International Theory (2014), 6:2, 224–254 © Cambridge University Press, 2014
doi:10.1017/S1752971914000037

Individual rights and the democratic boundary problem

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How should the geographic boundaries of democratic participation be set? This has been a notoriously difficult theoretical question, beset by paradoxes around determining democratic participants democratically. It also is seen as increasingly important in practical terms, amid deepening interdependence between states, immigration tensions, and suprastate regional integration. Numerous recent accounts have called for extending participation beyond the state. The case is generally made on intrinsic grounds: democracy demands it. Respect for individual autonomy is said to be violated when outsiders are deeply affected by decision processes, or subject to coercion from them, without being able to participate in them. Yet, familiar problems around restrictions on the autonomy of persistent democratic minorities remain in such accounts, and they could be magnified with expanded boundaries. An alternative approach is offered here, grounded in a rights-based instrumental justification for democracy. It sees participation as foundationally – though not solely – valuable as a means of promoting and protecting fundamental rights. It recommends extending participation boundaries to reinforce protections within regional and ultimately global institutions. Democratic participation would remain crucial at all levels, not principally as an expression of autonomy but to provide checks on power and promote accountability to individuals in multilevel polities.

Keywords: global democracy; boundary problem; democratic paradox; cosmopolitan; individual rights; all affected

> When it comes to the European Union, it's up to member states of the European Union to decide.
>
> –Nicolas Sarkozy, Prague, April 2009 (Vogel 2009)

https://doi.org/10.1017/S1752971914000037 Published online by Cambridge University Press

Introduction

The quotation here[1] from former French President Sarkozy highlights the continuing and, many would argue, increasing importance of democratic boundary problems. His claim was offered in response to a call by US President Barack Obama for Turkey's full accession to the European Union. Accession would mean the extension of formal EU citizenship to Turks, and voting and representation rights in the European Parliament, among other entitlements. Sarkozy's response expresses what could be called the 'common sense' view about how geographic[2] participation boundaries should be set. According to this view, those who already have the status of participatory insiders should be the ones to decide which outsiders will be admitted to that status. This obtains whether the would-be participants are citizens of an accession-candidate state in a regional integration project, prospective immigrants, or some other set of persons offering claims for inclusion.

Some democratic theorists have argued similarly that geographic participation boundaries simply should be accepted as found, in part given complications likely in extending them (see Schumpeter 1950, 243–45; Whelan 1983, 40–42; Dahl 1989, 119–31; Dworkin 2011, 382). Others have argued for preserving existing rights to exclude from participation on more positive grounds. These 'associative democracy' accounts (see Marchetti 2012, 27) focus on relations or virtues that are said to arise or be possible to promote only in the domestic democratic sphere (Christiano 2006b, 74; Ypi 2012, Ch. 6; see Song 2012). Numerous others, however, have sought in recent years to problematize the restriction of democracy to existing geographic boundaries. The most prominent or influential such accounts recommend participatory

[1] This article has had a long gestation, and I have incurred many debts in developing it. For thoughtful written comments, I thank Mathias Koenig-Archibugi, Laura Valentini, Katherine Tonkiss, Ashok Acharya, Christopher Finlay, Kirstie McClure, Jamie Mayerfeld, Jethro Butler, Richard North, and the editors and anonymous reviewers for this journal. I also received very useful feedback from audiences at the Workshop on Cosmopolitanism and Global Institutions, Radboud University, Nijmegen, the Netherlands; the Workshop on Global Political Justice, Monash University Prato Centre, Italy; the Ethics and Public Affairs Seminar of CIDE in Mexico City, seminars hosted by the political science departments of the universities of Delhi, Cardiff, Sheffield and Birmingham; and at the 2012 annual meeting of the International Studies Association in San Diego, California. Any errors remaining are my own.

[2] The focus in this article is on extending *territorial* political boundaries, primarily through embedding states in suprastate regions and regions in an evolving global institutional system. Other accounts would extend participation more selectively, for example, according to an individual or domestic group's stake in a specific trans-border issue (Macdonald 2008; see also Bohman 2007). Thus, the more encompassing term *geographic* boundaries is used here. I will note also that non-geographic participation boundaries or exclusions remain highly salient in various polities, including ones based in age, citizenship, gender, religion, mental capacities (see López-Guerra 2012).

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expansion, up to the global level, according to an intrinsic approach to democracy. In such an approach, democratic procedures are seen as intrinsically satisfying some significant moral requirement. In the two main 'global intrinsic' approaches to be considered here, the moral imperative is respect for individual autonomy. It is said to be shown inadequate respect:

a) when individuals are clearly *affected* by a collective decision but cannot participate in the decision process (Held 1995, 2004; see Linklater 1998; Archibugi 2008; Marchetti 2008a, 2008b, 2012; Cavallero 2009; Koenig-Archibugi 2012; see also Goodin 2007; Macdonald 2008; Agné 2010),
b) or when they are actually or potentially *subjected* to coercion arising from collective decisions in which they cannot participate (Abizadeh 2008, 2010, 2012; Fraser 2008, 64–67; see Smith 2008; Näsström 2011).

These will be called, respectively, the all affected and all subjected approaches to democratic boundary setting. Both focus on perceived mismatches between decision makers and decision takers, or restrictions of autonomy without accompanying participation rights. Both also see such mismatches as frequently occurring beyond state boundaries in the current system. Thus they advocate geographic participatory expansion.

I argue that outward is indeed the right direction for participation boundaries. The two predominant global intrinsic approaches, however, do not ultimately give us decisive reasons to expand participation. This is primarily because they cannot show that participation actually would enable autonomy for persistent democratic minorities. The problem of protections for such minorities – those who may perpetually find themselves on the losing side of majority decisions – is a familiar one in democratic theory, and it could in fact be magnified and multiplied were intrinsic approaches to guide democratic expansion beyond the state. Advocated here is an alternative, 'rights-based instrumental' approach to justifying democracy and ultimately setting geographic participation boundaries. Like the global intrinsic approaches, it would see some restrictions on democratic participation as objectionable. Unlike in those accounts, the objections would arise primarily from the crucial role such participation can play, along with closely related mechanisms of transparency, accountability and legal challenge, in ensuring the reliable protection of a more comprehensive set of individual rights for all persons in a polity.

Such protective considerations also should lead us to advocate boundary expansion. That is, because of biases and other inward-looking dynamics naturally reinforced by a sovereign states system, it is likely that the creation of broader supranational polities would be required to reinforce and ultimately ensure many of the requisite rights protections. Thus, the appropriate response to problems identified in the intrinsic global democracy

https://doi.org/10.1017/S1752971914000037 Published online by Cambridge University Press

approaches is not to recommend a retreat to state boundaries, but to pursue geographic participatory expansion as feasible in service of enhancing rights protections (pace Song 2012). In a case such as Turkey's, for example, full accession would be advocated as a means of strengthening rights protections, once the candidate state had, with appropriate assistance, achieved benchmarks for economic stability and the rule of law. The recommendation would not be simply to include Turks as participants in collective decision making about their own inclusion, as would be the case in some global intrinsic accounts (see Agné 2010). In the longer term and in the fully global context, the rights-based instrumental approach can inform a more appropriately rights-centered expansion of democratic political community, meaning one in which comprehensive rights are constitutionalized at a relatively high threshold, and where majority governing power at all levels is subject to a range of rights-based accountability challenges.

