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Enfranchising all subjected, worldwide

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For cosmopolitans, global democracy is valuable both in itself and as a means to global justice. Their preferred principle of political enfranchisement is the All Affected Principle which, given global interdependencies, means that virtually everyone should have a vote virtually everywhere. Anti-cosmopolitans want to resist that conclusion. They try to do so by appealing instead to the All Subjected Principle. But you are subject to a law whenever it claims to apply to you, and in contemporary practice states typically claim authority to make many laws that apply even to non-nationals abroad. On the All Subjected Principle, they too should have a vote over those laws. The All Subjected Principle would thus have similarly expansionary implications for the franchise as the All Affected Principle, contrary to the fondest hopes of anti-cosmopolitans.

Keywords: global democracy; enfranchisement; All Affected Principle; All Subjected Principle; extraterritoriality

Global democracy and global distributive justice are partners in the same larger cosmopolitan political project. Each valuable in its own right, from a cosmopolitan point of view. They are also linked: when the underprivileged 'many' are given a vote, they are likely to use it to secure a larger and more just distributive share. That was how democratic socialism worked domestically. 'Politics' was set 'against markets' (Esping-Andersen 1985) by creating a new currency, the vote, that (a) was distributed more equally than money and that (b) could be used to override market outcomes based on financial privilege. Cosmopolitanisms hope that global democracy might underwrite global distributive justice in similar fashion.

Global democracy might take many forms, and in the beginning it will inevitably start small. Various proposals have been canvassed (e.g. Held 1995; Archibugi 2008; Goodin 2010, 2013). Here is another. Forget about pressing straightaway for a world government, democratic in form. Try, instead, to turn already existing national-level democracies to more cosmopolitan purposes. Do that by allowing foreigners to vote in our national elections. Suppose that everyone worldwide had a vote in every

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nation's democratic elections. That would be functionally equivalent, at least for a great many purposes, to everyone's having a vote in a unitary democratic world government.

That approach is appealing, not only because it relies only on institutions that are already in place, but also because it is arguably what classical democratic theory anyway requires. The most 'intuitively plausible proposal' for determining who should get a vote says that everyone who is affected by a decision should get a say in the making of that decision.[1] Dahl (1970, 64), the doyen of democratic theorists, calls that 'the best general principle of inclusion that you are likely to find'. And of course in an interdependent world, pretty much everyone is affected in some way or another by just about every major decision made anywhere, certainly anyway those made in rich and powerful states. Combine that contingent fact about the world with the All Affected Principle for who should get to vote, and you have a case for giving just about everyone in the world a vote, if not quite everywhere, at least in all major states of the world (Goodin 2007).

Anti-cosmopolitans wanting to resist those expansionary implications of democratic theory can do so in either of two ways. One simply denies that there are any principled grounds in democratic theory or anywhere else for how to constitute the polity. The electorate is as it is, and there is no right or wrong of that matter. But that is an uncomfortably unprincipled approach, even for most hard-bitten political realists. It denies that any extension of the franchise – from the propertied elite to all males, to all women, to all races – ever had any principled grounding. That is an awfully big bullet to bite.

More moderate anti-cosmopolitans hope to rely instead on a more principled rationale for keeping the franchise broadly within its current bounds. They propose an All Subjected Principle for political enfranchisement. They do so on the assumption that those who are 'subject' to a state's laws, and thus entitled to a vote under that principle, will be a smaller set of people (and more nearly the same as the current citizenry) than the set of people who are 'affected' by a state's laws and who would be entitled to a vote under the cosmopolitans' All Affected Principle.

But as I shall show, vast numbers of non-nationals abroad are subject to the laws of a great many states not their own. States claim jurisdiction over a wide range of people and activities, on a variety of grounds discussed in the central sections of this article. Sometimes those claims seem well grounded, other times perhaps less so. Still, as long as states continue

[1] So says even Whelan (1983, 16), who himself goes on to reject that principle for reasons that I elsewhere refute (Goodin 2007).

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to claim broad jurisdiction in the ways that they do, the All Subjected Principle, just as surely as the All Affected Principle, requires that they permit a vast number of foreigners to vote in their elections.

Alternative grounds for political inclusion

What constitutes The People who are supposed to govern themselves democratically? Some commentators take that as being exogenously given. They suppose that the composition of the demos is dictated by some brute fact – of blood or soil or history or identity – that is, prior to and independent of any argument for democratizing the polity thus constituted.

That approach has the comforting consequence of broadly fitting the world as we find it.[2] But that approach provides no principled basis for determining who should be governed with whom and by whom, democratically. It makes that just a contingent brute fact, without any normative warrant.[3] And such an utterly unprincipled approach to constituting the demos is all the more inadequate, given that there actually are strong normative reasons of at least two sorts for constituting it one way rather than some other. 'It is as it is' is an inadequate response, when confronted with good arguments as to how it should be instead.

One such set of normative reasons is the All Affected Principle. That principle directs us to extend the vote in a polity to everyone whose interests would or could be affected by the outcomes of that polity's elections.[4] As I have said, however, the All Affected Principle would extend the franchise far beyond its conventional bounds. By that standard, for example, all Iraqis should be entitled to vote in the US presidential election whenever any of the candidates is proposing to invade their country.

Therein lies much of its appeal for cosmopolitans. But, as I have said, that implication gives others pause. Dahl (1970, 67), who is otherwise drawn toward the All Affected Principle, confesses to being 'troubled by the thought that [its expansionary tendency] … unlock[s] Pandora's Box'.

[2] Broadly, but of course there often are extraterritorial groups sharing the same blood or history or identity that create real trouble for this model.

[3] In this connection, Dahl (1989, 20–22) recalls Rousseau's (1978 [1762], bk 1, Ch. 2, 47) criticism of Grotius: 'His most persistent mode of reasoning is always to establish right by fact. One could use a more rational method, but not one more favorable to tyrants'.

[4] The canonical statement of the All Affected Principle is Dahl's: 'Everyone who is affected by the decisions of a government should have a right to participate in that government' (1970, 64). Strictly speaking, 'would or could' is a more appropriate formulation than Dahl's 'is', for reasons given in Goodin (2007). Strictly speaking, we should also add 'all relevantly affected interests'. See more generally Whelan (1983) and Arrhenius (2005).

