respect from Jane's initial wrongdoing (murder). Second, Mary has committed a cluster

[79] Sandra E. Marshall and R. A. Duff, "Public and Private Wrongs," in *Essays in Criminal Law in Honour of Sir Gerald Gordon*, eds. James Chalmers, Fiona Leverick, and Lindsay Farmer, (Edinburgh: Edinburgh University Press, 2010), 83.

of public wrongs (accepting bribes, obstruction of justice, being derelict in her special obligations as a public official), and again, these wrongs are *primarily* directed at the public. Of course, it is plausible to think that Mary has also wronged particular individuals, such as Gary's relatives, who have an interest in justice being served. But arguably, having wronged Gary's relatives individually is not the main reason why Mary's actions were wrongful, as her actions as a public official have wider potential implications for a large group of individuals beyond Gary's family. That is why Mary would have still wronged the public even if justice had been served, and Jane had been convicted in spite of the fact that Mary had previously accepted the bribe.

Contrasting *Jane the Murderer* and *Jane's Get Out of Jail Free Card* gives us strong reasons to differentiate between different kinds of public wrongs. If only some public wrongs are *primarily* wrong because they wrong the public, we need to ask what exactly defines that subset of cases. And furthermore, we need to determine whether negative retributivism supports the criminal disenfranchisement of any or all types of public wrongs (Part III.2), and whether AAP is compatible with that negative retributivist argument (Part III.3).

b. Defining Political Wrongs

I define political wrongdoing as the subset of public wrongs which are primarily wrong because they wrong the public by (i) wrongfully imposing a non-trivial risk of harm on the integrity of democratic institutions or procedures, *and* (ii) by committing such wrongs with the wrongful intention to benefit from the harm caused (not necessarily by the political wrongdoer herself) should the risk eventuate. Here, wrongful risks of harm (i) and wrongful intentions to benefit (ii) are necessary elements of a sufficient set

(NESS),[80] where (i) and (ii) are *jointly* sufficient for a public wrong to count as political wrongdoing.

Risks of Harm

I say 'wrongfully imposing a non-trivial risk' because I endorse the view that *some* risk impositions can be wrongful even if the risk of harm never eventuates, provided that the risk of harm's probability and severity is non-trivial.[81] Including '*risks* of harm', rather than 'actual harm' *only*, is particularly important for the purposes of this paper because criminal public wrongs also include inchoate offences, such as attempts to rig elections, attempts to obstruct justice, or attempts to silence or otherwise harm political opponents. To stick to a previous example, consider

> ***Jane's* Permanent *Get Out of Jail Free Card***: Jane is plotting future murders. Jane hires a helper for the specific purpose of bribing any public official—not just Mary—who will be involved in any future criminal prosecutions of Jane's crimes. Jane has not committed her second murder yet, but she has created a system that increases her chances of subverting the justice system. The presence of this system itself constitutes a non-trivial risk of harm to the integrity of democratic procedures and institutions in Jane's state.

Three clarifications are necessary to develop this point fully. First, this example also applies to *failed* attempts. If Jane's helper fails to effectively bribe relevant public officials when Jane commits her second murder, this does not mean that

[80] In Wright's influential account of NESS theory, NESS is defined as "a particular condition was a cause of (contributed to) a specific result if and only if it was a necessary element of a set of antecedent actual conditions that was sufficient for the occurrence of the result." Richard W. Wright, "Causation, Responsibility, Risk, Probability, Naked Statistics, and Proof: Pruning the Bramble Bush by Clarifying the Concepts," *Iowa Law Review* 73, no. 5 (1988): 1019.

[81] For a *defence* of this view, see my paper "Narrow Possibilism about Democratic Enfranchisement". For similar defences of this view, see (amongst others) Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Belknap, 2011), 306; Claire Finkelstein, "Is Risk A Harm?", *University of Pennsylvania Law Review* 151, no. 3 (2003): 987-990; John Oberdiek, *Imposing Risk: A Normative Framework* (Oxford: Oxford University Press, 2017), 84-91; Adriana Placani, "When The Risk of Harm Harms," *Law and Philosophy* 36, no. 1 (2017): 77-100; Judith Jarvis Thomson, *Rights, Restitution, and Risk: Essays in Moral Theory* (Cambridge, MA: Harvard University Press, 1986), 181.

he will fail again when Jane commits her third one. The point is that Jane has created a system which continues to threaten and undermine an institution that is integral for well-functioning democratic states, and in turn, for those states' ability to ensure equal consideration for every relevantly affected person's morally weighty interests in autonomy and wellbeing.

Second, the point about risks of harm is not restricted to the specific political wrong of obstructing justice. Analogous examples could be made, of course, for electioneering (a helper has been hired so that if Jane ever runs for office, the helper rigs the votes in her favour and intimidates her opponents), as well as other types of political wrongdoing. In such cases, the non-trivial risk of harm to the integrity of democratic institutions is even more obvious.

Third, 'risks of harm' already includes 'actual harm'—my earlier point was simply that the definition should not be narrowed down to include only actual harm because many important instances of political wrongdoing involve inchoate offences. For illustrations of *actual* harm resulting from political wrongdoing, we can consider a variety of existing empirical examples: for instance, electoral fraud, such as vote buying, tampering with voting machines, ballot stuffing, intimidating or attacking people at polling stations, or systematically spreading misinformation about electoral procedures.[82]

It also includes impersonating someone else while voting. Of course, this particular type of voter fraud is often discussed in the public debate, and in a particularly sensationalist way, in the context of the 2016 US presidential election. See, for instance, Donald Trump's statement—reported by CNN on April 5th, 2018, that "[i]n many places the same person in California votes

[82] One recent example of this tactic is the 2011 Canadian federal election voter suppression scandal ('Robogate'), during which voters received automated phone messages on the morning of Election Day, wrongly informing them that the location of their polling station had changed.

many times [...] Millions and millions of people".[83] However, as many academic studies have argued, voter fraud of this kind is actually extremely rare in the recent US context. For example, as a 2007 report by the Brennan Center for Justice points out, "[i]t is more likely that an individual will be struck by lightning than that he will impersonate another voter at the polls".[84]

Other examples include gross abuses of power by public officials, treason, and the funding of or participation in terrorist activities with the explicit aim of undermining democratic institutions. We might also consider the criminal misuse of economic participation rights,[85] such as contributing financially to political campaigns above legal limits, or transferring campaign funds from one campaign to another one when the two ought to be legally separate.

Consider, for instance, a recent case of potentially illegal campaign funds coordination before the Brexit referendum, which is currently under investigation by the UK Electoral Commission. Shortly before the referendum, the VoteLeave campaign had reached their legal spending limit, and transferred their remaining funds to the separate BeLeave campaign (a youth

[83] See Eli Watkins, "Trump Repeats Debunked Voter Fraud Claim," *CNN* (April 5, 2018) https://edition.cnn.com/2018/04/05/politics/trump-voter-fraud-california/index.html (accessed: May 24, 2018).

[84] Justin Levitt, "The Truth About Voter Fraud," *Brennan Center for Justice at New York University School of Law*, https://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf (accessed: May 24, 2018), 4. For an in-depth review of existing empirical studies and data regarding voter fraud in the US, which all support the view that individual voter fraud of this type is rare, see the 2014 Government Accountability Office Report to Congressional Requesters, "Elections: Issues Related to State Voter Identification Laws", http://www.gao.gov/assets/670/665966.pdf (accessed: May 24, 2018). Individual voter fraud is also extremely rare in the UK: as the UK Electoral Commission 2015 report on electoral fraud during the year of the last UK general election reveals, out of 481 cases of alleged electoral fraud only three resulted in convictions. See "Analysis of Cases of Alleged Electoral Fraud in the UK in 2015. Summary of Data Recorded by Police Forces (as of March 2016)," *The Electoral Commission*, http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/198533/Fraud-allegations-data-report-2015.pdf (accessed: May 24, 2018), 6, 15.