The argument is developed in three sections. The first section outlines the predominant global intrinsic approaches and details some challenges to them. The second section develops the rights-based instrumental approach, and the third deals with some possible objections to it. I offer reasons to think that the objections can be satisfactorily answered, and thus that a rights-based instrumental approach appropriately grounds democratic rule and informs the operation and geographic expansion of participation boundaries.

Intrinsic democratic expansion arguments

Democracy will be understood as comprising at minimum a process of collective decision making among persons who have formally equal standing to participate. I will focus on collective rule within formal political institutions, or 'institutionally established procedures that regulate competition for control over political authority' (Føllesdal 2011, 100). Thus, I do not consider accounts focused on participatory collective action by groups in international civil society, or on strengthening trans-state deliberation and publicity but not necessarily developing corresponding trans-state institutions (see Scholte 2012). Such accounts are significant, in particular for highlighting some further means of promoting accountability in the global system. The primary concern here, however, is with claims around formal participatory channels, including possible imperatives to create or further democratize institutions at the regional and global levels.

Within such an understanding of democratic rule, an intrinsic justification for it is one focused on some innate quality of democratic procedures which is seen as legitimating the decisions they produce (see Christiano 2006a). That quality could, for example, be an appropriate embodiment of fairness for individuals who share a certain kind of communal context

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(Christiano 2006b), or an appropriate expression of moral equality more broadly construed (see Buchanan 2004, 252–54; Anderson 2009, 214). Alternately, democracy could be seen as intrinsically justified by ways in which it enacts or embodies reciprocity within shared institutions under conditions of ineliminable diversity (Waldron 1999). In an intrinsic account, the legitimacy of enforcing any particular decision is closely bound up with the perceived democratic quality of the decision procedure. If the procedure appropriately embodies the moral requirement, then the legitimacy of decision outcomes is seen as effectively established, or at least presumptively very strong (see Bellamy 2007).

The intrinsic moral requirement most commonly cited, including again in the two leading global intrinsic approaches considered here (see Held 2004, 170; Abizadeh 2008, 39–40), is respect for individual autonomy. Collective self-rule is seen largely as an extension of individual autonomy or self-rule, where individuals collectively author the laws under which they will live. As Arash Abizadeh puts it, 'The democratic ideal of collective self-rule is grounded in the notion that securing the conditions of individuals' autonomy and standing as equals intrinsically requires that they be the joint authors of the terms governing the political power to which they are subject' (2012, 12). The next sections examine how the two approaches see such a joint authorship requirement leading to the expansion of participation beyond the state.

All actually and possibly affected interests

The first, 'all actually affected' approach emphasizes the effects that globalization and global economic integration can have on autonomy, as well as other vital interests. This approach is closely associated with such cosmopolitan democrats as David Held (1995, 2004) and Daniele Archibugi (2008),[3] and it has generated a broad literature in the past two decades (see Smith and Brassett 2008; Schaffer 2012). In the approach, decision effects on participatory outsiders are seen as having greatly expanded and intensified in recent years. This is said to be a result of increased interdependence between states and thus higher cross-boundary sensitivity to decisions (Koenig-Archibugi 2012), an increasing proportion of trade and other rules being decided beyond direct democratic oversight, at the suprastate level; and increasing effects on domestic polities from decisions made by trans-state firms and other economic actors (Held 2004, Ch. 6; Archibugi 2008; Marchetti 2008a, 2008b; Falk and Strauss 2011; see Gould 2004, 210–16; Pogge 2008, 190–92). Each is cited as reason to

[3] Archibugi's emphasis on autonomy or individual agency is not as explicit as Held's, but his account, which emphasizes popular control and political equality, is consistent with it (2008, 26–30).

https://doi.org/10.1017/S1752971914000037 Published online by Cambridge University Press

extend democratic decision boundaries, in service of enabling appropriate participation and democratic control.

Practical proposals for expansion include the further development of regional parliamentary bodies and the creation of a global parliament. The latter is often conceived as a directly elected second chamber operating alongside the United Nations General Assembly (Held 2004, Ch. 6; Archibugi 2008; Marchetti 2008a, 2008b). Its powers would be necessarily limited at first, but they would be expected to increase over time, ultimately to include significant ability to bind through legislation. At the horizontal, state-to-state level, proposals include one by Koenig-Archibugi to set a GDP-based formula for a percentage of a state's domestic representatives to be elected by outsiders. He estimates it should be about 27% in the US case, based on its economic power and impacts beyond its borders (Koenig-Archibugi 2012, 463, fn. 19).

Such all actually affected accounts can offer important insights, in particular for the challenges they pose to some common claims for restricting participation to the domestic sphere (Dahl 1989, 119–31). As a comprehensive approach to setting participation boundaries, however, all actually affected will face some significant objections. The first concerns a paradox faced by intrinsic accounts generally. Within such accounts, the people are understood to be the ultimate source of political power. It is *their* collective will which ultimately legitimates coercively backed decisions – an intrinsic requirement of their being empowered to lead appropriately autonomous, self-chosen lives. Yet, the question of who 'the people' actually are in that polity cannot be decided democratically. As many recent commentators have discussed, current members cannot simply be asked to collectively choose whether they are the rightfully configured people, because that would presume that they already are the people for the purposes of such decisions, and so on to infinite regress (Yack 2001; Goodin 2007; Näsström 2007, 2011; Abizadeh 2008, 2012, 8; Miller 2009; Zurn 2010; Schaffer 2012, 327–28; see Whelan 1983; Song 2012). This regress problem has crucial implications. If the people cannot be the ones to determine who properly belongs to the sovereign people, then nor can they clearly be seen as the ultimate source of decision-making authority in an intrinsic approach. Questions will remain about whose autonomy it is appropriate to enable through participation, and these cannot be settled merely through declaring that boundaries should be accepted as found (see Näsström 2007, 625–26).[4]

[4] Näsström notes similarities between such a declaration and claims that any form of governing power, however objectionable, must be accepted as found, given that it also emerged from some historical process.

https://doi.org/10.1017/S1752971914000037 Published online by Cambridge University Press

All actually affected rejects such a declaration and seeks to dramatically expand the set of participants. This will not, however, address the paradox. Consider that decision effects will depend in large part on the geographic boundaries drawn around the body making the initial decisions. That is, the set of those affected by decisions, and therefore presumed to be appropriately included in subsequent decisions, is conditioned by the size, composition, interests and other factors specific to the set of initial decision makers. Yet, the boundaries around the initial decision makers are taken as found. Thus, the original paradox has not been addressed. It has not been determined who properly belongs to the initial decision making set, or who properly has participation rights in existing intergovernmental institutions above the state.