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Fraser (2009, 64–65) treats the fact that 'everyone is affected by everything' as a *reductio ad absurdum* of the All Affected Principle. That is what leads her, and various others, to reject the All Affected Principle in favor of the All Subjected Principle (a phrase she coined for a much older thought). According to that All Subjected Principle, everyone who will be subject to the laws enacted should be entitled to a vote on them.[5]

Proponents of the All Subjected Principle hope that, by extending the franchise to all but only those who will be *subject* to the laws of that jurisdiction, they can justify keeping the franchise broadly within its conventional bounds.[6] Here I shall show, however, that those hopes are largely in vain, given policies and practices that are deeply entrenched among many important states across the world concerning whom they claim to subject to their laws.

Sometimes those policies and practices may seem to have good reasons behind them, sometimes they may not. I shall here pass no judgment on whether those policies and practices are themselves defensible, all things considered, from a normative point of view. I merely take the fact of their existence as given – just as I have done the fact of an interdependent world, in relation to the All Affected Principle. My concern here is with what normative conclusions follow from those facts, as regards who ought to be entitled to vote under the All Subjected Principle.

My argument will be that, given the fact of those policies and practices, the All Subjected Principle would require that the franchise be vastly expanded – if not to necessarily to exactly the same people as the All Affected Principle, anyway far beyond its conventional bounds. Obviously, I do not myself regard that as a criticism. Clearly, however, anti-cosmopolitans hoping to rely on the All Subjected Principle to keep the franchise within broadly conventional bounds will be sorely disappointed.

[5] The canonical statement of the All Subjected Principle comes once again from Dahl (1979, 116): 'Every person subject to a government and its laws has an unqualified right to be a member of the demos', subsequently revised to read, 'The citizen body in a democratically governed state must include all persons subject to the laws of that state except transients and persons proved to be incapable of caring for themselves' (Dahl 1989, 122). See similarly, López-Guerra (2005), Miller (2009), and Abizadeh (2012). Note well the difference between this principle and the converse one, which says that if you vote in an election then the principle of acting in good faith requires that you should be bound by the results of that election (Lau 2014). That argument says 'if you vote you should be bound', whereas the All Subjected Principle says 'if you will be bound then you should have a vote'.

[6] Miller is explicit about this: 'Since one can be affected by a decision, in the relevant sense, without being coerced by [which for Miller is to say, "subjected to"] it, the first ["all affected"] principle is likely to extend the domain more widely than the second ["all subjected"]' (2009, 224).

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Before proceeding to a closer examination of the All Subjected Principle's implications, in light of prevailing policies and practices among states in the contemporary world, three things should be noted about the relationship between the All Affected Principle and the All Subjected Principle.

First, note that being subjected to a law is one way of being affected by it. Hence, the All Affected Principle would enfranchise everyone whom the All Subjected Principle would. The All Affected Principle may enfranchise more people than the All Subjected Principle would. Its opponents think (wrongly, I shall show) that it would, and they object to it on those grounds. But at least the All Affected Principle enfranchises everyone that the All Subjected Principle would do. It does not leave anyone out that the All Subjected Principle would include.

Second, note that the strongest positive argument for the All Subjected Principle is couched in terms of protecting people's autonomy (Abizadeh 2008, 38–42). Specifically, the autonomy argument here in view says that we should not subject people to laws over which they have not had a say. But that argument provides grounds for only half of the All Subjected Principle – the half that says 'enfranchise all subjected'. It provides no grounds for the other half of the principle – the one that adds 'all *and only* those subjected'. (And, as I have just pointed out, it is only in that respect that the two principles come apart in their practical implications for whom to include in the franchise.)

Third, note that the All Subjected Principle's principle of exclusion (the 'and only') derives more from a concern with a failure of reciprocity than out of any concern for autonomy.[7] The All Subjected Principle objects to extending the franchise to people who are not subject to the laws in question, on the grounds that amounts to giving some people capacity to subject you, while you have none to subject them. But notice that (as the All Affected Principle points out) those other people are affected by – even if not literally subject to – the laws that you make. Failing to give them capacity to affect you through the laws that they make, in turn, would therefore be a failure of reciprocity, as well. In extending the franchise to those who are affected but not subjected, the All Affected Principle is thus respecting requirements of reciprocity, too. It is just reciprocity denominated in the broader terms of 'affectedness' rather than the narrower terms of 'subjectedness'.

[7] Notice that the Rousseau–Kant standard of autonomy as 'giving laws to oneself', taken as a principle for democratic inclusion, says only that if the law will bind you then you should have a say in making that law. If the law will apply to a million people, then each of those million ought on those grounds have a say in making it – and if they do, then this standard of autonomy is satisfied, even though each has only a one-millionth say in that process.

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Specifying 'All Subjected'

There are three ways of cashing out who is 'subject' to the laws of a state. One – corresponding to the first *Oxford English Dictionary* definition – is a more purely formal, juridical reading.[8] On that account, someone is subject to a body of laws if and only if that body of laws purports to bind him.[9] Would he be legally liable to prosecution in that state for violation of those laws?[10] Second is a more pragmatic reading, corresponding to the second *Oxford English Dictionary* definition of the verb 'to subject'.[11] On that account, someone is subjected to a body of laws if and only if that body of laws materially affects him in any way.[12] The third reading is a variation on the second, which picks out a particular subset of cases. On that account, someone is subjected to a body of laws if and only if that body of laws affects him in a way that counts as 'coercive' (Abizadeh 2008; 2012; Miller 2009; 2010).[13]

The second reading is unsatisfactory, because on that reading the All Subjected Principle basically collapses into the All Affected Principle to which it was supposed to be providing an alternative. The All Subjected Principle thus construed would be liable to all the same 'over-inclusiveness'

[8] The first *Oxford English Dictionary* definition of the verb 'to subject' reads: 'To make subject or bring into subjection to the rule, government, power, or service of a superior'. This reading also fits with notions of the sovereign's 'imperative' power, which the *Oxford English Dictionary* defines as 'demanding obedience, execution, action, etc.; that must be done or performed; urgent; of the nature of a duty; obligatory'.

[9] Rawls' principle of equal participation is phrased in this way: 'all citizens are to have an equal right to take part in, and to determine the outcome of, the … process that establishes the laws with which they are to comply' (1971, 221). See further López-Guerra (2005).

[10] '[D]emocratic boundaries should correspond to jurisdictional scope' is how Beckman (2009, 74) characterizes what he (confusingly) labels 'the legal conception of the all affected principle' (confusingly, because it is better seen as a subspecies of the All Subjected Principle – which is itself an alternative to, not a subspecies of, the All Affected Principle). In later work Beckman (2014, 257) more aptly characterizes this model as one according to which being '"bound by the law" refers to anyone to whom the law ascribes legal duties'.

[11] Which reads: 'To lay open or expose to the incidence, occurrence, or infliction of something'.