[85] For a defence of the view that holders of economic participation rights have a duty not to intentionally misuse those rights, see "Economic Participation Rights and the AAP".

organisation), while directly instructing BeLeave to immediately transfer those funds directly to the consultancy Cambridge Analytica, whose services VoteLeave had used before. This type of coordination might suggest that VoteLeave had not merely transferred a (legal) gift to BeLeave, but had in fact used BeLeave to go above their legal spending limit, and thus to increase their chances of achieving their desired electoral outcome.[86]

Wrongful Intentions to Benefit

My point about '*wrongful* intentions to benefit' may seem puzzling at first sight. After all, what's the problem with wrongful intentions? Specifically, what are the grounds for criminalising wrongful intentions—via criminal disenfranchisement or otherwise? What I have in mind here are intentions coupled with a *plan*, or, in Bratman's terms, a "reflective endorsement".[87] Such a plan might involve thinking about what kinds of actions (my own, or the actions of others) have to occur in order for me to benefit. In the specific context of political wrongdoing, I might develop a plan about how I will benefit from electioneering should I, or someone else, gain the power to engage in electioneering. Here, neither I nor anyone else has engaged in electioneering yet. But, critically, I have already endorsed the idea that I desire to benefit from electioneering. Maybe I have also constructed a plan about how I can increase my chances, or someone else's chances, of actually having the power to engineer an election. The point is that I am not merely daydreaming about rigging elections. Instead, I have intentionally developed and reflectively endorsed a plan about how I can benefit from electioneering. What I am thus

[86] For news coverage of the ongoing Electoral Commission investigation regarding this issue, see for instance Carole Cadwalladr and Mark Townsend, "Revealed: The Ties that Bound Vote Leave's Data Firm to Controversial Cambridge Analytica," *The Guardian* (March 24, 2018), https://www.theguardian.com/uk-news/2018/mar/24/aggregateiq-data-firm-link-raises-leave-group-questions (accessed: May 24, 2018).

[87] Michael E. Bratman, *Structures of Agency: Essays* (Oxford: Oxford University Press, 2007), 22-25 and 33-46.

proposing is that, in the context of political wrongdoing, such a plan in itself is part of the *actus reus*. Here, my view is closely aligned with Goodin's and Pasternak's, who argue that "the actions that practical intending involves (forming the intention or reflectively endorsing it) [...] are not merely a precursor towards some subsequent 'genuine' doing but rather already part of that doing".[88]

But exactly when, and why, is the intention (or plan) to benefit already part of the wrongful action, thus making the intention to benefit *wrongful itself*? Call a wrongful intention to benefit ξ. I would argue that intentions to benefit are indeed wrongful, and thus constitute a necessary element of a sufficient set, if and only if the presence of such intentions makes a *difference* for the question whether a risk of harm, or actual harm, actually occurs. Consider

> ***Jane for Mayor***: Jane, Mary, and Kate are all running for mayor. Jane is plotting to murder her opponent Mary. Kate is plotting to intimidate Mary so that she drops out of the race. Kate becomes aware of Jane's plans. Kate intends to benefit from Jane's action, and thus fails to warn Mary of her imminent murder. In fact, Kate checks routinely whether Mary has been murdered yet, which counts as a reflective endorsement of her intention to benefit.

Kate has never formed the wrongful intention φ to murder Mary herself. However, the fact that she has formed the wrongful intention ξ to benefit from Mary's murder makes a difference to the situation. Ordinarily, a third agent who gains knowledge of a murder plot would attempt to prevent the murder, for example by sharing their knowledge with law enforcement, or by warning the prospective victim. And in fact, Kate might have done so before she formed intention ξ. But Kate is not an ordinary third agent. The fact that Kate formed

[88] Robert E. Goodin and Avia Pasternak, "Intending to Benefit from Wrongdoing," *Politics, Philosophy & Economics* 15, no. 3 (2016): 285.

ξ makes it more likely that actual harm will occur to Mary than if Kate had not formed ξ.[89] As Goodin and Pasternak have argued,

> [b]y definition, ξ is a NESS condition of wrongdoing φ if and only if ξ is a NESS of conditions for wrongdoing φ to occur. There may be other necessary elements of the set of conditions required for φ to occur in that particular way; and there may be other ways (other sufficient sets of conditions) for φ to occur. Still, supplying a NESS condition such as ξ makes a *modal difference*. It makes it possible for wrongdoing φ to occur, which would be impossible (along that particular pathway anyway) in the absence of ξ. That makes the agent supplying the NESS condition ξ potentially causally responsible for wrongdoing φ occurring and morally responsible for that.[90]

Apart from illustrating this point about the wrongness of intentions to benefit (ξ) hinging on making a difference, *Jane for Mayor* also shows that the *nature*—not only the wrongfulness—of intentions matters for the question whether an act is an ordinary public wrong, or indeed a political wrong. Earlier, I used *Jane the Murderer* to illustrate exactly this distinction, arguing that standard *mala in se* crimes like murder are not primarily political. However, in this case, murder becomes part of political wrongdoing, such that the *primary* aim of the actus reus in *Jane for Mayor* is to circumvent fair democratic procedures.

Let us proceed by discussing the remaining aspect of my initial definition of political wrongdoing. I used the phrase 'harm caused (not necessary by the political wrongdoer herself)' because political wrongdoing often involves joint enterprises, or complicity in a larger scheme, where an individual political wrongdoer does not necessarily plan to execute the act leading to wrongful harm herself. As Goodin and Pasternak rightly point out,

---

[89] One might wonder about the implications of a modified case, in which Kate is physically unable to share her knowledge of the plot even if she wanted to. Here, it is hard to see how Kate's intention ξ makes a difference. But the point here is a conditional one: whenever Kate *is* able to share the information about the plot, she decides not to, and the reason why she does not share the information is because of her intention ξ. So it is ξ which determines whether Kate shares the information, provided that she *could* choose—i.e. is physically able—to do so: ξ makes a difference.

[90] Goodin and Pasternak, "Intending to Benefit from Wrongdoing," 286.

"X's 'intending to benefit from φ' includes, as a crucial component of that intention, X's 'intending the existence of φ from which X will benefit'".[91] This does not preclude the possibility that someone who is *not* X—say, Y—is the one who commits a wrongful act φ, and that X simply intends to benefit from φ. This point is especially important for an analysis of political wrongdoing because, empirically, it is often the case that sophisticated acts of political wrongdoing require multiple agents, not all of whom are directly causally responsible for harms resulting from political wrongdoing, but all of whom intend to benefit from such acts. Consider

> ***Jane's Hitman***: Jane is running for mayor. She hires a hitman to murder her political opponent Mary. Jane's hitman kills Mary.

Both Jane and the hitman had wrongful intentions to benefit in this case, although only the hitman physically committed the criminal act of murdering Mary: the hitman anticipated a material reward for his own actions, and Jane anticipated a certain win.