This extension or reinforcement of the paradox is cited by such commentators as Robert Goodin as one reason to problematize existing boundaries even further, and adopt an 'all possibly affected' intrinsic approach. Since conceivably any person could be affected in the salient ways, depending on the initial decision boundaries, on who is setting the agenda, and on the decisions actually issuing from it, all would appear to have standing to be included in all decision making processes (Goodin 2007, 55). Two important challenges remain, however. First, we can note that, because agendas are to remain so open in the all possibly affected variant, it cannot be determined in advance whether any conceivable decision would have strong implications for autonomy, or whether it would more generally affect the most urgent interests or the most trivial interests of any set of individuals. Nor would it be possible to determine who would be most deeply affected by any particular decision. Any possible agenda, and any decision arising from it, could affect any person, and possibly very deeply (see Marchetti 2008a, 2008b, 91, fn. 20; Miller 2009, 216–17). Thus, the approach may not be able to give much practical guidance in setting participation boundaries.[5]

Second, there is an implicit but more essential challenge to the all possibly affected approach, around whether extending the franchise to individuals actually will express the intrinsic value intended. All affected accounts in general would expand participation as a means of showing adequate respect for individual autonomy – or in Goodin's specific account,

[5] Koenig-Archibugi (2011) argues that in practice agendas need not be so open, since polities have widely varying powers to affect the interests of others. Yet even very small states' decisions can have deep impacts on outsiders, e.g., negative impacts associated with illicit financial flows to small-state tax havens (see Reuter 2012). Koenig-Archibugi suggests also that it could be appropriate to limit some decisions through accountability mechanisms after the fact, rather than assuming that all possibly affected should be included. To be equitably applied, however, such limits would need to be formalized in binding, constitution-like documents. That would imply a starting point in rights-based limits on decision effects, rather than intrinsic requirements to enable autonomy through participation.

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autonomy and other vital interests. Simply expanding the set of those possessing the franchise, however, or who are entitled to membership in agenda-setting bodies, does not ensure that autonomy will be enabled or protected. Those who found themselves in a persistent voting minority could see their own aims routinely thwarted in the democratic process, however equal their ability to participate in it (Beitz 1989, 155–63; Dworkin 2000, Ch. 4; Caney 2005, 155; see Christiano 2006b, 103; cf. Agné 2010; Song 2012, 45).[6] This problem could again be magnified with a global extension of participatory institutions. It can be asked, for example, how far being granted representation in some democratic global assembly would protect or enable the autonomy of those in very small states facing specific common threats, such as climate change-induced rises in sea level (cf. Agné 2010). Being granted participation rights, only to then be routinely outvoted, would seem to do little for actually enabling autonomy, on which more below.

All possibly subjected

This second global-intrinsic approach would reject an emphasis on decision effects, in part from concerns that affect may give a person some standing to claim redress for harms but not actual participatory standing (Abizadeh 2012, 12; see Beckman 2009, 46–47; see also López-Guerra 2005, 222–-24). Instead, the emphasis here is on ensuring appropriate participation for those who are actually or potentially subjected to political coercion, meaning 'direct physical force, invigilation via agents authorized to used physical force, and threats of punitive harm' (Abizadeh 2012, 12). Such a coercion emphasis is longstanding in the literature on domestic democracy (see Dahl 1989, 124–26). In its global extension, in particular Abizadeh's (2008, 2010, 2012) highly systematic elaboration in a series of complementary arguments, the same logic is applied to authoritative coercion which crosses state boundaries. All who stand to be coerced should be enabled to participate.

Abizadeh's starting point is the democratic paradox: the problem noted above with determining democratic participation boundaries through democratic participation. He sees this as strong reason to view the democratic polity as in principle unbounded in an intrinsic approach. All should simply be presumed to be part of the polity. Thus, any coercion which may serve to restrict autonomy, including that used to set and maintain state boundaries, must be justified to all who are subject to it

[6] Song, who rejects boundary expansion, argues that all persons should be enabled to have fully 'equal opportunities for political influence' (2012, 45) within existing states. If those opportunities simply resulted in the persistent denial of minority interests, however, they could count for little in substantive terms.

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(Abizadeh 2008, 44–48, 2012). Following Raz, (1986, 372–78), Abizadeh sees autonomy as obtaining when an individual: '(1) has the appropriate *mental capacities* to formulate personal projects and pursue them, (2) enjoys an adequate range of valuable *options*, and (3) is *independent*, that is, free from subjection to the will of another through coercion or manipulation' (2008, 39–40). Significantly, he sees potential subjection to coercion as omnipresent in the current global system. Any person, for example, could conceivably choose to enter any country and face coercive exclusion from it. Thus, a democratic process is required to render any exclusions – and the ensuing restrictions of autonomy – legitimate, and that process could extend to the fully global level.

I will bracket concerns about whether border controls are coercive per se (see Miller 2010; cf. Abizadeh 2010). More essential here is whether coercion and the restriction of autonomy are the factors actually driving participatory inclusion in the account, and ultimately whether the problem of persistent minorities has been overcome. In terms of inclusion, Abizadeh would give 'a greater participatory say to foreigners for whom entry actually represents a valuable option, an even greater say to those for whom the option of entry is necessary to have an adequate range of valuable options, and perhaps the greatest say to citizens themselves' (2008, 58). This approach to inclusion would thus be consistent with the Razian understanding of autonomy, which again emphasizes valuable life options and the ability to make use of them.

Yet, any strong emphasis on the last claim, that current citizens should have the most say over their own borders, would seem at odds with the core tenets of all possibly subjected. If current citizens are given the greatest decision input, presumably because of the greater actual coercion to which they are subject, then that would simply ignore the democratic paradox. Present state-backed coercion to which citizens are subjected is a result of their membership in the state. It cannot be cited as conclusive proof that they were appropriately counted as members – and others excluded from membership – in the first place. As noted for the all actually affected approach above, the extent of affect or coercion on individuals would be deeply conditioned by already existing boundaries. If the point of the exercise is to determine where boundaries should be set, then effects arising from existing boundaries cannot independently tell us whether those are indeed the boundaries that should have been set or should now be maintained.

If, as is more consistent with the overall approach, an emphasis on actual present coercion is rejected, then the starting point again is a polity that is unbounded in principle, where all persons are understood to be equally *potentially* subject to coercion. The fact of that potential coercion would qualify all for the possibility of participatory inclusion, or more precisely,

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inclusion in collective decisions about who is to be included (Abizadeh 2008, 64, fn. 46, 2010, 2012). So, in practice, inclusion should be determined by how valuable it is to promoting individuals' autonomy, in particular those for whom 'the option entry is necessary to have an adequate range of valuable options' (Abizadeh 2008, 58). If that is the case, then several steps have been taken in the direction of an instrumental approach. Participatory inclusion will be dictated by how needy the potential entrants are, and how far their inclusion is necessary to addressing their needs. It will not be decided by how far it would enable participation *per se*; or by whether the entrants are being subjected to actual coercion, the extent and intensity of which again will be conditioned by existing polities' boundaries and characteristics.

That said, the explicit presumption remains in Abizadeh's and other coercion-focused accounts (Agné 2010) that inclusion will not mean addressing such deprivations directly, but permitting would-be entrants to participate in decisions about who should be included in the polity. Here, the problem of persistent minorities recurs. If the needy were included in collective-entry decisions only to find themselves routinely the losers on such decisions, then little would have been done to address the deprivations which gave them the initial priority for inclusion. Abizadeh does not want to simply affirm such an outcome, or the exclusion of persistent minorities more generally. He posits a fundamentally deliberative democracy, in which 'those subject to political power must be able to see their political institutions and laws as the outcome of their own free and reasoned public deliberation as equals' (Abizadeh 2008, 41). Deliberation, of course, is important to democratic governance for many reasons. Here, however, we can simply note that individuals' deliberatively informed preferences must at some point be aggregated. Given the likely intensity of the preferences at stake for those in affluent receiving countries, it is not unlikely that the outcomes would be the same as in some non-deliberative process. The persistent minority of needy hopeful entrants could continually see themselves outvoted and excluded, however formally equal their standing in the decision-making set, and however valuable the option of full inclusion could be to them.