[12] Bentham (1786) was famously of this view: 'An individual can be subject to a sovereign no farther than the physical power which that sovereign has of hurting him, or his *afflictive power* as it may be called, extends'. In cognate debates on distributive justice, Rawls (1971, 96, 2001, 10, 52–57) sometimes talks similarly of society's basic structure as having a 'pervasive impact' on people's lives, which is what he thinks makes it the proper focus for a theory of justice.

[13] This is to apply to the franchise a line previously developed to settle the scope of distributive justice (Blake 2001; Nagel 2005; Abizadeh 2007). The canonical formulation of this scope condition is 'individuals who share liability to the coercive network of state governance' (Blake 2001, 285).

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concerns that its advocates have with the All Affected Principle (giving all Iraqis a vote in the US presidential election, and so on).[14]

It would also be under-inclusive, from the point of view of a plain reading of the law. Someone living in Nevada is surely legally *subject* to the gun registration laws of that state, even if she has no gun to register. The law may in that case have no material consequences for her, but the law still *applies* to her. Every resident of Nevada (of which she is one) is legally obliged to register a gun if they have one.[15] That she needs to do nothing to satisfy the demands of the law does not mean it is not binding on her.

To switch examples: it would be patently absurd to suppose that the law against murder comes to apply to a person only at the moment she actually commits murder. She was subject to the law against murder every bit as much before she committed the murder as afterwards. In determining to what laws one is subject, the issue is not the laws under which one actually is prosecuted, but rather under what laws one legally could be prosecuted. Of course, in any well-functioning society only a very small proportion of the population is ever actually prosecuted for any breach of law. It would be clearly mistaken, however, to suppose that those are the only people who are actually *subject* to the laws of that state.

Consider now the third reading of what it is to be 'subjected' to a law. Whether that third reading fares any better depends on how we understand 'coercive'. On the most natural reading, Iraqis were certainly subject to the coercive power of the United States when the United States invaded Iraq. Furthermore, that invasion was conducted *under the color of US law*.[16] So in that sense, Iraqis surely were subject to the *coercive power* of the United States and its laws. And if the All Subjected Principle is understood as

[14] When I here talk about the complaint that a principle for constituting the *demos* is 'over-inclusive' or excessively 'expansionary', what I shall mean – following those who criticize the All Affected Principle on those grounds – is that the principle under criticism would extend the franchise far beyond its conventional bounds. Obviously, as a cosmopolitan I do not share their view that constitutes a criticism, which is why I systematically put the terms in scare quotes.

[15] Importantly, formulated that way rather than as 'if a resident of Nevada has a gun, then that resident is obliged to register it'. The latter phrase would imply that the resident is under a legal duty at all only if she has a gun; the formulation in the main text is the correct one, implying as it does that the resident is under the same legal duty whether or not she has a gun. Note that the third ('all legally coerced') version of the All Subjected Principle needs to be read in a similarly conditional way as well. There is nothing forced or unnatural about such a reading, however; a threat that the state will do X if an individual does Y, where X is bad for that individual, can obviously count as coercive.

[16] Among other things, it was authorized by Congress under the 'Authorization for Use of Military Force Against Iraq Resolution of 2002' P.L. 107-243, enacted 16 October 2002.

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'subject to coercive power', then all Iraqis should be thereby entitled to a vote in US elections.[17] On that reading of 'coercive', the All Subjected Principle would have the same expansionary implications that its advocates were hoping to avoid.

There is, however, another reading – preferred by some advocates of the All Subjected Principle – that focuses on 'coercive authority' rather than 'coercive power'.[18] While Iraqis certainly were subject to the coercive *power* of the United States and its laws when the United States invaded Iraq, they were not subject to the coercive *authority* of US law. US laws 'imposed no legal obligations' on them. The invasion was an exercise of force, pure, and simple.

But if that is what 'being subject to the law' means – 'having obligations imposed on you by the law' – then the third ('coercion as coercive authority') reading of 'subjected' collapses back into the first. It would then be the juridical fact of to whom the law applies, rather than[19] its coercive effects, that makes someone subject to a state's law.

[17] On this first version of the third reading, the All Subjected Principle would extend the franchise well beyond conventional bounds in a similar fashion as the All Affected Principle, albeit not necessarily to the very same people.

[18] Indeed, Miller (2010, cf. 2009, 221) claims that (*pace* Abizadeh 2008, 2010) forcibly preventing people from entering the country is not coercing them at all in such circumstances. Abizadeh insists, however, that 'Although political [entities] may … refrain from imposing legal obligations on outsiders, they nevertheless subject them to coercion' (2012, 878, n. 25).

[19] Or perhaps 'in addition to'. Such a conjunctive version is Beckman's (2014, 257) understanding of being 'bound by the law' as referring to 'anyone subject to the institutions enforcing the law'. But then the under-inclusiveness problem re-arises. If the state's law applies to someone, without being backed by coercive power, then on this 'conjunction' interpretation the person would not be subject to that state's law. Hardcore legal realists may say that a law that is not enforced is not law; but virtually everyone else would see those as two wholly separate questions, and would suppose that an unenforced law is still a law that applies (however, ineffectually) to those to whom the law itself claims to apply (Owen 2012, 145–46). It would be absurd to say that I am not subject to the law, and should therefore not have say in making it, simply because the police virtually never appear in my village. Nor is it just a question of what it means to be subject to the law. Normatively, having a legitimate claim to make someone subject to a law entails having a legitimate claim to enforce that law on those subject to it (Hart 1961, 20–22; Lamond 2001); and on any plausible understanding of the All Subjected Principle, those on whom laws can legitimately be enforced ought to have a say in the making of those laws. Yet another alternative would be a 'disjunctive' version, such that one is subject to the law of a state either if the law purports to impose legal obligations on that person or if that person is subject to the coercive power of that law. This may be Abizadeh's position: he writes that 'for persons to be subject to political power it is not necessary that they be placed under any legal obligations to comply; … it is sufficient that the state subject them to coercion …' (2012, 878). (Note that he says 'sufficient' rather than 'necessary and sufficient', thus opening the possibility of this interpretation.) But if the relation is supposed to be disjunctive, then the objections raised against both the second and earlier versions of the third readings obviously apply.

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Thus, the more formal, juridical reading of 'subjected' seems to offer the best rendering of the All Subjected Principle. Certainly it does, anyway, if the All Subjected Principle is going to provide a genuine alternative to the expansiveness of the All Affected Principle. That is therefore the version of the principle upon which I shall concentrate in the rest of this article.