Note that on my account, it is strictly speaking not necessary that the political wrongdoer *intends to do wrong* (φ), either by committing the wrong herself or by working in conjunction with others who commit the wrong. It is only necessary that she intends to benefit from any sort of political wrongdoing (φ) that is or will be present, even if she did not intend to bring about the original wrong φ. My claim here is that the wrongful intention to benefit (ξ) is conceptually different from the wrongful intention to commit a wrong (φ), and that, much like φ is wrong in and of itself (irrespective of the actual consequences), ξ is also wrongful in and of itself.[92]

---

[91] Ibid., 289.

[92] For a similar point, see Robert Fullinwider, "Preferential Hiring and Compensation," *Social Theory & Practice* 3, no. 3 (1975): 318. As Fullinwider states, it is "wrong to seek out benefits from the wrongdoing of others, even if there is nothing wrong with unavoidably coming into possession of them".

I suspect that my claim about ξ is less intuitive than my claim about φ. To see how this thought plausibly applies to political wrongdoing in particular, consider

> ***Big League Collusion***: Officials of state R collude with the staff of a presidential campaign team T to influence an upcoming election in the US by disseminating false information online. Meanwhile, officials of a third country S contemplate the possibility of colluding with the same team T for the same reasons, since the political interests of R and S are aligned in this case: both want the candidate of team T to win. However, R is unaware of S's activities. S, in turn, *is* aware of R's activities. S therefore knows that, because of R's plans, S will likely achieve its aim of T winning the election. S is willing to take the small chance that R may be unsuccessful in its endeavour. Hence, S abandons the intention to take any action to support T.

In *Collusion*, both R and S are political wrongdoers. However, political wrongdoer R intends to do wrong (φ) *and* possesses the wrongful intention to benefit (ξ) from wrongdoing (φ); whereas S possesses *only* the latter intention (ξ). My point here is that the latter is sufficient for fulfilling our 'wrongful intentions' criterion, because S *would have* supplemented an intention to benefit (ξ) with an intention to do wrong (φ) had R suddenly dropped out of the picture. Political wrongdoing was unavoidable in this case in the sense that either R or S would have carried it out—it was not necessary for the two of them to act *together*. What is interesting about *Collusion*, however, is that one agent's knowledge about the presence of wrongful intentions (φ) altered their own intentions to commit wrongdoing (φ), but not their wrongful intentions to benefit from wrongdoing (ξ).

c. *Acts that Do* Not *Constitute Political Wrongdoing*

Before concluding this section, let us examine briefly what kinds of acts my definition of political wrongdoing excludes. It excludes illegal disobedience to the law with a non-*wrongful* intention, for example as a way of exercising one's moral right to engage in civil disobedience. Following Rawls, I define civil disobedience as a "public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government", motivated by the goal of protecting existing just institutions or creating new just institutions in a liberal democratic state.[93]

The relevant claim here is that, by definition, civil disobedience is an act committed with the explicit intention to protect existing just (democratic) institutions, or to create new ones. While a variety of other accounts of civil disobedience reject specific criteria of the Rawlsian account concerning the appropriate *means* of civil disobedience, such as the publicity criterion or the non-violence criterion, there seems to be a broad consensus on the question of what the appropriate *ends* are: protecting or promoting justice in democratic institutions.[94]

Thus, civil disobedience does not involve wrongful intentions to benefit (ξ), which is why civil disobedience does not constitute political wrongdoing—even if it causes harm.

[93] See John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Belknap, 1999), 363.
[94] See, for instance, these two well-known (and significantly different) accounts of civil disobedience: Kimberley Brownlee, "The Communicative Aspects of Civil Disobedience and Lawful Punishment," *Criminal Law and Philosophy* 1, no. 2 (2007): 179-192; Robin Celikates, "Democratizing Civil Disobedience," *Philosophy & Social Criticism* 42, no. 10 (2016): 982-994.

2. Why Does Negative Retributivism Justify the Criminal Disenfranchisement of Political Wrongdoers, and Political Wrongdoers *Only*?

a. The Negative Retributivist Case for Criminal Disenfranchisement

Recall the general structure of the first part of the negative retributivist argument, which I outlined at the end of part II of this paper. The first two claims are already established in a sufficient way:

1. *Negative Retributivism*: Those, and only those, who are guilty of wrongdoing of type X deserve to be punished in proportion to their desert.
2. *Compatibility Claim*: Criminal disenfranchisement can be compatible with AAP in principle, provided that (i) it adheres to particular additional constraints which do not undermine AAP, and that (ii) it disenfranchises only those members of X who deserve disenfranchisement specifically (not just punishment in general).

After my discussion of the concept of political wrongdoing, we can now add a third claim:

3. *Relevant Types of Wrongs*: X denotes the domain of *criminal* wrongdoing. Crimes are public wrongs. But not all public wrongs are morally wrong *primarily* because they wrong the public, and specifically, the integrity of democratic institutions or procedures. Only a subset of crimes (political wrongdoing) is primarily wrong for this reason.

Now, a negative retributivist justification of criminal disenfranchisement must introduce a (lack of) desert claim and a claim about rights forfeiture:

4. *Negative Retributivist Claim about a Lack of Desert*: Wrongdoers who are guilty of public wrongs (crimes), but not of political wrongs, do not deserve to be punished by being disenfranchised (though they may deserve other kinds of punishment).
5. *Negative Retributivist Forfeiture Claim*: Wrongdoers who are guilty of political wrongdoing forfeit their right not to be punished via criminal disenfranchisement.

As I pointed out earlier, negative retributivists can draw on the AAP to give substance to this claim. While negative retributivists—or any retributivists, for that matter—do not have to commit themselves to the claim that criminals necessarily forfeit exactly the right that they have violated, they do have to provide an argument to the effect that it would not be *fitting* to restrict some or all of the concrete democratic participation rights of a criminal who is not a political wrongdoer. Surely, the intuition underpinning such a 'lack of desert' claim must go as follows: if A's crime had nothing do with democratic participation, did not inhibit the democratic participation of others, and was not pursued with the primary intention of benefitting from the erosion of central democratic procedures and institutions, it would not be fitting to punish A by depriving her of democratic participation rights, the exercise of which is entirely unrelated to her criminal conduct: otherwise, the connection between the substantive nature of the sanction and the substantive nature of the criminal conduct at stake would simply be too tenuous. Those insisting that A deserves criminal disenfranchisement have to explain why disenfranchisement *specifically* is appropriate in this case. Why *not* (or not only) incarcerate A, fine A, or force A to do community service? Why *not* (or not only) publicly shame her? Deprive her of the right to buy and own guns, or the right to take up employment in the medical or educational sector? As López-Guerra argues, "[i]t would be difficult to argue that a person deserves to be deprived of the right to influence the making of all laws just for breaking one, or a few of them".[95] To this, negative retributivists like myself will add: "...unless the criminal has broken laws concerning the integrity of democratic institutions, which ensure that *everyone else* can influence the making of all laws during legitimate democratic procedures." While criminals who commit public wrongs that are *not* primarily wrong because they wrong the public in this way

[95] López-Guerra, *Democracy and Disenfranchisement*, 116.

lack the kind of desert that is necessary for showing that they forfeit their right not to be punished via criminal disenfranchisement, political wrongdoers do not lack this kind of desert. On my account, the desert basis (political wrongdoing) is thus closely linked to the desert object (disenfranchisement) in an intuitively clear way.[96] The upshot of my discussion so far is that negative retributivists must restrict justifiable criminal disenfranchisement to political wrongdoers, and political wrongdoers only.