Alternately, if we imagine that somehow vast numbers of persons are seeking to enter some very small, very rich state and vote to open its borders immediately, the result being that its governing capacities are overwhelmed, the minority problem could be reversed. If prior steps are taken to avoid this outcome, then the account will again have moved beyond an intrinsic approach, to one like the rights-based instrumental approach which begins with limits on majority rule. The broader point would be that, even on their own terms, intrinsic accounts focused on enabling individual autonomy

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face a core problem of coherence. If binding majority rule plausibly leads to an expression of autonomy as self-governing for the winners, it always also raises the possibility of enforcing heteronomy on persistent losers. As Christiano expresses it, in such accounts, 'If each person must freely choose the outcomes that bind him or her then those who oppose the decision are not self-governing. They live in an environment imposed on them by others. So only when all agree to a decision are they freely adopting the decision' (2006a).[7]

Given that consensus can be expected for few if any collective decisions, all decisions will bind some losers. If they are persistent losers, perpetually excluded from substantive legislative benefits in a polity dominated by men, or a specific race, caste, religion, etc., this offers a serious challenge to the idea of democracy as self-legislation, or more broadly as enabling individuals to lead autonomous, self-chosen lives (Bohman 2007, 6–8; see Arneson 2009). The same challenge would obtain at the global level, and probably with greater force, given a greater potential range of persistent minorities.[8] Thus, the global intrinsic accounts' claims to offer a coherent justification for democratic rule, and also for democratic expansion, are cast into doubt.

A rights-based instrumental alternative

Let us then consider some more fundamentally instrumental accounts of democracy. Such accounts can be placed into three general categories: strategic, epistemic, and character focused (see Christiano 2006a). Strategic accounts see democracy as instrumental to helping individuals protect themselves from harm, and enabling them to make effective demands for important economic and social goods (Buchanan 2004, 142–47; Caney 2005, Ch. 5; Talbott 2005; see Sen 1999b, 152–53). A Republican strategic variant would focus in part on the instrumental importance of democracy for protecting individuals against domination, or the arbitrary exercise of

[7] Christiano argues separately (2006b, 89–90) that an account focused on the equal advancement of individual interests will set intrinsic, not instrumental, limits on democracy (2006b, 99). It is not clear, however, whether he is genuinely offering an intrinsic account, given that a polity is said to surrender rights against external interference when its 'assembly engages in widespread and persistent violations of democratic, liberal and economic rights' (Christiano 2006b, 100). This would set prior conditions on shared rule based in a fairly comprehensive conception of individual rights.

[8] Marchetti (2008b, 159), makes the valuable point that global democracy would give domestic minority groups the opportunity to join forces above their states and press collectively for change. At the same time, it can be acknowledged that implementing any form of majoritarianism for a global polity of multiple billions would stand to create many more persistent electoral minorities. Thus, the autonomy/coherence issue would remain.

https://doi.org/10.1017/S1752971914000037 Published online by Cambridge University Press

power over them (Bohman 2007; see Lovett 2013). Epistemic instrumental accounts are focused on ways in which broad participation and other characteristics of democracy can lead to better decision making than other forms of rule (Estlund 2008; see also Arneson 2003). Character focused accounts highlight democracy's potentially beneficial effects on the character of the populace itself, specifically in promoting a willingness to stand up for oneself, and promoting respect for others as co-equal citizen participants (Mill 1861, Ch. 3; see Kateb 1992, Ch. 1).

The account offered here is informed by insights from each of the three categories but is focused on the first, strategic one. It begins with an emphasis on the importance of vital human interests. These are understood to include familiar interests in avoiding premature death, unchosen physical harm, having adequate nourishment and access to medical care, as well as being able to exercise agency and to avoid subjection to unjust discrimination (Buchanan 2004, 25–26, 134–35; see Raz 1986, 166; Caney 2005, 72–77; Talbott 2005). These interests are considered essential enough to human well-being that they give rise to specific protective rights. Just how extensive the package of rights should be, and whether the account should lead to some version of trans-state equality of opportunity based in rights against unjust discrimination (Caney 2007b; see also Buchanan 2010), cannot be pursued here, though there is nothing in what follows that would rule out the latter. I presume that rights against unjust discrimination, enacted as various forms of legal and political rights to directly challenge salient decisions, will be necessary in a range of cases to individuals being able to effectively protect their vital interests. Further, it is highly likely that, in the pursuit of integration between states described below, rights against unjust discrimination would be interpreted to eventually include rights for individuals to pursue opportunities through crossing political boundaries, broadly analogous to the free movement regime in the current European Union. Thus, there is no presumption that protections can or must be constitutionalized at only at the level of 'basic rights', especially in the longer term.

In this approach, rights are understood as most effectively protected within appropriately configured political institutions. In the immediate term, this means an emphasis on rights-respecting democratic states, though suprastate institutions, in particular the European Union, have increasingly important roles to play. The core importance of such political institutions, as opposed to other kinds of coercive agents, is that by design they are generally the ones best able to

1) reliably provide comprehensive rights coverage for individuals, and
2) routinely obtain compliance from individuals with duties to contribute to rights protections and to avoid violating rights.

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Neither coverage nor compliance can ever be complete, of course. Gaps in both inevitably will emerge, regardless of how well-resourced or well-meaning the governing apparatus is within a set of institutions. Thus, in this approach, specific civil and political rights are seen as crucial instruments to be used in publicizing and protecting against violations of more comprehensive rights corresponding to vital interests (Christiano 2011; see also Sen 1999, Ch. 6; Buchanan 2004, 142–47; Talbott 2005, Ch. 7; Caney 2005, Ch. 5; Føllesdal 2011). Such procedures would include voting to select representatives and possibly some forms of referendum voting, but also publicity and accountability mechanisms associated with consolidated liberal democracies, for example, legally actionable rights to freedom of speech and press, peaceable assembly and protest, and some legal rights to directly challenge laws, rules or decisions. In such an institutional context, individuals are enabled to appropriately *challenge* political power holders through forms of protest and expression, and to *chasten* them through formal electoral processes and, significantly, in courts or through ombuds processes (see also Kateb 1992, Ch. 1). Both kinds of mechanisms are crucial for achieving and sustaining rights protections, and they are major factors in explaining why stronger protections are found in consolidated liberal democracies than in hierarchical regimes (Christiano 2011, 149–51; see Davenport and Armstrong 2004).