For the same reason, I shall suppose that the All Subjected Principle should be read, narrowly, as enfranchising only all those who are *actually* subjected to the laws. A case could be made for thinking that the All Subjected Principle should be understood as arguing for the enfranchisement everyone who might *potentially* be subjected to the laws.[20] That reading of the All Subjected Principle would automatically have highly expansionary implications for the franchise – anyone who might potentially move to Nevada would be potentially subject to the gun laws of Nevada and should therefore have a say in making those laws, wherever they currently reside. For purposes of this article, however, I shall not avail myself of that cheap victory. Instead I shall assume, more charitably, that advocates of the All Subjected Principle can find some way to vindicate the narrower ('actually subjected') rather than more expansionary ('potentially subjected') way of interpreting their preferred principle.

Over whose conduct do states claim jurisdiction?

On the All Subjected Principle juridically understood, the question of who is subject to a state's laws – and hence who should be entitled to a say in making them – reduces to the simple question of *to whom* 'a demos decides to apply its laws' (Miller 2009, 222).[21]

In contemporary political practice, every state applies its laws to people on its own territory.[22] Most states apply at least some of their laws to their

[20] As, it has been argued, the All Affected Principle should extend to 'all who are potentially affected' (Goodin 2007) – although the arguments for doing so in the case of 'those subjected' rather than 'affected' would obviously be different. For a brief discussion of this option see Arrhenius (Forthcoming, sec. III).

[21] Strictly speaking, that should read 'to whom the laws would apply' (which on this account tells us whom should constitute the *demos*, rather than there being some pre-existing *demos* with any legitimacy antecedent to that).

[22] At least they purport to do so – that is, they claim their laws apply to everyone on their territory, however effective they may be at actually enforcing that claim. But recall that, in determining who is subject to the laws, it is the jurisdictional claim rather than the actual enforcement that matters. Furthermore, notice that states apply their laws to anyone on their territory, whether as citizens or resident aliens or temporary visitors, as Miller (2009, 222) goes on to note. But at least in the latter case, he does not think that involves coercion sufficient to merit a vote, because temporary visitors (and perhaps resident aliens by the same token) consented to that upon entering the country.

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own citizens wherever they are in the world. But states do not always (or even typically) stop at that. Their jurisdictional claims often extend beyond those first two, in various ways that render non-resident non-nationals subject to their laws – and hence (on the All Subjected Principle, juridically understood) entitled to a vote in making those laws.[23]

A US Congressional Research Service commentator remarks that, while 'a surprising number of federal criminal statutes have extraterritorial applications', in practice 'prosecutions have been few …'.[24] That is true. But remember, what is crucial on that juridical reading of the All Subjected Principle is purely to whom the state *claims* its laws apply. The issue is not who is actually hauled into that country's courts.[25] Rather, it is who *could be*, given the jurisdictional claims made by that state.[26]

In practice, of course, a country claiming extraterritorial jurisdiction for some particular criminal offence will often defer to the jurisdictional claims of the country on whose territory the offence was committed.[27]

[23] The still-canonical 1935 text codifying state practice in claiming jurisdiction with respect to crime lists 'five general principles on which a more or less extensive penal jurisdiction is claimed by States …': 'first, the territorial principle, determining jurisdiction by reference to the place where the offence is committed; second, the nationality principle, determining jurisdiction by reference to the nationality or national character of the person committing the offence; third, the protective principle, determining jurisdiction by reference to the national interest injured by the offence; fourth, the universality principle, determining jurisdiction by reference to the custody of the person committing the offence; and fifth, the passive personality principle, determining jurisdiction by reference to the nationality or national character of the person injured by the offence'. The authors go on to say, 'Of these five principles, the first is everywhere regarded as of primary importance and of fundamental character. The second is universally accepted, though there are striking differences in the extent to which it is used in the different national systems. The third is claimed by most States, regarded with misgivings in a few, and generally ranked as the basis of an auxiliary competence. The fourth is widely though by no means universally accepted as the basis of an auxiliary competence, except for the offence of piracy, with respect to which it is the generally recognized principle of jurisdiction. The fifth, asserted in some form by a considerable number of States and contested by others, is admittedly auxiliary in character and is probably not essential for any state if the ends served are adequately provided by on other principles' (Dickinson 1935, 445; Doyle 2010, 11; Kamminga 2012).

[24] '[B]ecause practical and legal complications, and sometimes diplomatic considerations … counsel against its exercise', as the US Congressional Research Service commentator (Doyle 2012, 1) continues.

[25] In practice, extraterritorial 'prosecutions are relatively few … because of the practical, legal and diplomatic obstacles that … attend such an endeavor' (Doyle 2012, 39).

[26] The claim in question is 'jurisdiction to prescribe, i.e., to make its law applicable to the activities, relations, or status of persons …', rather than necessarily 'jurisdiction to adjudicate' or 'jurisdiction to enforce' (ALI 1986, §401).

[27] And rightly so: under the so-called 'rule of reasonableness', where multiple states claim jurisdiction over the same case, other states ought stand back and permit the state with the strongest interest in the case hear it in that state's courts (ALI 1986, §403).

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Pragmatically, even if a state claims extraterritorial jurisdiction, it may find it difficult or impossible to extradite or otherwise seize the offender in order to try him in its own courts.[28] In consequence, the putative offender might not, in practice, be much affected by the laws of some state not his own claiming extraterritorial jurisdiction over his conduct.[29]

As a juridical fact of the matter, however, he is still subject to them. And as the previous section has shown, the juridical reading of the All Subjected Principle is the most credible one. Certainly, anyway, it is only one that holds any hope (albeit this article will argue, a forlorn hope) of making the All Subjected Principle substantially less expansive than the All Affected Principle, in terms of its implications for the franchise.

Protecting nationals abroad

Here is one classic way in which non-resident non-nationals might be subjected to the laws of some state not their own. Nozick (1974, pt I) taught us to think of the state as a 'protection agency'. One thing a state would naturally do in that capacity is to claim the right to protect its nationals and to punish anyone who harms them anywhere in the world. The classic way a state protects its citizens is by enacting and enforcing laws against harming them; and if it is to protect its citizens when they are abroad in that way, the state's laws must apply to the harmful conduct of others (whatever their nationality) outside its own territory.[30]

Claiming jurisdiction on that basis is referred to by international lawyers as the 'passive personality' principle (Dickinson 1935; Chehtman 2010, 67–70; Kamminga 2012). Not all states claim jurisdiction under that heading, and many other states refuse to recognize such claims when made.[31] Nonetheless, a great many states of the world have claimed

[28] For these reasons, statutes claiming extraterritorial jurisdiction are often phrased in terms of 'if he ever alights on our soil, a non-national who has committed this offence elsewhere will be answerable in our courts for this crime'. For examples, see 18 US Code §1203(b)(1)(B) and §2239B(d)(1)(C).