Compare this to the positive retributivist stance discussed earlier in this paper, which relied on a positive desert claim to justify the disenfranchisement of criminals irrespective of the nature (including the intentions and possible harms) of their wrongdoing. Of course, positive retributivists could incorporate my concept of political wrongdoing into their account, and then introduce additional normative principles in order to restrict their account to political wrongdoers only. This might yield similar results—it would justify the criminal disenfranchisement of the same group of people—but it would do so for different reasons.

My stance is that those different reasons would also be the *wrong* reasons: as I have argued above, positive retributivism is not the most attractive account available for justifying criminal disenfranchisement, for reasons that are unrelated to restricting the scope of the account (to the group of political

[96] Here, I am relying on Feinberg's influential terminology. See Joel Feinberg, *Doing and Deserving* (Princeton, NJ: Princeton University Press, 1970), 55-94, where he defines "[d]esert bases [as follows:] if a person is deserving of some sort of treatment, he must, necessarily, be so *in virtue of* some possessed characteristic or prior activity" (58). Some will of course simply not share my intuition that the connection between non-political criminal wrongdoing and the sanction of criminal disenfranchisement is too tenuous, and my intuition that the connection between political wrongdoing and disenfranchisement is not. The negative retributivist account developed here might therefore strike them as overly restrictive. In that case, the debate about the appropriate desert basis for criminal disenfranchisement leads to an impasse, since evalutations of desert bases must always to some extent rely on intuitionistic reasoning. Ultimately, my discussion here may nevertheless be useful for those denying the intuitive force of my negative retributivist account in the sense that my account helps clarify one amongst several *possible* stances on criminal disenfranchisement, and presents a systematic conceptual analysis of a *possible* desert basis (political wrongdoing), which no other contributor to this debate has (to my knowledge) done so far.

wrongdoers only). For that reason, I continue to endorse negative retributivism here. An analogous argument applies to the expressivist account: due to the internal tensions in the expressivist justification *of the specific punitive sanction of criminal disenfranchisement*, which would persist even if the account were restricted to political wrongdoers, expressivism remains less plausible than my negative retributivist justification for criminal disenfranchisement.

Having reached the sub-conclusion that some criminals—political wrongdoers—forfeit their right not to be punished via criminal disenfranchisement, we still have to show why the criminal disenfranchisement of political wrongdoers is *justified* all things considered. In order to do this, a plausible version of negative retributivism must, in my view,[97] invoke a

6. *Positive Instrumentalist Justification for Disenfranchisement*:
    a. Protecting the integrity of democratic institutions or procedures is a valuable instrumentalist goal because doing so is a precondition for securing central individual rights in a system of fair political equality.
    b. Criminal disenfranchisement by definition requires the restriction of the right to participate in democratic decisions.
    c. Such restrictions are justified iff they serve the aim of protecting the integrity of democratic institutions or procedures.

Here, those who reject my negative retributivist move to restrict criminal disenfranchisement to political wrongdoers may argue that adding instrumentalist justifications to the account may in fact widen the scope of justifiable disenfranchisement again, i.e. beyond political wrongdoers. What if, for instance, disenfranchising all or some non-political criminals would effectively incapacitate and deter political wrongdoers? My response is that I

[97] Many other contemporary contributors to the debate on negative retributivism agree that combining retributivist elements with instrumentalist ones is a plausible strategy. For an overview of accounts that take this stance, see Mitchell N. Berman, "Two Kinds of Retributivism," in *Philosophical Foundations of Criminal Law*, eds. R. A. Duff and Stuart P. Green (Oxford: Oxford University Press, 2013), 433-459.

can imagine no possible scenario where there would be a direct causal connection between the two. Of course, should such a situation arise, my argument would have to accommodate such a case. But given that the actual occurrence of such a situation is hard to imagine, there seems to be little to be gained from explicitly modifying the argument in order to allow for this possibility.

b. Side Constraints: Proportionality and Fairness

Once we have justified the criminal disenfranchisement of political wrongdoers, what kinds of side constraints should be placed on this kind of punishment when it comes to sentencing?

Proportionality

The most obvious sentencing constraint from a negative retributivist perspective is *proportionality*: this helps ensure that the negative retributivist account avoids the pitfalls of a deterrence account, such as allowing the disproportionate punishment of the guilty as well as the punishment of the innocent.[98] What counts as a proportionate punishment is a complex matter, of course. Contributors to the academic debate distinguish between the non-comparative notion of cardinal proportionality and the comparative notion of ordinal proportionality. Cardinal proportionality, according to Lippke, "requires that sanctions for crimes not be excessive in some non-comparative sense, as, presumably, life sentences for minor property offences would be".[99] By contrast, ordinal proportionality involves a multidimensional assessment of

[98] As Lippke argues, "negative retributivism holds that, in the pursuit of crime reduction, we must not impose sanctions on convicted offenders that are disproportionate. This constraint is grounded in the concern that the forward-looking logic of the crime reduction approach might justify excessive criminal sanctions in order to (a) make offenders an object lesson for others, thereby furthering the goal of general deterrence, or (b) incapacitate offenders for lengthy periods of time, not so much because of their past crimes but from fear of their future ones." Lippke, "Some Surprising Implications of Negative Retributivism," 53.
[99] Ibid.

available punishments by reference to a number of comparative criteria. Following von Hirsch's account of ordinal proportionality,[100] I define these criteria as follows:

> **Parity**: "when offenders have been convicted of crimes of similar seriousness they deserve penalties of comparable severity".[101]
>
> **Rank Ordering**: "[the] relative severity [of punishment] reflects the seriousness-ranking of the crimes involved".[102]
>
> **Spacing**: "Suppose crimes X, Y, and Z are of ascending order of seriousness; but that Y is considerably more serious than X but only slightly less so than Z. Then, to reflect the conduct's gravity, there should be a larger space between the penalties for X and Y than for Y and Z".[103]

One way of making the disenfranchisement of political wrongdoers ordinally proportionate is to ensure parity for political wrongdoers who are guilty of similar kinds of wrongdoing (e.g. obstruction of justice with respect to the same institutional body). But whenever this is not the case, rank ordering and spacing become important. We can approximate those two criteria by depriving political wrongdoers of different kinds of concrete democratic participation rights. For instance, if we are sentencing two political wrongdoers guilty of qualitatively different crimes—such as collusion with a foreign government vis-à-vis bribing a local county official—restricting the right to vote for both political wrongdoers may be inconsistent with *rank ordering*. It may thus be the most proportionate to deprive the former political official not only of her right to vote in local elections, but to also deprive her of the right to run for office in a given election cycle, which also serves the incapacitative aim of preventing further collusion by elected officials. Of course, it is not my aim in this paper to defend a complete account of how we can achieve an ordinal ranking of

[100] Andrew von Hirsch, *Censure and Sanctions* (Oxford: Clarendon Press, 1993), 18.
[101] Ibid.
[102] Ibid.
[103] Ibid.

different types of political wrongdoing, and a corresponding ordinal ranking of forfeitable concrete democratic participation rights that applies to all possible sentencing contexts. Doing so would be beyond the scope of this paper. My point here is simply that, in principle, it is possible to feed comparative considerations concerning the moral seriousness of different types of political wrongdoing into a context-specific, ordinally proportionate judgment as to what sort of concrete democratic participation rights can justifiably be considered as forfeited by the political wrongdoer.