Yet, however consolidated a democracy, the presumption is that such procedures and mechanisms of accountability will never be eliminable in practical terms (see Mayerfeld 2011; cf. White 2010). This is the case for both strategic and epistemic reasons.[9] In the case of the latter, even if some cadre of wise and neutral judges, or perhaps Platonic Guardians (Dahl 1989, Ch. 4; see Estlund 2008, 206–22), were put in place across a set of institutions, and they were fully empowered and genuinely committed to securing the core rights of all individuals in their jurisdiction, they still could not be all-knowing. It would remain important for those within the polity to be able to share with even some maximally benevolent despot their own 'insider's wisdom' (Shapiro 2003, 39–43) about how specific proposals or decisions could affect them. Likewise in strategic terms, it is presumed that the power to challenge and chasten governing power must always be available to the polity if governors are to remain appropriately sensitive to the interests and rights of the governed. This would rule out some scheme of 'governing with judges' or other leaders who could not be held accountable for their decisions. Finally, there is a strong presumption in the rights-based instrumental approach that any one of the named

[9] I thank two peer reviewers for pressing me on this point.

https://doi.org/10.1017/S1752971914000037 Published online by Cambridge University Press

mechanisms of accountability, while arguably necessary to ensuring the requisite rights protections, will not in itself be sufficient. Thus, the approach should not be taken to recommend simple enfranchisement, for example, as a sufficient protective tool. Persistent minorities could again find themselves with very limited protections. It is not possible to state here with precision which set of accountability tools will clearly be necessary and sufficient, but it is presumed that the more mechanisms available to challenge and chasten governing power, the better able individuals will be able to protect their own rights.

Two final points should be noted about the nature of the rights-based instrumental account developed here. First, it does not claim that there is a clear human right to democracy on instrumental grounds (see Bohman 2007, 38). Unlike in intrinsic accounts, where autonomy or other core human attributes are said to require democracy, it is presumed *logically* possible here that some non-democratic regime could achieve the appropriate standards on all rights protections. Such a regime would be highly unlikely to emerge in practice, however, and even if it could, its protections would be fragile and continually tested, given the information problems noted above and the lack of publicity, challenge and other mechanisms. Second, while this account is primarily instrumental, it is not fundamentally consequentialist. The claim is not that democracy is choiceworthy because it is the system of rule that will tend to produce maximum aggregate welfare, etc. (see Arneson 2003; cf. Buck 2012). It is conceivable, at least, that some majoritarian procedure which suppressed core rights for a small, persistent minority could create more utility for the polity overall. Here, democratic procedures are viewed as instrumentally valuable in the protection and promotion of individual rights, where protective procedures are consistent with respecting the rights of all individuals.

Thresholds and rights chains

In practical terms then, the rights-based instrumental approach would recommend a relatively high threshold of constitutionalized individual rights, including again some robust rights to non-discrimination. It is not possible here to set some precise threshold for which rights, or which interpretations of specific rights, should be so viewed as falling below the threshold and outside the limits of collective decision making. Two things can be said, however. The first is to reinforce again the importance of insider's wisdom or insight, specifically in setting thresholds for specific rights, or enabling individuals to highlight ways in which agendas and possible decisions from them may have unforeseen implications for weakening rights protections. Democratic deliberation, augmented by

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mechanisms to ensure the inclusion of the poor and others whose voices are often muted in public dialogue, certainly would have a role to play in publicizing the insights of all persons in a polity regarding the identification, provision and appropriate interpretations of rights protections.

The second regards the significance of rights chains. That is, even the most fundamental rights likely will require legally actionable secondary and tertiary rights to be adequately secured. A right to life, for example, likely will entail a right to adequate housing, meaning housing that provides protection from the elements, animals or insects and diseases they bear, easy predation by other persons, etc. That in turn entails a right to secure legal tenure in housing, which implies rights, or at least entails a need for, appropriately empowered – and appropriately restrained – police and legal bodies capable of enforcing those rights, and so on. It cannot be claimed that rights to housing are *strictly* necessary to a right to life, given that it is clearly possible to live out of doors and survive, as millions of homeless persons around the world do (see Pogge 2009). It would be more difficult, however, to argue that such persons are adequately protected from standard, generalizable threats to vital interests, especially exposure to elements and predation. Thus, the adequate protection of even the most fundamental rights will require the creation of institutions capable of enacting and protecting secondary, tertiary and quaternary rights directly linked to the core right (Caney 2007a, 154–63; Nickel 2007, 87–90).

Overall, such rights chain logic provides an important counter to claims that constitutionalized rights represent little more than the opinions of some about objective value (Waldron 1999, 164–87; Zurn 2010, 211–13; see Agné 2010, 388). Constitutional protection of the rights entailed in the chain is strongly implied, and they are to some extent off the decision table. In general, the balance would be tipped to protections, and those would be expected to become more firm the closer to vital interests any specific issue is located. Many areas of collective decision making, of course, are not so clearly related to core rights and would appropriately remain above the threshold. Democratic procedures here could be justified by epistemic or character-based instrumental reasons, possibly complemented by some intrinsic reasons (see Dworkin 2011, 390–91). Thus, the rights-based instrumental approach is fundamentally focused on rights protections, but not solely. It would, however, be vital to ensure that rights-based challenges could be heard to claims that a specific issue is above the threshold and is appropriately choice sensitive.[10] A partial model is

[10] Many such challenges likely would involve 'new' rights claims, or claims on behalf of groups such as gays and lesbians who had previously been presumed appropriately excluded from some anti-discrimination legislation (see Johnson 2013).

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provided at the regional level by individuals' direct standing to file challenges in the European Court of Human Rights,[11] and on a more narrow range of issues, including some pertaining to rights against unjust discrimination, in the European Court of Justice.

Integration and rights protections

How, then, does this rights-based instrumental account give guidance on democratic inclusion, specifically on the core question of where the geographic boundaries of participatory rule should be set? The account, in fact, should give us strong reason to pursue the creation of broader institutional and participatory boundaries. Such extension would be crucial for meeting the two aims noted above, of reliably providing rights coverage for individuals, and reliably obtaining compliance with duties related to rights protections.

We can note first a presumption that, in a rights-based approach, duties to help secure universal individual rights for all persons will *in principle* fall on all other persons. This is similar to Abizadeh's claim above that, within an autonomy-based intrinsic approach, the democratic paradox gives reason to view the polity as, in principle, unbounded. The presumption in a rights-based approach is consonant with a well-known argument by John Simmons (1979, 143–56). He argues that an account focusing on rights and corresponding natural duties – understood as duties to others based in their plain humanity – will face an unavoidable 'particularity problem'. It will not be possible to demonstrate why any particular attention should be paid to protecting the rights of domestic co-participants, or any other set of persons smaller than the global, if it is indeed individuals' plain humanity which gives them standing in a rights framework.

I take this not as a problem so much as a description of the natural starting point for geographic boundary setting within a rights-based instrumental approach. Advocates of such an approach who wish to limit it to the domestic or perhaps regional sphere must identify reasons why the duties corresponding to rights held by all persons do not fall on all persons. So, for example, Estlund would claim that present state boundaries should be presumed to set the limits of participation in an instrumental frame, because they represent the 'effective and available means of securing the discharge of duties', including ones of rescue to those in need, and fair share duties to sustain common institutions (2008, 148). There are reasons to

[11] The Court did not evolve as a formal European Union institution, however, Article 6 of the EU's 2009 Lisbon Treaty mandated its accession to the European Convention on Human Rights, meaning that EU legislation would become subject to direct challenge in the Court (Lock 2010).

