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Who are the people? Associative freedom and the democratic boundary problem

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ABSTRACT

The justification of criteria for the delineation and composition of democratic communities poses a significant challenge for democratic theory. The article argues that the all-subjected principle (ASP), advocated inter alia by Robert Dahl, fails to provide a convincing solution of the democratic boundary problem. Based on a detailed critique of the ASP, an alternative approach that builds on the right of association and a territorial principle is suggested. In contrast to non-territorial associations, such as religious communities, territorially organized states have specific obligations to permanent residents that include the granting of voting rights. In response to possible objections it is argued that the freedom of association can be sensibly applied to the creation and maintenance of states. Moreover, it is shown that the territorial principle on which the proposed solution of the democratic boundary problem relies differs from the ASP in important respects. Finally, some practical consequences for controversial cases, such as immigrants, anarchists, and expatriates, are elucidated.

KEYWORDS Citizenship; democratic boundary problem; freedom of association; all-subjected principle; territory; voting rights

Introduction

A defining feature of democracies that unites their different manifestations and distinguishes them from other political systems is the self-government of the people. But who are the people? Given the centrality of the term people, it seems important to know how the relevant political units that qualify for democratic self-government are to be determined. Although the differentiation and composition of democratic communities is a fundamental challenge, it has been largely ignored in the writings of classical political philosophers. The so-called democratic boundary problem did not surface in democratic theory until the 1970s, when Robert Dahl (1970, 1989, 1998) and a few other authors raised this issue.¹ Even though in recent years some important

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contributions have been made, the debate so far has produced standard answers that are – as I will argue – unpersuasive.

One of the most prominent answers to the democratic boundary problem is the ‘all-subjected principle’ (ASP) advocated *inter alia* by Dahl. In Dahl’s (1989, p. 127) view, ‘every adult subject to a government and its laws must be presumed to be qualified as, and has an unqualified right to be, a member of the demos.’² The ASP plausibly builds on the ideal of democratic self-government, according to which the group of law-takers, i.e. those persons to whom the laws apply, should match with the group of law-makers. Every responsible person who is subject to state regulations must be able to participate – directly or indirectly via representatives – in the deliberations and decisions that lead to the enactment of the relevant laws. The ASP corresponds well with the widespread intuition that competent adults, such as people of color, women, and persons without possession must not be excluded from democratic procedures.

An important alternative to the ASP, that has been most fully developed by Robert E. Goodin (2007, 2016), is the ‘all-affected principle’ (AAP). According to the AAP, every person whose interests are (or might be) affected by a democratic decision has a right to take part in this decision.³ I take both principles to stipulate necessary and sufficient conditions for the granting of voting rights in democratically organized states. No one who is not subject to (or affected by) state law is entitled to political participation; all those who are subject to (or affected by) state law need not meet any further requirement.⁴ Since both principles share essentially the same problems, I will largely confine my attention to the ASP and only briefly discuss the AAP.

In the next section I will elaborate on the moral justification of the ASP and discuss two important points of criticism, the over-inclusiveness and the circularity objection. Thereafter, I will advance an alternative approach to the composition of democratic communities that builds on the individual right of association combined with a principle of territorial obligation. In the following section I will discuss and reject two concerns that may be raised against my argument. On the one hand, one may doubt whether the idea of associative freedom can be sensibly applied to state organizations; on the other hand, one may conjecture that my principle of territorial obligation falls back on an all-subjected criterion. Finally, I will outline some practical consequences of my proposal for groups, such as expatriates, whose participation rights are typically contested in democratic societies. I will conclude by briefly summarizing the main findings of my analysis.

The all-subjected principle

Theorists who advocate the ASP differ on the question of how to best understand the meaning of being subjected to democratic decisions. The two most

important interpretations explicate ‘being subjected’ either as ‘being exposed to coercion’ or as ‘being legally bound’ (Andrić, 2021, pp. 388–390). The first-mentioned variant of the ASP has been most prominently defended by Arash Abizadeh (2008, pp. 39–42) in the context of recent debates on immigration and border control. Abizadeh considers individual autonomy a core value of democratic theory that has to take center stage in the justification of political power. In his view, autonomy requires, first, that a person enjoys an adequate range of valuable options and, second, that they are not subjugated to the will of somebody else. State laws put pressure on the individuals to whom they apply to perform actions they might otherwise omit or to refrain from actions they might otherwise carry out. By threatening punishment in the case of non-compliance they do not necessarily violate the first condition of autonomy, but they always conflict with the second requirement. Although a state’s legal apparatus reduces the number of options between which a person can decide, it may leave them with a sufficiently broad range of choices. However, the coercive threats or acts that are used to enforce the law inevitably infringe on an agent’s autonomy, as they subject them to the will of the collective. According to Abizadeh (2008, p. 40), ‘coercive state practices (...) must either be eliminated, or receive a justification consistent with the ideal of autonomy.’ Within democratic theory, individual autonomy is taken into account by enabling the persons concerned to participate in the law-making process on an equal footing. Every competent person who is subject to coercive state threats or acts must be given the opportunity to become a co-author of the respective laws.