Fairness

Fairness is a general desideratum for all theories of punishment, which is why it applies to negative retributivism as well. A concern for fairness may constrain the scope of all-things-considered justified criminal disenfranchisement in two different ways: first, justified disenfranchisement must not be an unfair kind of punishment *itself*, and second, justified disenfranchisement must not exacerbate the adverse impact of structurally unfair background conditions such as racism.[104]

What makes a punishment unfair in terms of its scope? The scope of a punishment, i.e. the extent of the rights being forfeited, can vary depending on the empirical context in which a punishment is imposed, and depending on whether that empirical context is reflected adequately in the actual sentence. In the context of criminal disenfranchisement, this happens, for example, if the punishment is imposed between elections, so that the loss of a voting right remains inconsequential because the criminal would have had no opportunity to exercise it anyway.[105] By contrast, prisoners whose sentences overlap with

[104] Both of these points may be subject to feasibility constraints, which I will bracket here.
[105] By this, I do not mean that whenever disenfranchisement does not actually lead to a tangible loss of participation rights because there are (empirically) no opportunities to exercise such rights, this necessarily makes disenfranchisement morally unproblematic all things considered.

elections will experience the added disadvantage of not being able to exercise their right to vote.[106] It is possible that asymmetries like this occur even if everything else is held constant—the severity of the crime, the length of the prison sentence, the kind of punishment being imposed. So even those punishments that seem fair and unobjectionable *de jure* may *de facto* be unfair because they have arbitrary effects.[107] Courts ought to strive to prevent and mitigate such unfair arbitrary effects. This may be done, for example, by disenfranchising only those criminals whose prison sentence exceeds the duration of one election period, so that all criminals disenfranchised in that jurisdiction will experience the same kind of punitive effect—the loss of the ability to vote—at least once, irrespective of when they are sentenced, which is a morally arbitrary empirical fact.

Let us now turn to the separate issue of unfair background conditions. Members of disadvantaged minorities, such as African-American men in the US,[108] are disproportionately impacted by stop-and-frisk policies,[109] are more likely to be arrested,[110] and are "nearly *twice* as likely to be charged with an

---

Disenfranchisement may, for example, entail a morally objectionable loss of equal standing in society.

[106] On this point, see Nicholas Munn, "The Limits of Criminal Disenfranchisement," *Criminal Justice Ethics* 30, no. 3 (2011): 223-239.

[107] See Susan Easton, "Electing the Electorate: The Problem of Prisoner Disenfranchisement," *The Modern Law Review* 69, no. 3 (2006): 445-448; and *Hirst v. UK,* §76.

[108] I am focussing on the US context in this paragraph since the link between racial inequality, mass incarceration, and criminal disenfranchisement has been most extensively researched in recent empirical scholarship examining the contemporary United States, and because the impact of racial inequality on disenfranchisement policies is particularly visible in that context. Nevertheless, my arguments in this paragraph also apply to all other empirical contexts in which unfair background conditions of the kind discussed here are present.

[109] see this recent study published by the criminal justice reform advocacy organisation *The Sentencing Project*: Nazgol Ghandnoosh, "Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System" (2013), https://sentencingproject.org/doc/publications/rd_Black_Lives_Matter.pdf (accessed: May 24, 2018), 3.

[110] The same study finds that in Ferguson, Missouri, African-Americans were twice as likely to be arrested after being stopped in traffic. This disparity seems particularly alarming given that the study also found that police stopped more black persons than white persons (12% vs. 7%) in the first place, but actually found significantly less contraband with black persons (22%) than white persons (34%). The report drew on data by the Office of the Missouri Attorney General, including Racial Profiling data (2013) by the Ferguson Police Department, http://ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2 (accessed: May 24, 2018).

offense carrying a mandatory minimum sentence",[111] even after controlling for a criminal's individual characteristics and criminal history. This also means that members of disadvantaged minorities are more likely to receive a sentence which entails criminal disenfranchisement as a collateral consequence. As legal scholars have pointed out, this disparate impact is in tension with existing laws,[112] such as section 2 of the US Voting Rights Act (1965), which prohibit restrictions of the electorate if such restrictions disproportionately decrease a minority's equal opportunities to influence the political outcome by voting.[113] This applies, as the 1982 amendment to the Voting Rights Act clarifies, regardless of whether the *intent* of such restrictions is discriminatory or not—what matters is the discriminatory *effect*.[114] This suggests that regardless of why and how unfair background conditions arise, once they exist they must be taken into account when considering the appropriate scope of punishment during sentencing. Recognising the unfair impact of racial inequality on the exercise of participation rights, the US Supreme Court argued in its ruling on *Thornburg v. Gingles*, a case brought under the 1982 amendment of the Voting Rights Act, "[t]he essence of a Section 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in

[111] Sonja B. Starr and M. Marit Rehavi, "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker*," *The Yale Law Journal* 123, no. 1 (2013): 28-29.

[112] For an influential analysis, see Karlan, "Convictions and Doubts", 1147-1170.

[113] The relevant parts of section 2 are as follows: "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [...]. (b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are *not equally open to participation* by members of a class of citizens protected by subsection (a) in that its members have *less opportunity than other members of the electorate to participate* in the political process and to elect representatives of their choice." *Voting Rights Act of 1965 (1982 amendment)*, 52 U.S.C. 10101 (2018) [emphases added], http://library.clerk.house.gov/reference-files/PPL_VotingRightsAct_1965.pdf (accessed: May 24, 2018), 26.

[114] This point was included mainly in response to *Mobile v. Bolden*, 446 U. S. 55 (1980). See also *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

the opportunities enjoyed by black and white voters to elect their preferred representatives".[115]

A similar awareness of the unfair impact of racial inequality on the scope of franchise ought to be reflected in individual sentencing. This could be achieved, for example, by considering a criminal's personal background and by investigating whether the proposed punishment matches punishments imposed on criminals from different backgrounds in a fair and potentially more lenient way, i.e. in a way that acknowledges problems of conscious and unconscious racist bias in policing and sentencing. Of course, doing so would neither compensate for the presence of structural injustice, nor address that structural injustice directly. However, it would avoid *exacerbating* structural injustice further by striving not to impose criminal disenfranchisement policies with an unfair political impact.

3. Conclusion: Why Is This Solution Compatible with AAP?

In order to reach the conclusion that

> 7. The positive instrumentalist justification for criminal disenfranchisement is compatible with AAP as specified in (2),

we now need to simply specify that the kinds of principles that constrain my negative retributivist account are the principle of equal concern for all holders of affected interests, and coherence with FPE. My negative retributivist account violates neither the principle of equal concern nor the value of procedural fairness which underpins FPE due to the side constraints introduced above: it does not allow for any arbitrary infringements of these principles in a way that would be unfair, and it only allows for the punitive revocation of all or some

[115] *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

concrete democratic participation rights if the loss of such rights is proportionate to the severity of the political wrongdoing in question.

In sum, I have developed the following argument in this paper: I began by rejecting standalone democratic justifications of criminal disenfranchisement on grounds of insufficiency and incompatibility with AAP. I proceeded by examining non-democratic justifications, with the aim of identifying one that can plausibly justify criminal disenfranchisement without being subject to major empirical and normative objections. I have concluded that only negative retributivism, appropriately constrained, can do so. Subsequently, I have argued that my negative retributivist argument, supplemented by instrumentalist principles, justifies specifically the disenfranchisement of *political* wrongdoers. Since no contributor to the debate has—to my knowledge—offered an analysis of the subset of crimes that are political wrongs so far, I have developed a systematic conceptual analysis of this type of wrongdoing in this paper. Restricting disenfranchisement to this narrow set of criminal offenders implies a disenfranchisement policy that departs significantly from widespread contemporary disenfranchisement policies—for instance, policies of blanket disenfranchisement for all incarcerated criminals irrespective of the precise nature of their offences. From the perspective of my negative retributivist account, these policies are overinclusive, since they disenfranchise persons guilty of morally serious—but non-political—criminal wrongdoing, such as murder, assault, or theft. But they are also underinclusive, since they fail to disenfranchise some persons guilty of morally serious political wrongdoing.