[29] 'Not much', because of course the extraterritorial criminalization of his conduct by some state means that he had better not travel to or through that state if he wants to avoid prosecution there.

[30] If only as a deterrent (Chehtman 2010, 70).

[31] The authors of the 1935 'Draft Convention on Jurisdiction with Respect to Crime' declined to include the 'passive personality' principle in their Draft Convention precisely because there is no general consensus on it (Dickinson 1935, 578–80). Note that Article 10(d) did specify that: 'A State has jurisdiction with respect to any crime committed outside its territory by an alien … when committed in a place not subject to the authority of *any* State, if the crime was committed to the injury of the State assuming jurisdiction or of one of its nationals, or of a corporation or juristic person having its national character' (Dickinson 1935, 573, emphasis added).

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jurisdiction under that heading. Foremost among current exemplars is France.[32] But at one time or another the list has included some two dozen states,[33] conspicuously among them Japan,[34] Turkey,[35] Mexico,[36] Peru,[37] and Uruguay.[38]

Of course, multiple states might claim jurisdiction over the same conduct, one based on the 'territoriality principle' ('it was done on our territory') and others based on the 'passive personality principle' ('it was done to one of our nationals'). In such cases, international law requires them to engage in a good faith balancing to determine which state has a greater interest in regulating the conduct (American Law Institute (ALI) 1986, §403). In any case, if only for purely practical reasons, even states claiming a right to prosecute non-nationals for harm to their own nationals abroad will typically try to work with and through the local authorities in doing so.

Nonetheless, *in extremis* states do assert the right to act unilaterally, even on some other state's territory, to protect their nationals against harm.[39] Think, for example, of the 1976 Israeli raid to free Israelis being held hostage by Popular Front for the Liberation of Palestine operatives in the Entebbe airport. States also often claim jurisdiction to prosecute and to punish non-nationals in other jurisdictions harming their own nationals. Think, for example, of Israel's kidnapping of Adolf Eichmann in Argentina

[32] Under article 113-7 of the French *Code pénal*, 'The French criminal law is applicable to any felony, and any offense punishable by imprisonment, committed by a French national or a foreigner outside the territory of the Republic when the victim is of French nationality at the time of the offense'.

[33] Dickinson (1935, 578) lists: Albania, Brazil, China, Cuba, Czechoslovakia, Finland, Greece, Guatemala, Italy, Japan, Latvia, Lithuania, Mexico, Monaco, Peru, Poland, Rumania, Russia, San Marino, Sweden, Switzerland, Turkey, Uruguay, Venezuela, and Yugoslavia.

[34] *Keiho (Penal Code)*, Law No. 45 of 1907, art. 3, provides that its 'law also applies to foreigners who have committed offenses … against Japanese subjects outside the Empire'. See Dickinson (1935, 578).

[35] *Ceza Hukuku*, art. 6 (1926), provides: 'Any foreigner who … commits an offence abroad to the prejudice … of a Turkish subject …, shall be punished in accordance with the Turkish Penal Code'. See McCarthy (1989, 303, n. 23).

[36] *Codigo Penal Para El Distrito Federal,* art. 186 (1886), declares that 'Penal offenses committed in a foreign country … by a foreigner against Mexicans, may be punished in the Republic and according to its laws'. See McCarthy (1989, 302, n. 16).

[37] *Codigo Penal*, art. 5 (1924), provides: 'Offences committed outside the territory of the Republic shall be punished [when the] … [o]ffences [are] … committed by an alien against a national'. See McCarthy (1989, 303, n. 23).

[38] *Codigo Penal*, art. 7 (1889), gives its courts jurisdiction over 'offenses committed in foreign territory by an alien, to the injury of a citizen'. See Dickinson (1935, 578).

[39] Under Article 51 ('self-defence') of the UN Charter, or under 'self-help' principles of customary international law (Boyle 1982).

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and smuggling him to Jerusalem to stand trial for crimes committed against Jews in what was at the time German territory.[40]

For present purposes, it is the latter claim – the claim to subject non-nationals abroad to their law, rather than to the force of their arms – that is of interest. Such a jurisdictional claim makes anyone who threatens harm to the citizens of a state subject to the laws (at least *that* law) of that state, wherever they are in the world and whatever their own nationality. Furthermore, non-nationals are subject to those laws not only when they are actively harming or threatening harm that country's nationals. Recall the Nevada gun law example once again: a law can apply to you with respect of something (there, owning a gun) that you have not yet done and indeed may have no intention of ever doing.

The upshot is that anyone who could ever intentionally harm or threaten to harm the nationals of a state such as France that claims jurisdiction under that 'passive personality principle' is, here and now, strictly speaking subject to the laws of that state. Logically speaking, that includes everyone in the world who might come into contact with a French national – which is pretty much everyone in the world. So everyone worldwide is subject to the laws of France – and thus should (on the All Subjected Principle, juridically understood) be entitled to a vote in France. And the same is true of every other state in the world that claims the right to protect its citizens overseas against harms criminally inflicted on them by anyone anywhere in the world.

Protecting national security

Not every state claims the right to protect its nationals against criminal harms abroad. But virtually all states claim the right to legislate to protect their own national security from harms emanating from abroad, whether from activities of their own nationals or of foreigners. International lawyers call this the 'protective principle' of jurisdiction.[41] Classically included

[40] Baade 1961. Note that under US law illegalities in the extradition process do not constitute a barrier to prosecution in US courts. The case in point is *Ker v. Illinois*, 119 US 436 (1886), in which the accused was kidnapped in Peru and brought to trial in the United States. The Supreme Court held that 'forcible abduction [abroad] is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense, and presents no valid objection to his trial in such court' (at 444).

[41] A representative text is found in the *Restatement (Third) of the Foreign Relations Law of the United States*: 'a state has jurisdiction to prescribe with respect to … (3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests' (ALI 1986, §402). See more generally Chehtman (2010, 70–75).

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among the state interests protected in this way against harmful extra-territorial conduct are 'selling state secrets, spying or the counterfeiting of its currency or official seal' (Stigall 2012, 334).

This sort of jurisdictional claim has acquired great prominence, of late, in connection with the so-called 'war on terror'. Beginning in the mid-1990s and expanded by the USA PATRIOT Act in the wake of 9/11, US law, for example, makes it a crime for anyone to provide 'material support' to terrorists (Doyle 2010). Congress explicitly added, 'there is extraterritorial Federal jurisdiction over an offense under this [legislation]'.[42] Any person or entity, foreign or domestic, can be prosecuted under this statute for providing material support anywhere in the world to any organization that appears on the US government's list of 'terrorist organizations'.