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think, however that such duties, and the rights corresponding to them, will be routinely underfulfilled in a system of competitive, 'separate but equal' sovereign states, and thus that institutional and participation boundaries should be extended where feasible.

These reasons are traceable primarily to a set of interconnected biases, naturally arising in a states system. The biases serve as powerful forces working against distributions not only of resources and opportunities to outsiders, but also against extending fully fair terms of trade and investment, equitable aid conditionalities, responsibilities to address climate change and other threats. Biases include an electoral or stakeholder one, where domestic leaders have strong incentives to tend to the interests of their own constituents first and routinely ignore those of outsiders. Self-interest and a more subtle own-case bias arise at the level of the collective or polity. Polities are left to be the judges of their own obligations in a global system lacking a neutral suprastate judge or forum where salient decisions can be challenged from outside the states taking them. Thus, they face few systematic challenges to acting from plain self-interest, and in fact tendencies to do so are reinforced by accompanying tendencies to presume that one's own case is right when one is left to judge it – a dynamic explored by Locke ([1690] 1980, 12), among others (Mayerfeld 1998; Buchanan 2004, 293–99).

These and other biases against fully recognizing and accommodating the interests of non-compatriots are inherent to a system in which states remain the ultimate judges in their own cases. They represent continuous barriers especially to obtaining full compliance with duties to ensure adequate rights protections to all persons (Cabrera 2010, Chs 2–3; see also Caney 2005, 159–64; Pogge 2008, Ch. 7; Mayerfeld 2011).[12] Thus, there are strong, rights-based reasons to expand institutional and participatory boundaries, bringing more persons within institutions capable of providing appropriate rights coverage and obtaining compliance with duties corresponding to rights. Whether these reasons might be trumped by some other moral claims is taken up in third section below.

Possible institutional expansions

The institutional implication is decidedly not that we are left with a stark, dichotomous choice between accepting the existing states system and creating some all-powerful global government, as commentators such as

[12] In Cabrera (2010, Chs 2–3) I offer a more detailed treatment of such duties, as well as of the biases and possible reasons to expand institutions, though without the emphasis on democratic participation boundaries.

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Risse (2012, Ch. 16) would suggest. Familiar concerns around a Kantian 'soulless despotism', global instability and possible tyranny (see Song 2012) surely would attend such a set of global institutions, were they somehow to be imposed in the near term and state boundaries simply erased from the map. Rather, a rights-based instrumental approach gives reason to promote the progressive expansion of participatory political institutions, as feasible and within the limits of respect for individual rights.

The ultimate aim would be a system of institutions in which adequate coverage and compliance would obtain for all. Thus, as with global intrinsic accounts, especially those in the all actually affected camp, the ultimate institutional aim would be relatively strongly empowered regional and global democratic political institutions capable of enacting appropriate binding legislation on states and sub-state units. Significantly more emphasis, however, would be placed in the rights-based account on the more comprehensive package of constitutionalized rights. Held, for example, would argue for the constitutionalization of only those individual rights that are directly related to enabling democratic participation (1995, 190–201). This springs in part from his intrinsic justification: respect for autonomy demands democracy, and democratic participation demands certain enabling rights. The rights-based account would consider a wider range of rights, including again non-discrimination and related free movement rights. It would stress the importance of making such rights actionable in multiple layers and types of courts, as well as enabling other accountability mechanisms.

In the relatively near term, there would be some significant possibilities for mitigating biases through the creation of democratic supranational institutions. The European Union represents a partial exemplar – only partial because of its incomplete democratization. That is, while individuals within states can vote for individual Ministers of the European Parliament representing geographic districts within member states, there is no directly elected EU president, and the interests of individual member-state governments continue to hold powerful sway in EU institutions overall, especially in terms of policy agendas (see Føllesdal and Hix 2006). Individual democratic participants have relatively limited opportunities to share their insider's insight and otherwise engage in potentially significant political communication at the suprastate level. That said, the EU does provide a range of accountability mechanisms that can serve to reinforce rights protections, and it gives individuals direct opportunities to lodge legal challenges on some key rights issues. It also represents an invaluable living laboratory for studying opportunities for, and challenges to, shared rule above the state.

The rights-based approach would support full EU accession for Turkey on grounds that it would be highly likely to strengthen rights protections,

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including economic rights related to free movement opportunities and enhanced distributional transfers across borders, as well as some social rights and rights to free expression.[13] Such support would be contingent on any candidate state meeting some rights-salient institutional and feasibility conditions, discussed below. As noted, however, the recommendation would not be that Turks simply be included in a collective decision procedure on their own inclusion (Agné 2010). That could do little more than give them persistent minority status, as with the needy would-be migrants above. Likewise, the rights-based alternative would recommend the deepening and political transformation of other regional entities such as Mercosur, the North American Free Trade Agreement and African Union, were that to be plausibly rights enhancing. There also would be, over time, some obligations on the part of those in richer suprastate regions to support the development of institutions in poorer ones, lest the 'separate but equal' states system be transformed into a similarly unequal system of have and have-not sets of regional institutions. That concern, with the presumption that the biases could be replicated at a higher level in such a world of regions, would give reason to pursue integration between regions where possible.

Finally, if deep political integration were indeed possible between states and regions over the long term, then the creation of fully global political institutions, including a global parliamentary body, would be advocated as important to further protecting and sustaining rights, though again a more comprehensive set of rights than the global intrinsic authors generally envision. In the near term, an important implication of a rights based approach is that the development of global democratic bodies may not be the most urgent item on the agenda. If rights protections were better served through strengthening state capacities, further developing and consolidating regional human rights courts or the International Criminal Court, and reforming and enhancing United Nations oversight of individual states, then such reforms would have priority. Unlike in a global intrinsic approach, there would be no in-built moral requirement to pursue participation per se above the state. Rights reforms would not, however, represent an appropriate stopping point, given the potential instrumental importance of such participation. There would be strong reason to pursue the creation of suprastate democratic institutions over time, including at the global level.

[13] Turkey's summer 2013 protests, which began in Istanbul but soon spread to cities nationwide, were in part focused on claimed rights against the imposition of some religious mores on public life, and more generally were concerned with a perceived refusal by the ruling AKP Party to consider any insiders' insights but its own (see Arango 2013).

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Possible objections

I will focus here on three types of objections to extending participation boundaries according to a rights-based instrumental approach. The first sees national belonging as a more appropriate means of setting boundaries, the second holds that features of a shared political life justify a restriction of participation to existing boundaries, and the third that perverse consequences would be entailed by an instrumental approach.

National sentiment

This objection holds both that shared national sentiment is a necessary condition of participatory rule, and that it provides the most appropriate basis for setting participation boundaries. The first, necessity claim (Miller 1995, Ch. 4; see also Song 2012),[14] has been challenged by numerous commentators (Føllesdal 2010; Weinstock 2010; Koenig-Archibugi 2011, 527), and it will not be pursued in detail. A more central concern is with whether a national sentiment approach, or any related approach focused on drawing participatory boundary lines around persons who share some set of characteristics (Miller 2009), can overcome the democratic paradox.