Finally, I have assessed the overall compatibility of the negative retributivist account with AAP, as opposed to discussing whether all other possible theories of punishment are incompatible with AAP. The rationale for this is that a theory's compatibility with AAP is irrelevant in the context of this

paper if it cannot provide a plausible general justification for criminal disenfranchisement in the first place. I have concluded that, while AAP cannot *itself justify* criminal disenfranchisement, AAP is *compatible* with my negative retributivist argument for the criminal disenfranchisement of political wrongdoers.

Bibliography

Allen, Francis A. *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose*. New Haven, CT: Yale University Press, 1981.

Altman, Andrew. "Democratic Self-Determination and the Disenfranchisement of Felons." *Journal of Applied Philosophy* 22, no. 3 (2005): 263-273.

Anderson, Elizabeth S., and Richard H. Pildes. "Expressive Theories of Law: A General Restatement." *University of Pennsylvania Law Review* 148, no. 5 (2000): 1503-1575.

Beccaria, Cesare. *On Crimes and Punishments*. Translated by David Young. Indianapolis: Hackett, 1986.

Bennett, Christopher. *The Apology Ritual: A Philosophical Theory of Punishment.* Cambridge: Cambridge University Press, 2008.

Bennett, Christopher, and Daniel Viehoff. "Written evidence (VEP 0007) for the UK's Joint Committee on the Draft Voting Eligibility (Prisoners) Bill." Published online (December 18, 2013), https://www.parliament.uk/documents/joint-committees/Draft-Voting-Eligibility-Prisoners-Bill/prisonervoting-evidvol%20(4).pdf, 95-103. Accessed: May 24, 2018.

Bentham, Jeremy. *Introduction to the Principles of Morals and Legislation*, edited by James H. Burns and H. L. A. Hart. Oxford: Clarendon Press, 1996.

Berman, Mitchell N. "Two Kinds of Retributivism." In *Philosophical Foundations of Criminal Law*, edited by R. A. Duff and Stuart P. Green, 433-459. Oxford: Oxford University Press, 2013.

Blackburn, Simon. "Group Minds and Expressive Harm." *Maryland Law Review* 60, no. 3 (2001): 467-491.

Boonin, David. *The Problem of Punishment.* Cambridge: Cambridge University Press, 2008.

Braithwaite, John. *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press, 1989.

Braithwaite, John, and Philip Pettit. *Not Just Deserts*. Oxford: Oxford University Press, 1990.

Bratman, Michael E. *Structures of Agency: Essays*. Oxford: Oxford University Press, 2007.

Brownlee, Kimberley. "The Communicative Aspects of Civil Disobedience and Lawful Punishment." *Criminal Law and Philosophy* 1, no. 2 (2007): 179-192.

Bülow, William. "Felon Disenfranchisement and the Argument from Democratic Self-Determination." *Philosophia* 44, no. 3 (2016): 759-774.

Cadwalladr, Carole, and Mark Townsend. "Revealed: The Ties that Bound Vote Leave's Data Firm to Controversial Cambridge Analytica." *The Guardian*. Published online (March 24, 2018), https://www.theguardian.com/uk-news/2018/mar/24/aggregateiq-data-firm-link-raises-leave-group-questions. Accessed: May 24, 2018.

Carrington v. Rash, 380 U.S. 89 (1965).

Celikates, Robin. "Democratizing Civil Disobedience." *Philosophy & Social Criticism* 42, no. 10 (2016): 982-994.

Chin, Gabriel J. "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction." *University of Pennsylvania Law Review* 160, no. 6 (2012): 1789-1833.

Council of Europe. "Communication from the United Kingdom Concerning the Case of Hirst (No. 2) v. the United Kingdom: Action plan DH-DD(2017)1229." *Council of Europe: Secretariat of the Committee of Ministers*. Published online (November 2, 2017), https://rm.coe.int/1680763233. Accessed: May 24, 2018).

Cotton v. Fordice, 157 F.3d 388 (1998).

Duff, R. A. *Punishment, Communication, and Community*. Oxford: Oxford University Press, 2001.

———. "Responsibility, Citizenship, and Criminal Law." In *Philosophical Foundations of Criminal Law*, edited by R. A. Duff and Stuart P. Green, 125-149. Oxford: Oxford University Press, 2011.

Dworkin, Ronald. *Justice for Hedgehogs*. Cambridge, MA: Belknap, 2011.

Easton, Susan. "Electing the Electorate: The Problem of Prisoner Disenfranchisement." *The Modern Law Review* 69, no. 3 (2006): 443-452.

Ellis, Anthony. "A Deterrence Theory of Punishment." *Philosophical Quarterly* 53, no. 212 (2003): 337-351.

Ewald, Alec C. *Punishing at the Polls: The Case Against Disenfranchising Citizens with Felony Convictions*. New York, NY: Demos, 2003.

Farrakhan v. Locke, 987 F. Supp. 1304 (1997).

Feinberg, Joel. "The Expressive Function of Punishment." *The Monist* 49, no. 3 (1965): 397-423.
———. *Doing and Deserving*. Princeton, NJ: Princeton University Press, 1970.

Finkelstein, Claire. "Is Risk A Harm?" *University of Pennsylvania Law Review* 151, no. 3 (2003): 987-990.

Fullinwider, Robert. "Preferential Hiring and Compensation." *Social Theory & Practice* 3, no. 3 (1975): 307-320.

Ghandnoosh, Nazgol. "Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System." *The Sentencing Project*. Published online (2013): https://sentencingproject.org/doc/publications/rd_Black_Lives_Matter.pdf. Accessed: May 24, 2018.

Goodin, Robert E., and Avia Pasternak. "Intending to Benefit from Wrongdoing." *Politics, Philosophy & Economics* 15, no. 3 (2016): 280-297.

Gray v. Sanders, 372 U.S. 368 (1963).

Hampton, Jean. "The Moral Education Theory of Punishment." *Philosophy & Public Affairs* 13, no. 3 (1984): 208-238.
———. "Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of the Law." *The Canadian Journal of Law & Jurisprudence* 11, no. 1 (1998): 23-45.

Hare, Richard M. *Moral Thinking: Its Levels, Methods and Point*. Oxford: Oxford University Press, 1981.

Hirst v. UK (No. 2), ECtHR Grand Chamber (74025/01). Published online (October 6, 2005), http://hudoc.echr.coe.int/eng?i=001-70442. Accessed: May 24, 2018.

Honderich, Ted. *Punishment: The Supposed Justifications Revisited*. Fifth edition. London: Pluto Press, 2005.

Hoskins, Zachary. "Deterrent Punishment and Respect for Persons." *Ohio State Journal of Criminal Law* 8, no. 2 (2011): 369-384.

Hunter v. Underwood, 471 U.S. 222 (1985).

Kahan, Dan M. "The Anatomy of Disgust in Criminal Law." *Michigan Law Review* 96, no. 6 (1998): 1621-1657.

Kalt, Brian C. "The Exclusion of Felons From Jury Service." *American University Law Review* 35, no. 1 (2003): 65-189.

Karlan, Pamela. "Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement." *Stanford Law Review* 56, no. 5 (2004): 1147-1170.

Kleinig, John, and Kevin Murtagh. "Disenfranchising Felons." *Journal of Applied Philosophy* 22, no. 3 (2005): 217-239.