The scope of this law is wide. It extends to 'property, tangible or intangible …, lodging, training, expert advice …, communications equipment, facilities, …, personnel …, and transportation …'.[43] To see just how wide the reach of this law is, consider the case in which the US Supreme Court upheld this statute. That involved an organization called the Humanitarian Law Project 'train[ing] members of [a listed terrorist organization] on how to use humanitarian and international law to peacefully resolve disputes'.[44]

An *amicus* brief filed on behalf of several conflict resolution organizations, including the Brussels-based International Crisis Group, pointed out that impartial mediators providing expert advice on how to end a conflict would be violating that statute, were one of the conflicting parties on (or subsequently added to) the US government's list of terrorist organizations (Goodman 2010). Likewise with organizations like Paris-based Médecins sans Frontiéres/Doctors Without Borders providing medical assistance in conflict zones: international humanitarian law requires them to be neutral in the conflict, so they treat impartially casualties of the conflict, some of whom often are members of listed terrorist organizations; and while the medicines they supply are explicitly exempt, transportation (e.g. in their ambulances) and lodging (e.g. in their hospitals) are definitely included in the material support that the US statute prohibits (Goodman 2010, 25–28; Lepora and Goodin 2013, 119–21).

The threat of prosecution under this statute has had a considerable chilling effect on humanitarian organizations assisting populations in need. During the famine in al-Shabaab controlled areas of Somalia in 2011, the US State Department held a press conference announcing that no aid

[42] 18 US Code §2339(B)(d)(2).

[43] 18 US Code §2339(A)(b)(1).

[44] *Holder v. International Law Project*, 130 S. Ct. 2705 at 2736-7 (2010).

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organization would be prosecuted for good faith famine relief efforts, even if under the strict letter of the law it might be construed as 'providing material assistance to terrorists'.[45] But that was a one-off guarantee applying to that specific crisis alone (Adelsberg, Pitts and Shebaya 2013).

Those examples involve organizations, foreign as well as domestic, that might be in contravention of extraterritorial provisions of US law and be sanctioned accordingly (primarily, in practice, by having their assets in the US frozen (Bush 2001)). But consider next the wide range of foreign individuals who might be subject to similar provisions of US law. Another provision in the same section of the *US Code* stipulates: 'Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or is about to commit, an offense under [related antiterrorism sections of the *US Code*] … shall be fined under this title or imprisoned not more than ten years, or both'.[46]

So when Osama bin Laden's driver Salim Ahmed Hamdan went home to Yemen for a family wedding, his family became liable under this clause for prosecution under US law by virtue of the hospitality (food and shelter) they provided to him while he was there (Lepora and Goodin 2013, 119–21). So too would anyone who serves a meal or rents a room or a car to anyone who US courts judge they had 'reasonable grounds to believe has committed or is about to commit a [terrorist] offense'. There are some places in the world where people often inevitably and unavoidably interact, to mutual advantage, with many other people who meet that description. All those people going about their ordinary affairs in those places would therefore be subject to US laws prohibiting anyone anywhere from providing 'material assistance' to terrorists.

On the All Subjected Principle, juridically understood, everyone who is subject to US laws in that way ought to have a vote in the making of those laws. The implication would be that we should, under that principle,

[45] The key exchange at that press conference was the following: 'MARY BETH SHERIDAN (WASHINGTON POST): [I]f you're an aid organization, [what]… you're going to want to really know that if you have to pay a toll to al-Shabaab to get food to starving people, you're not going to be brought up on charges. … [M]y impression is that … we're talking about expanded licenses to aid groups that will actually allow them to do more things, and it's not just …, "Oh, don't worry, we don't want to prosecute you," but in fact, they'll be allowed to do things they were not … under the rules before were … permitted to do, such as use U.S. funding for transportation. Am I understanding that correctly, or am I wrong there? SENIOR ADMINISTRATION OFFICAL TWO: Mary-Beth, you are exactly right …' (US State Department 2011).

[46] 18 US Code §2339. Doyle (2010, 21) remarks that, while this section 'has neither a general nor a descriptive statement of extraterritorial jurisdiction[, n]evertheless, it seems likely that the courts would find its provisions applicable overseas for any of several reasons' which he goes on to list.

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enfranchise in US elections everyone in the world who lives in anywhere that terrorists are rife and interacting with them to mutual advantage is unavoidable. Everyone in Waziristan, for example, should under that principle get a vote for those who make (or could repeal) that US law.[47] I doubt that that is an outcome that would be greeted with glee by those who had turned to the All Subjected Principle as a way of avoiding the expansionary implications of the All Affected Principle.

Preventing crimes of universal concern

There are also certain crimes that are regarded under international law as 'crimes of universal concern'. Any state has jurisdiction to prosecute those crimes, if the offender is found on its territory.[48] International lawyers call this the 'universality principle' of jurisdiction.

Under that heading, 'A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern …' (ALI 1986, §404). Until relatively recently, the only offense generally recognized under that heading was piracy.[49] Latterly, however, the list has been expanded to include 'slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism …' (ALI 1986, §404).[50]

Not only do states have a right under international law to 'prescribe punishment' for such crimes against such crimes against humanity. They also have a right (a right that a great many states act upon) to '*define*' those offences,

[47] Anyway, all those who have not themselves committed a felony, if 'felon disenfranchisement' is morally permissible (on which I take no stand for present purposes). Note this complication: under the US Constitution electoral law is the province of the states, and there is federal no electoral register independent of the various state electoral rolls. So when I say that the All Subjected Principle implies that some non-resident non-national ought to have a vote in making the US federal laws to which s/he is subject, that is to say either that there ought either be some way for assigning them (randomly perhaps) to state electoral rolls or that there ought to be created some new federal electoral roll and some way for those voters securing fair representation in US elections.

[48] Statutes in Spain and Belgium creating universal jurisdiction over such offences have now been limited to apply only to those on the national territory (Molto 2012; Song 2015, n. 7). Whether offenders are extraditable for such offences just depends on the details of the extradition treaty between the two states in question (Doyle 2012, 29–32).

[49] That was the only offense specified in this connection in the *Restatement (Second) of the Foreign Relations Law of the United States*, §34, published in 1965. The standard account explains this expansion in terms of the heinous nature of the crimes involved (Song 2015); but that was not the way piracy was originally regarded (Kontorovich 2004) and a better explanation is probably 'enforcement gap-filling' (Song 2015).