There would in fact be myriad difficulties in identifying traits – language, religion, culture, historical emphases – that are shared sufficiently exclusively among a group of persons to justify rigid exclusions from participation (Abizadeh 2012, 2–5). The traits would not be self-evidently unique to one group of persons. Judgments would have to be made about who appropriately belongs to the group. This would obtain even were the ultimate polity to be an ethnocracy composed along straightforwardly ethnic or racial lines. For example, what would be appropriate inclusion for those of mixed parentage? Do they qualify for membership at half blood, one-quarter, or at 'one drop?'[15] Who decides who is qualified to decide on insiders and outsiders? Who decides on those deciders, and so on? If we move away from ethnocracy, as David Miller (2009), Michael Walzer (1983) and virtually all

[14] Song (2012) would limit shared rule to the domestic sphere in part on grounds that only it can provide the necessary solidarity and stability. Yet, states range in population from 10,000 to more than 1 billion, often with vast internal diversity of language and culture, rendering any straightforward such claims problematic.

[15] The phrase 'one drop' refers to US exclusion mandates for persons with African-American ancestry. In the landmark 1896 Supreme Court case of Plessy vs. Ferguson, defendant Homer Plessy was deemed to fall under Louisiana's segregation laws because of his 1/8 black ancestry. Today, various 'blood quantum' standards continue to play a role in determining membership in Native American tribes, though there is no uniform rule for qualifying percentage of ancestry across all tribes (see Villazor 2008).

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recent defenders of solidarist boundary drawing have sought to do, then the challenges are multiplied many times over. Infinite regress would seem to obtain especially when a broader set of ascriptive characteristics, none of which is presumed to be strictly necessary, is to be used to try to delineate participatory insiders from outsiders (see also Agné 2010, 385–86).

Associative accounts

What, then, about accounts which focus not on ascriptive cultural or ethnic characteristics, but on shared associative ones? Ypi, for example, argues that appropriately configured domestic democratic contexts should be preserved for ways in which they promote civic education and could inculcate moral cosmopolitan values (2012, Ch. 6). For Christiano, the domestic sphere is a morally distinctive common world where the interests of individuals are extensively intertwined through their joint and comprehensive subjection to law and institutional regulation (2006b, 85, 100–1, 2012, 74). Given this deep interdependence, he argues, those who share a state can be said to have a 'roughly equal stake' in decisions it makes, and thus to have a strong claim to a democratic say. Existing suprastate institutions do not create such common worlds, however, and thus there is no strong imperative to extend democratic boundaries.

Arguably this objection, which is most directly salient to global intrinsic approaches, could be directed at the rights-based instrumental approach. Some such features of associative life, that is, might justify giving strong priority in participation and overall rights protections to compatriots. Mathias Risse, for example, argues against extending strong principles of distributive justice globally, given that individuals who share a state are collectively subject to comprehensive coercion and engaged in deep forms of reciprocity (2012, 36–40; see also Nagel 2005). Similar reasons might be offered against a strong imperative to extend institutional participation boundaries on rights-based instrumental grounds.

In response, it can be noted first that there is nothing inherent in associative arguments to prevent the gradual development of suprastate institutions capable of providing a common world, etc., as Christiano (2006b, 83) acknowledges. It could be claimed that the European Union, with its vast set of uniform laws, large-scale redistribution via 'cohesion funding' (European Commission 2013), and its increasingly significant and directly elected parliament, already has traveled some distance toward the creation of a common world. For the same reasons, it might be appropriately seen as an institutional site of distributive justice, and a potentially very significant site for the strengthening of comprehensive rights protections through integration, as described above.

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More crucially here, there is a potential tautology at the heart of associative claims for the restriction of participation or principles of distributive justice to the domestic sphere. This is similar to the problem noted above, of extending boundaries based on decision effects, but without first justifying the boundaries that condition those effects. Associative accounts emphasize virtues produced in a democratic domestic sphere, as well as facts of reciprocity, joint coercion and interdependence in that sphere. Such current facts, however, do not necessarily justify past and continuing exclusions from participation or distributions. It must first be demonstrated that the setting and maintenance of particular boundaries, and the exclusions from membership and collective goods that such boundaries entail, was and is morally defensible (see also Buchanan 2004, 35–37; Caney 2008).

I will focus on facts of coercion and reciprocity. We can note again that many claims about the moral significance of state-backed coercion or comprehensive regulation are, at root, claims about restrictions on autonomy. Individuals are coerced; they live under extensive schedules of laws, institutional rules and regulations, and this is said to contribute to their standing to participate or to receive robust, justice-based distributions. Yet, associative accounts also make a clear distinction between authoritative state coercion and plain oppression. The latter is seen as a straightforward wrong. The former is to be employed in service of ensuring domestic stability, the production of key social goods and overall effective and fair institutions. Coercion is, in fact, an intrinsic feature of such institutions, without which they could not provide the beneficial goods sought. If this is so, however, the case for treating participatory standing or distributive priority as due compensation for limitations of autonomy is significantly weakened. Submitting to state coercion would be, rather, a step toward securing goods that all are presumed to need (see Pevnick 2008, 401–2). It could not so easily be held up to would-be members as proof that insiders have earned their exclusive privileges through seeing their autonomy restricted, making sacrifices, etc.

In terms of reciprocity, the claim is that insiders have sacrificed not to the state but for one another. The intuitions here can be strong: one good turn deserves another. It is indefensible to take from others without ultimately giving something in return. It can be noted, however, that many compatriots do not engage in actual cooperation at the levels implied. They may be handicapped, deeply economically disadvantaged, or just ideologically disinclined to participate, and thus their actual contributions may be minimal. Further, an emphasis on reciprocity within a given set of persons cannot independently justify exclusions from that set. It cannot demonstrate that that system within which the reciprocity and exclusions have arisen is itself defensible.

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Likewise, citing the cooperation and reciprocity that can exist between compatriots cannot itself speak to the defensibility of the broader global system in which states are embedded (see Tan 2004, 28–29, 66–67). Given that billions of persons continue to face severe poverty in that system, and to see their core rights precariously protected at best (United Nations 2013), any strong claim that its defensibility has been established will face steep challenges. Thus, unless we can be certain that the initial move to exclude is defensible, a moral shadow is cast over subsequent claims that exclusions are just when grounded in current coercion, reciprocity, or civic virtues. Ultimately, such claims would seem to do little but restate the paradox in the frame of domestic associations: those who already are included, coerced or stakeholders are the ones who should be empowered to determine who should be so included, coerced or seen as a stakeholder, because they are the ones already included, etc. It does not in itself justify refusing outsiders the opportunity to enjoy the same benefits through placing themselves within the same framework of coercion and regulation.