Kousser, J. Morgan. *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880—1910.* New Haven, CT: Yale University Press, 1974.

Lacey, Nicola. *State Punishment: Political Principles and Community Values*. London: Routledge, 1988.

LaFollette, Hugh. "Collateral Consequences of Punishment: Civil Penalties Accompanying Formal Punishment." *Journal of Applied Philosophy* 22, no. 3 (2005): 241-261.

Levitt, Justin. "The Truth About Voter Fraud." *Brennan Center for Justice at New York University School of Law*. Published online (November 9, 2007), https://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf. Accessed: May 24, 2018.

Lippke, Richard L. "Criminal Offenders and Right Forfeiture." *Journal of Social Philosophy* 32, no. 1 (2001): 78-89.
———. *Rethinking Imprisonment*. Oxford: Oxford University Press, 2007.
———. "Some Surprising Implications of Negative Retributivism." *Journal of Applied Philosophy* 31, no. 1 (2014): 49-62.

López-Guerra, Claudio. *Democracy and Disenfranchisement: The Morality of Electoral Exclusion*. Oxford: Oxford University Press, 2014.

Mabbott, John D. "Punishment." *Mind* 48, no. 190 (1939): 150-167.

Mackie, J. L. "Retributivism: A Test Case for Ethical Objectivity." Reprinted in *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross, 677-684. Fourth edition. Belmont CA: Wadsworth, 1991), 677-684.

Marshall, Sandra E., and R. A. Duff. "Criminalization and Sharing Wrongs." *The Canadian Journal of Law and Jurisprudence* 11, no. 1 (1998): 7-22.

Marshall, Sandra E., and R. A. Duff. "Public and Private Wrongs." In *Essays in Criminal Law in Honour of Sir Gerald Gordon*, edited by James Chalmers, Fiona Leverick, and Lindsay Farmer, 70-85. Edinburgh: Edinburgh University Press, 2010.

McCloskey, H. J. "An Examination of Restricted Utilitarianism." *The Philosophical Review* 66, no. 4 (1957): 466-485.

McLaughlin v. City of Canton, 947 F.Supp. 954 (1995).

Mobile v. Bolden, 446 U. S. 55 (1980).

Moore, Michael S. "The Moral Worth of Retribution." In *Responsibility, Character, and the Emotions: New Essays in Moral Psychology,* edited by Ferdinand D. Schoeman, 179-219. Cambridge: Cambridge University Press, 1987.

Morris, Herbert. "Persons and Punishment." *The Monist* 52, no. 4 (1968): 475-501.

Munn, Nicholas. "The Limits of Criminal Disenfranchisement." *Criminal Justice Ethics* 30, no. 3 (2011): 223-239.

Oberdiek, John. *Imposing Risk: A Normative Framework*. Oxford: Oxford University Press, 2017.

Office of the Missouri Attorney General. "Racial Profiling Data 2013." Published online (2013), http://ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2. Accessed: May 24, 2018.

Owen v. Barnes, 711 F.2d 25 (1983).

Perman, Michael. *Struggle for Mastery: Disenfranchisement in the South, 1888—1908*. Chapel Hill, NC: University of North Carolina Press, 2001.

Placani, Adriana. "When The Risk of Harm Harms." *Law and Philosophy* 36, no. 1 (2017): 77-100.

Primoratz, Igor. *Justifying Legal Punishment*. Atlantic Highlands, NJ: Humanities Press, 1989.

Quinton, Anthony M. "On Punishment." *Analysis* 14, no. 6 (1954): 133-142.

Ramsay, Peter. "Voters Should Not Be in Prison: The Rights of Prisoners in a Democracy." *Critical Review of International Social and Political Philosophy* 16, no. 3 (2013): 421-438.

Rawls, John. "Two Concepts of Rules." *The Philosophical Review* 64, no. 1 (1955): 3-32.
———. *A Theory of Justice*. Revised edition. Cambridge, MA: Belknap, 1999.

Raynor, Peter, and Gwen Robinson. *Rehabilitation, Crime and Justice*. Basingstoke: Palgrave Macmillan, 2005.

Reiman, Jeffrey. "Liberal and Republican Arguments Against the Disenfranchisement of Felons." *Criminal Justice Ethics* 24, no. 1 (2005): 3-18.

Richardson v. Ramirez, 418 U.S. 24 (1974).

Rose, John C. "Negro Suffrage: The Constitutional Point of View." *American Political Science Review* 1, no. 1 (1906): 17-43.

Ross, William D. *The Right and The Good*. Oxford: Clarendon Press, 1930.

Schneider v. State, 308 U.S. 147 (1939).

Shapiro, Andrew L. "Challenging criminal disenfranchisement under the Voting Rights Act: A New Strategy." *The Yale Law Journal* 103, no. 2 (1993): 537-566.

Sigler, Mary. "Defensible Disenfranchisement." *Iowa Law Review* 99, no. 4 (2014): 1725-1744.

Starr, Sonja B., and M. Marit Rehavi. "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker*." *The Yale Law Journal* 123, no. 1 (2013): 2-80.

Stephenson, Gilbert T. "Racial Distinctions in Southern Law." *American Political Science Review* 1, no. 1 (1906): 44-61.

Tadros, Victor. *The Ends of Harm: The Moral Foundations of Criminal Law*. Oxford: Oxford University Press, 2011.

Thompson, Mark E. "Don't Do the Crime If You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment." *Seton Hall Law Review*, 33, no. 1 (2003): 167-205.

Thomson, Judith Jarvis. *Rights, Restitution, and Risk: Essays in Moral Theory*. Cambridge, MA: Harvard University Press, 1986.

Thornburg v. Gingles, 478 U.S. 30 (1986).

Tomlin, Patrick. "Innocence Lost: A Problem for Punishment as Duty." *Law and Philosophy* 36, no. 3 (2017): 225-254.

Uggen, Christopher, and Jeff Manza. "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample." *Columbia Human Rights Law Review* 36, no. 193 (2004): 193-215.

Uggen, Christopher, Angela Behrens, and Jeff Manza. "Criminal Disenfranchisement." *Annual Review of Law and Social Science* 1, no. 1 (2005): 307-322.

Uggen, Christopher, Ryan Larson, and Sarah Shannon. "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement." Report for *The Sentencing Project*. Published online (October 6, 2016), http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/. Accessed: May 24, 2018.

UK Electoral Commission. "Analysis of Cases of Alleged Electoral Fraud in the UK in 2015. Summary of Data Recorded by Police Forces (as of March 2016)." Published online (March 2016), http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/198533/Fraud-allegations-data-report-2015.pdf. Accessed: May 24, 2018.

UK Ministry of Justice. "Offender Management Statistics Bulletin, England and Wales (Quarterly October to December 2017)." London: UK Ministry of Justice. Published online (April 26, 2018),

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702297/omsq-q4-2017.pdf. Accessed: May 24, 2018.

US Government Accountability Office. "Elections: Issues Related to State Voter Identification Laws", 2014 Government Accountability Office Report to Congressional Requesters. Published online (February 27, 2015), http://www.gao.gov/assets/670/665966.pdf. Accessed: May 24, 2018.

von Hirsch, Andrew. *Doing Justice: The Choice of Punishments*. New York: Hill & Wang, 1976.
———. *Censure and Sanctions*. Oxford: Clarendon Press, 1993.

von Hirsch, Andrew, Andrew Ashworth, and Clifford Shearing. "Specifying Aims and Limits for Restorative Justice: A 'Making Amends' Model?" In *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, edited by Andrew von Hirsch, Julian V. Roberts, Anthony Bottoms, Kent Roach, and Mara Schiff, 21-42. Oxford: Hart Publishing, 2003.