[50] For a list of 'Federal criminal laws which enjoy express extraterritorial application' see Doyle (2012, 39–63).

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that is, incorporate those offences in their domestic law and give those domestic enactments extraterritorial application. When a state does so, everyone everywhere in the world becomes juridically subject to that state's legislation.

On the All Subjected Principle, juridically understood (as I have argued it must be understood), everyone subject to a state's law should have a vote in the making of that law. By that standard, the fact that everyone in the world is subject to any state's law against hijacking aircraft, for example, means that everyone in the world should have a vote in every state making such a law. Everyone everywhere in the world is strictly subject to those laws, even if they have no intention of actually boarding, much less hijacking, an airplane – and remember, it is the juridicial fact of being subject to the law, and that alone, that triggers the right to a vote under the All Subjected Principle, juridically understood.

Preventing certain specific offences

Finally, there is a raft of particular crimes for which states claim extraterritorial jurisdiction because those offences are 'such that to limit their [prosecution] to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute'.[51] Among the offences for which extraterritorial jurisdiction is claimed on that basis are cybercrime, antitrust activities,[52] other financial conspiracies, bribery, and drug trafficking (Zerk 2010).

An effort is typically made to establish some sort of connection to the state claiming jurisdictional authority to outlaw the activity.[53] There clearly is such a connection if one of the state's citizens committed the crime, or if the state or one of its citizens was (or would have been) the victim of it. The *Bowman* case, from which the above quotation is drawn, involved a conspiracy to defraud the US government; and that fact was deemed sufficient to make the conduct properly subject US legislation, even though the overt act consummating the crime in that case was a telegram sent from a vessel on the high seas.[54] 'A state has jurisdiction … with respect to … conduct outside its territory that has *or is intended to have* substantial effect within its territory' (ALI 1986, §402(1)(b), emphasis added). And on that basis, would-be drug traffickers intending to sell

[51] Chief Justice William Howard Taft, *United States v. Bowman*, 260 US 94 (1922), at 98.

[52] For criminal if not civil prosecutions (Anonymous 2011, 1269–80).

[53] *United States v. Davis*, 905 F.2d 245 (9th Cir. 1990), at 247-8, set this as the standard: 'In order to apply extraterritorially a federal criminal statute to a defendant consistently with due process, there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair'. See further Stigall (2012).

[54] *United States v. Bowman*, 260 US 94 (1922).

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their wares in the United States have been apprehended even before they reached the United States and prosecuted there.[55]

Any connection between the offender and the state claiming jurisdiction to outlaw his conduct can sometimes be pretty tenuous, however. The Oxley–Sarbanes Act's requirements, for example, apply to any private foreign issuer of securities traded on US markets.[56] Other US statutes claim jurisdiction over non-nationals acting abroad on grounds that their actions 'affect interstate or foreign commerce' of the US.[57] (That is an awfully wide catchment.) Yet, other US statutes, such as those against destruction of aircraft or violence at international airports, apply to a person – whether or not a US national, and whether or not the offence occurred on US territory – merely if 'the offender is afterwards found in the United States'.[58]

Everyone everywhere in the world is subject to those laws. And they are subject to them, in the juridical sense that matters, whether or not they actually violate them. It is enough that those laws apply to them – that they *could* be prosecuted under those laws, were they to violate them (recall again the Nevada gun registration case). And on the All Subjected Principle, juridically understood, anyone subject to a law in that way should have a say in the making of that law.

So, for example, anyone anywhere in the world who *might* destroy an airplane or defraud the US Government or do something affecting US interstate or foreign commerce should have a vote in the making of US laws constituting those offences. Since the test is a counterfactual one ('are they subject to prosecution under that US law if they engage in the conduct criminalized by it?'), just about everyone in the world falls into that category. It is perfectly possible for just about anyone in the world to commit one of those acts.

Two failed evasions

Next let us consider two ways in which advocates of a narrowly restricted franchise might strive to avoid these expansive implications of the

[55] For example, in the case of *United States v. Davis*, 905 F.2d 245 (9th Cir. 1990), at 248-9, a 'sufficient nexus between the defendant and the United States' for the Maritime Drug Law Enforcement Act to apply in the case of drugs seized on a foreign-flagged vessel on the high seas, merely because the drugs were intended for sale within the United States; see further Stigall (2012, 348–50).

[56] Corporate and Criminal Fraud Accountability Act of 2002, Pub. L. 107-204, 116 Stat 745 (20 July 2002). There is widespread criticism in France of this 'jurisdictional overreach' (Carfritz and Tene 2003).

[57] Such as the US law regulating the handling of the smallpox virus, even by non-nationals outside the United States;18 USC 175c.

[58] 18 USC 32, 37.

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All Subjected Principle, deriving from currently common (and in many, if not all cases, eminently defensible) state practices. One points to the possibility of using treaties to incorporate foreign jurisdictions' laws within your own. A second reinterprets the All Subjected Principle to demand enfranchisement only of those who are subject to some sufficiently large proportion of a state's laws. Neither evasion fully works, as I shall now show.

Treaties might incorporate other states' laws

One way of avoiding extraterritorial application of their laws is for states to sign treaties (or agree on a one-off basis) to permit the laws of one state to be applied on the territory of another (Chehtman 2010, 75). For policies whose effective implementation requires transnational cooperation, states often do precisely that. Insofar they do, it is ultimately one's own state's decisions (in acceding to the treaty or agreeing to the foreign prosecution) to which a person is being subjected when being prosecuted by a foreign state.[59]

While states enter into such treaties or agreements wherever they can, it is not always possible. Some states – typically, those home to the behaviors we would most like to control in this way – are unwilling to enter into such agreements or unable to enforce them effectively within their territories. And even if the other state enters into such an agreement, it doing so resolves the democratic legitimacy problem here in view only if that state is itself a democratic regime – which, once again, the sorts of states of most concern in this regard often are not.

Where securing treaties or one-off agreements with other states is not possible, states with interests of the sorts just canvassed will often (and often not unreasonably) respond by writing extraterritorial provisions into their own domestic law. In so doing, they make unilateral claims that their laws on these matters apply to everyone everywhere in the world.

Not subject to too many

When asking whether under the All Subjected Principle outsiders should be entitled to a say in making the laws on the same basis as insiders, Miller readily concedes that '[t]hey would be, of course, if a *demos* decides to apply its laws, *or a significant proportion of them*, to outsiders'

[59] Contrary to Beckman (2014, 263), it is not that one is being subject to valid international law: it is instead that one is being subject to the decisions of one's own state in acceding to the treaty or the one-off agreement.