This is not to suggest that we must adopt some form of stringent first-person impartiality, where any special consideration shown to parents, children or other intimates must be justified according to a universal morality.[16] Nor does it recommend immediately throwing open the gates of all states – a move that even firm advocates of freer immigration would reject (see Seglow 2005). Rather, it challenges claims for exclusions based only in present societal relations. By themselves, such relations do not appear to justify the exclusions from participation or broader institutional protections that are the norm in the current system. Nor would they appear to justify strong claims to territorial rights or rights of occupancy, such as those posited by Anna Stilz (2009). She argues that those whose current residency is integral to their goals and personal relationships, and who have not themselves committed wrongful acts to take up residence, hold firm rights of occupancy and related rights to exclude. Yet, each of these conditions could obtain for the children of a generation which invaded the territory, or which committed some form of ethnic cleansing to claim it (Miller 2012, 255–56). The defensibility of the current occupancy cannot be settled without taking such acts into account. Likewise, the exclusions from participation and institutionally backed rights protections must be justified against the background of the broader normative questions (see also Shachar 2009). The importance of enabling individuals to help protect their own rights, and the biases noted above

[16] Even in those spheres, however, intimacy does not trump all ethical concerns, as evinced by laws against nepotism in public procurement, among others (see Gutman 2012).

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which contribute to rights underfulfillment, would constitute strong reasons to challenge claims to full territorial exclusion rights.

Finally, we can note the broader challenge implied to any strong claims for state sovereignty or self-determination. The latter claims in particular are rooted in notions of popular sovereignty, or the autonomous choices of a discrete, cohesive, self-legislating people (see Beitz 2009; Goodhart and Taninchev 2011). Yet, we cannot simply say that each sovereign, democratic people should be left to determine its own fate if we cannot say with confidence that existing participation boundaries are appropriately drawn. A rights-based instrumental approach would not give strong emphasis to collective self-determination claims in general. It would again presume that all persons are the people, in principle. It would seek to expand participation according to that principle and in service of rights protections, while it also would be cognizant of political constraints and the many related challenges to expansion in the near term.

Neo-colonialism and sovereignty

If territorial rights, along with presumed self-determination rights, are to be so open to challenge, does this lead a rights-based approach to perverse consequences? For example, would it dictate the imposition of some neo-colonial rule on states or regions where rights protections are precarious? Justifications of that kind were common enough in 19th century and earlier colonialism or imperialistic control. European powers often cited their 'civilizing mission' to assume care for the bodies and souls of persons in scores of less affluent or less powerful countries (Kohn 2012). Yet, any re-imposition of such governing forms would be at odds with some of the fundamental assumptions in the rights-based approach. First, there is little reason to believe that those within a state that is suddenly subjected to colonial or imperial rule would be afforded adequate opportunities to participate. Even if the form of control were intended to be more benign, though still presumably not fully participatory, acute problems would arise around opportunities to share insider's insight and, in general, opportunities to chasten and challenge in order to protect their own rights (see Sen 1999, 328–29, fn. 7.)

Further, any such wholesale imposition would seem likely to generate a potentially violent backlash, with important implications for weakening existing rights protections. It could simply set the stage for ongoing civil unrest. Finally, a neo-colonial intervention by another state would be problematic in part because of the biases noted above. Such a state acting singly would not represent the sort of neutral judge presumed necessary to overcome the biases. We can consider here the issue of humanitarian

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intervention, which raises some of the same concerns. There is strong reason to believe that general decisions on intervention are not best left to a single state. In fact, the creation of a more neutral and more disinterested judge than the current UN Security Council likely would be a crucial step toward more defensible outcomes, given the self-interested influence often wielded by the five permanent members (Brock 2006).

Important questions remain, however, around the powers to chasten and challenge that current citizens of regional projects should be able to exercise on questions of integration. In the Turkish case, for example, we can ask whether those within current EU member states should have referendum powers to decide on accession. Former French President Jacques Chirac (1995–2007) had, in fact, backed an amendment to the French Constitution requiring a public referendum on the accession of any candidate state whose population was 5% or more of the total EU population – a guarantee that French voters would have a direct say on Turkey. That amendment was dropped, with Sarkozy's support, in 2008, over concerns that it could hamper the accession of other candidate states (Euractiv 2008). At present, approval is required for accession from the European Commission, which negotiates with potential members toward ensuring they meet the Cophenhagen Criteria, benchmarks for democratic governance, economic stability and rights protections. When the criteria are deemed satisfied and negotiations concluded, the accession must still be approved by the European Parliament and each existing member state, though in many states the mechanism does not involve a direct popular vote.

As should by now be apparent, a rights-based instrumental approach would raise concerns about empowering individual state governments or their citizens to act as the final judges in their own cases about obligations to expand participatory and institutional boundaries. Such an expansion in the Turkish case stands to enhance vital economic, social and civil rights for millions of persons. In this case, the course recommended would be one where obligations to help protect such rights are foregrounded, and where a range of actors could share their insider's insight during the accession and negotiation process, but where the final decision would hinge on a neutral assessment of progress on the benchmarks, rather than a simple majoritarian process. Again, that does not mean that economic feasibility, 'accession fatigue' or other practical challenges such as Turkey's strained relations with Cyprus should be blithely ignored or will easily be overcome. Rather, it highlights the course of action that would be prescribed within a rights-based instrumental approach, as well as a position that would be important to advocate in continuing practical dialogue on accession procedures.

What, then, of consulting those living within the accession candidate state? This seems more challenging. If there is little expressed support in

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polls, etc., for accession, then the spectre of neo-colonialism could again arise, of dominion imposed through unwanted inclusion. On the other hand, a persistent minority – say the ~14 million Kurds in Turkey – as well as the impoverished and otherwise excluded in that state, could benefit greatly from the access to resources and life opportunities, as well as the democratic consolidation and civil rights enhancements, that full accession could bring.[17] I will suggest that, the stronger the expressed public opposition to accession, the greater the danger of weakening rather than strengthening overall protections through accession, at least in the near term. The rights-based instrumental approach would not recommend integration again if it were likely to dramatically weaken rights protections. It would recommend the extension of some free movement opportunities to those in the candidate state, as well as a continuation of pre-accession aid, especially that aimed at enhancing rights protections. Both types of measures would go some way toward addressing concerns around persistent internal minorities, while reasons in favor of accession could be highlighted in continuing formal dialogue.

Conclusion

I have offered a primarily instrumental, rights-based answer to the question of how the geographic boundaries of democratic participation should be set. It would avoid some of the problems identified with approaches which build from intrinsic justifications for democracy, especially problems around persistent minorities. An instrumental, rights-based approach would emphasize the importance of constitutionalizing a relatively comprehensive schedule of significant individual rights, and it would seek to progressively extend geographic institutional and participation boundaries in order to strengthen rights protections.

As suggested above, many practical questions would remain around the actual expansion of participatory boundaries. In some cases, such as Turkish accession, a clear route to inclusion can be identified, and there is extensive dialogue and research on challenges to formal inclusion. In other cases, including the possible expansion of participatory governance in the North American Free Trade Agreement area (see Pastor 2011), a route to formal inclusion is less clear, and practical challenges appear more daunting in the near term. Even there, however, a rights-based approach can

[17] Support for accession expressed by Turks overall has dropped in recent surveys. That follows, however, years of stalled negotiations over Turkish relations with Cyprus, and amid French and German opposition. Many commentators suggest that much stronger support for accession would return were it to appear to be a viable prospect (see Bürgin 2012).

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fundamentally inform immigration reforms and other policy areas relevant to boundaries. It offers a challenge that must be addressed by those advocating rigidly exclusionary immigration and citizenship policies in the domestic frame, as well as a set of principles capable of providing guidance for the development of more appropriately inclusionary policies over time, including ultimately at the global level.

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