Voting Rights Act of 1965 (1982 amendment). 52 U.S.C. 10101 (2018). Published online: http://library.clerk.house.gov/reference-files/PPL_VotingRightsAct_1965.pdf. Accessed: May 24, 2018.

Washington v. State, 75 Ala. 582 (1884).

Watkins, Eli. "Trump Repeats Debunked Voter Fraud Claim." *CNN*. Published online (April 5, 2018), https://edition.cnn.com/2018/04/05/politics/trump-voter-fraud-california/index.html. Accessed: May 24, 2018.

Whitt, Matt S. "Felon Disenfranchisement and Democratic Legitimacy." *Social Theory and Practice* 43, no. 2 (2017): 283-311.

Woodruff v. Wyoming, 49 Fed. Appx. 199 (2002).

Wright, Richard W. "Causation, Responsibility, Risk, Probability, Naked Statistics, and Proof: Pruning the Bramble Bush by Clarifying the Concepts." *Iowa Law Review* 73, no. 5 (1988): 1001-1077.

Conclusion

I. Arguments and Insights

In this thesis, I have presented four papers exploring a range of undertheorised issues in the philosophical debate on the All-Affected Principle, and the debate on the democratic boundary problem more generally. Surprisingly, many contributors to these debates find the thought that holders of affected interests ought to get a say in democratic decisions intuitively appealing, but ultimately reject AAP for a variety of reasons: for example, on the grounds that AAP is insufficiently nuanced in a way that makes it hard to see why affected interests possess *sufficient normative force* to justify the conferral of democratic participation rights; or on the grounds that it is difficult to realise AAP's ideal of democratic enfranchisement in *practice*. In response, I have (amongst other things) developed a version of AAP that I consider to be plausible by offering a detailed account of *who* passes the threshold of democratic enfranchisement: as I have pointed out, doing so requires explaining—in more detail than proponents of AAP have done so far—which interests matter, what being affected means, and why that is sufficient for justifying a person's abstract right to democratic participation.

The next obvious question is *how* we should distribute this abstract right: does it always instantiate itself in the *same* concrete form, and does AAP

imply that concrete democratic participation rights ought to be distributed *equally* to all affected persons even if the way in which their interests are affected is different? Here, I have identified various gaps in the literature: most contributors focus exclusively on the concrete right to vote. Against that, I have argued that AAP supporters need to take into account a much wider, diverse set of concrete democratic participation rights.

I have also criticised versions of AAP which adopt an all-or-nothing view about democratic enfranchisement: the most plausible ideal articulation of AAP, I have argued, is one that distributes rights proportionately above its threshold. By connecting two seemingly separate debates—the emerging debate on the ethics of risk on the one hand, and the debate on the democratic boundary problem on the other one—I was able to identify a concept that allows us to translate the moral weight of a person's actually or possibly affected interests into a fair and proportionate distribution of concrete democratic participation rights. In doing so, I developed a risk-sensitive ('narrow') version of a possibilist AAP, which constructively builds on existing versions of AAP, but also identifies their central shortcomings.

Responding to key arguments by AAP sceptics, and anticipating further objections that AAP sceptics *could* potentially put forward, I have argued that the right way of pushing the debate on AAP forward is to start by getting a clear picture of what a plausible version of AAP looks like, and what the appropriate function of a democratic enfranchisement principle like AAP is in a *broader* framework of values. Many well-known objections to AAP rightly reject crude versions of AAP—but that does not mean, of course, that these objections are fatal for *every* possible version of AAP. Proceeding from the assumption that the onus is now on AAP supporters to not only articulate more robust versions of the principle but to also identify and test AAP's limitations, I have

systematically mapped the most important possible objections to AAP in order to subsequently assess their normative force. Interestingly, it became clear during my discussion that a lot of possible objections against AAP could stem from a higher-order disagreement between AAP sceptics and AAP supporters about *how much* a plausible principle of democratic enfranchisement must achieve: to what extent, for example, must a democratic principle like AAP address questions of substantive justice, or questions about political feasibility? And how much *priority,* morally speaking, should we give to these considerations in comparison to the goal of implementing an ideal principle of democratic enfranchisement? How important is it to get democratic enfranchisement right, if doing so does not achieve certain other morally important goals? Identifying the precise nature of these disagreements, I have argued, is a crucial first step for furthering the philosophical debate on this topic, as it is illuminating for AAP supporters and sceptics alike.

Another interesting puzzle concerning AAP is the question of whether endorsing AAP commits us to a particular stance on debates that are distinct from, but adjacent to, the debate on democratic enfranchisement. I have focused on the problem of *criminal disenfranchisement* here, yet there are many other adjacent debates that merit further investigation from the perspective of AAP. Again, my discussion here was driven by my concern for identifying not only AAP's strengths, but also its appropriate limitations. The issue of criminal disenfranchisement, I have argued, extends well beyond the reach of democratic enfranchisement principles: justifying criminal disenfranchisement requires a full engagement with the separate literature on theories of punishment. However, as it turns out, AAP can still offer interesting insights at this juncture: asking what sort of punitive justification of criminal disenfranchisement is compatible with AAP ultimately led me to develop a conceptual account of a diverse cluster of crimes ('political wrongdoing') as the

appropriate desert basis for criminal disenfranchisement from the perspective of AAP. Even if one does not support AAP, one might find this conceptual account useful, since other contributors to the debate on criminal disenfranchisement have—to my knowledge—not identified similar conceptual categories, leading them to adopt much broader views. Although *my* investigation of the nature of political wrongdoing originated in my endorsement of AAP, one *could* endorse the conceptual view that political wrongdoing is a distinctive type of crime without endorsing any normative view about democratic enfranchisement, such as AAP. Therefore, the arguments set out here may inform debates entirely external to AAP as well.

II. Directions for Future Research

Many of AAP's implications remain uncharted territory for now, and thus offer promising avenues for further research. First, when it comes to determining who passes the initial threshold for democratic enfranchisement ('who has an *abstract* right to democratic participation?'), how should we deal with beings whose *equality of moral status* remains fiercely contested in the relevant philosophical literature, such as animals or artificial intelligence? Second, where else, apart from different polities, could we plausibly *apply* AAP? Within the workplace, for instance; or perhaps within the family, or within educational institutions? Third, what are the *preconditions* for implementing AAP successfully: for example, does a commitment to AAP imply a particular view about *competence requirements* for democratic agents? Are uninformed and uneducated voters a problem from the perspective of AAP, and what should AAP supporters think about the possible enfranchisement of children? Fourth, how would a democratic enfranchisement principle like AAP work in conjunction with *other*

democratic principles that are unrelated to justifying enfranchisement, for instance, when it comes to developing a full theory of democratic *legitimacy*? Fifth, how exactly should we (re-)design real democratic institutions in order to best realise AAP? With respect to this question, *interdisciplinary* research that connects empirical insights with the normative debate on the democratic boundary problem would be particularly useful.

These questions—and possibly others—provide an interesting and complex basis for future work in this area. As I hope to have shown in these four papers, the baseline assumption from which such work ought to proceed is the insight that democratic enfranchisement in our contemporary world can and should be disentangled from questions of citizenship. While this move raises difficult conceptual and normative questions about what types of views could plausibly refine and replace more established, citizenship-dependent ones, it is worth pursuing, and it has illuminating implications for philosophical debates well beyond the democratic boundary problem.