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(Miller 2009, 222, emphasis added).[60] Might that 'significant proportion' rider provide an easy avenue of escape from the conclusions outlined above? Can states excuse themselves from giving a vote to non-resident non-nationals whom they subject to some of their laws, merely on grounds that they do not subject them to *all that many* of their laws?[61]

Now, as I have been phrasing it throughout, the All Subjected Principle should properly be understood as requiring that anyone who is juridically subject to a law should be given a say in making *that* law. If only a few of any given state's laws apply to non-resident non-nationals, then those people should only have a say over a few of that state's laws. But on the All Subjected Principle, they should surely have a say in the making of such laws – be they many or few – to which they would be subject.

Were enfranchisement an all-or-nothing affair – such that a person either has to have a vote in the making of every law of a state or in the making of none of them – matters might be otherwise. Then the fact that a person ought to be entitled to a vote on only a few of a state's laws might constitute an argument (in that all-or-nothing setting) for depriving him of a vote on any of them.[62] But there is no reason to think that enfranchisement needs to be an all-or-nothing matter. It is perfectly possible (even if undeniably more cumbersome) for some people to be given a right to vote on some things but not others.[63]

It would not be insurmountably difficult to establish twin electorates, one for making laws that apply extraterritorially and other for making laws that do not. In a direct democracy, for example, you could simply maintain two separate electoral registers. One register would contain the names of all nationals (and resident aliens, the All Subjected Principle would insist). The other register would contain the names of everyone else in the world. People

[60] Abizadeh (2012, 345 ff.) talks similarly of 'ongoing state coercion', in a way that embraces 'wide scope' as well as 'long duration'.

[61] Note in passing that it should not be a matter simply of *how many* or *what proportion* of a polity's laws to which a person is subject, but instead how grave are those laws' possible consequences for him. The sorts of laws to which people are extraterritorially subjected typically carry heavy consequences – heavy fines, long prison sentences, perhaps even the death in some jurisdictions. So even if they are relatively few, the gravity of those laws may well put people extraterritorially subject to them over that threshold.

[62] Christiano (2006, 81) argues against global democracy, for example, saying 'one foundational element of the justification of democracy is missing in transnational and global contexts: the requirement that people have a roughly equal stake in the groups in which they have an equal say'.

[63] In half of the states in the US, citizens living abroad are allowed to vote for federal but not state or local officials, for example. See http://travel.state.gov/content/passports/english/abroad/legal-matters/benefits/voting.html#VotingEligibility.

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on both registers would be entitled to vote on any referendum to enact legislation to which everyone everywhere would be subject. People on the former register, and they alone, would be entitled to vote on any referendum to enact legislation to which only nationals and resident aliens would be subject.[64]

Something similar could be done within a system of representative democracy. There, the idea would be for some representatives to be chosen by nationals and resident aliens, and some other representatives to be chosen by everyone else in the world. The first set of representatives, and they alone, get to vote on those laws to which only nationals and resident aliens would be subject. But both sets of representatives would get to vote on those laws to which everyone everywhere in the world would be subject.

Conclusion

As has been shown, a great many states extend some of their most significant laws to cover non-nationals on foreign soil. On the All Subjected Principle, understood in the juridical way in which I have argued that it must be understood, those states must give a vote in the making of such laws to all foreigners abroad who would be subject to them.

Anti-cosmopolitans will be aghast. They had been hoping that the All Subjected Principle would imply a significantly less extensive franchise than the cosmopolitans' All Affected Principle. How might they respond? I see only four options:

1. Abandon hopes of a more restrictive franchise, and give a vote in all the state's elections to all non-resident non-nationals who are juridically subject to any laws of that state.
2. Abandon the practice of applying the state's laws to non-resident non-nationals.
3. Adopt a two-track method of making laws as sketched above, giving non-resident non-nationals a vote on laws to which they would be subject but not on those to which they would not be subject.
4. Reject the All Subjected Principle as the proper guide for constituting the *demos*.

For anti-cosmopolitans who embraced the All Subjected Principle precisely to avoid the expansive implications of the All Affected Principle, the

[64] And remember, the test so far as the All Subjected Principle is concerned is whether the law juridically applies to someone, not whether he is actually affected by it. Hence, the standard objections to the All Affected Principle, in terms of inconvenience of having different electoral registers for every issue that arises (Whelan 1983, 19), do not apply in this case.

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first is not an attractive option. Neither, however, is the second. No state, presumably, would be happy renouncing its right to prevent terrorist attacks originating abroad; and no state, presumably, would be any the happier renouncing its right to use its own criminal code to prevent such attacks, in whatever ways it can. Nor would many states be happy renouncing their powers to use their own criminal code to curb financial misconduct in the globalized economy, originating abroad but impacting at home.

Among the first three options, the third is presumably the least unappealing. Cumbersome although it would undeniably be to maintain and employ different electoral arrangements for making different sorts of laws, that is the least (and also the most) that the All Subjected Principle would require.[65]

Many would of course be loathe to give people who would commit terrorist acts a vote over their own laws on terrorism. Such people presumably find it all the more galling to be told that we should do so precisely because those people might find themselves in breach of those laws, committing terrorist acts. That, however, is exactly what the All Subjected Principle would require – and exactly why it would require it.[66] That is what it *means* to give people who will be subject to a state's laws a say in the making of those laws.

Someone who cannot abide that implication might be tempted by the fourth option, rejecting the All Subjected Principle *tout court*. But anyone who rejects both the All Subjected and All Affected Principles is left without any principled way of constituting the demos. That would create a void at the heart of democratic theory that would compromise every state's democratic credentials.[67] Concluding that 'there are simply no principles for judging whether anyone is unjustly excluded from citizenship' leads to 'absurdities' against which Dahl (1989, 122) rightly rails. That would indeed be an awfully big bullet for anti-cosmopolitans to bite.

[65] For those hoping that the changes to current practice will be only minimal, option 3 might be particularly appealing insofar as those in the second, expanded electorate merely use their votes to remove the extraterritorial provisions in the laws that entitle them to a vote on those laws in the first place. But there is no guarantee that that is the only way they will use their vote, of course.

[66] Combined with the fact that there is reasonable disagreement among them, which can only properly be adjudicated through a democratic vote, as to what should be seen as an illegal act of terrorism and what should be seen as a morally and hence legally acceptable response to an unjust situation (Waldron 1999).

[67] In Whelan's (1983, 41) words, 'Doubts may … arise concerning the validity of democratic procedures when it is considered that, however impeccable democratic decision-making may be within a given community, the outcomes are in a sense determined by the previous and inescapably undemocratic decisions that defined the community in the first place'.

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