The most detailed argument for the second reading of the ASP has been advanced by Ludvig Beckman in his recent book on democratic inclusion. According to Beckman (2023, p. 6), the principal democratic aspiration is ‘that people should be able to collectively determine the rules that seek to regulate them.’ In his view, democratic self-government requires that everybody who has to comply with a law must have a say in its making. Consequently, in order to establish who is subject to a legal rule one needs to know who is expected to abide by it. Every person over whom a law claims the normative authority to regulate their conduct must be granted democratic participation rights.

The difference between the two varieties of the ASP may become clearer if one considers how they deal with access restrictions for potential migrants. Abizadeh (2008, pp. 44–48) emphasized that the closed border policies many affluent countries pursue are enforced by the threat and exercise of coercion. Since potential migrants are subject to coercive state laws they must, in his view, be included in decisions on border regulations.⁵ By contrast, from Beckman’s (2023, pp. 98–101) perspective, the coercive nature of admission constraints is irrelevant to the conferral of democratic participation rights. He has stressed that modern states merely claim the authority to regulate the

conduct of persons who stay within their territory. They do not, however, demand obedience from persons living outside their borders and subject to the exclusive jurisdiction of another state. If potential migrants are prevented from entering the territory, they are, according to Beckman, not subject to state law and, therefore, not entitled to co-determine its border regulations.

In my opinion, both interpretations of the ASP fail to offer a convincing solution of the democratic boundary problem because they yield over-inclusive results and are based on circular reasoning. The determination of the electorate is over-inclusive if participation rights are granted to persons whose involvement appears to be highly counter-intuitive. Of course, as the controversy on the status of migrants demonstrates, it is often open to debate who should be included in democratic decision-making. In disputes where the scope of the demos is in question it would be pointless to criticize one of the positions for being over-inclusive. In other cases, however, there is broad agreement that certain groups of persons should not have a say in the law-making process.⁶ A well-known example, which already Dahl (1989, pp. - 127–129) addressed, concerns people who spend only a short time on the relevant state territory. Clearly, transients, tourists, and visiting students are subject to state laws and may experience coercion if they do not comply with them. Therefore, the ASP requires the inclusion of these groups in the democratic law-making process, which seems highly implausible.

Here one may point out that some advocates of the ASP have already responded to the over-inclusiveness objection by limiting the scope of the principle. Eva Erman (2021, p. 248), for instance, has argued that ‘all and only those who are de facto systematically and over time subjected to coercive decisions should have an influence in the decision making (. . .).’⁷ By introducing the requirement that subjection to state laws has to be systematic and long-lasting she intends to avoid the counter-intuitive results I have mentioned. The additional condition allows the ASP to distinguish long-term residents from short-term visitors, such as transients, tourists, and guest students. This response, however, prompts the question why it is not subjection to a law as such but only systematic and long-lasting subjection that gives the persons concerned a right to participate. Advocates of the ASP argue either that the reduction of one’s autonomy or that the regulation of one’s conduct by state authority requires democratic inclusion. Both justifications apply to each individual law and do not presuppose any particular frequency or duration of subjection to state jurisdiction. Therefore, Erman’s reading of the ASP appears to be an ad hoc modification that cannot be easily derived from the reasoning the principle is based on.

Moreover, the requirement of permanent subjection proposed by Erman and other authors fails to completely rebut the charge of over-inclusiveness. Consider the example of illegal migrants who cannot be returned because the country of origin refuses to take them back. To be sure, proponents of

a right to global freedom of movement may argue that illegal migrants are morally justified to reside in the state concerned and should, therefore, be enfranchised. Even these theorists, however, typically allow for the possibility that certain individuals have no moral claim to stay in the country they have entered unlawfully. If, for example, a state has already accepted such a large number of migrants that it is on the verge of collapse, it may turn away additional applicants. Moreover, a state may legitimately constrain the free global movement of persons pursuing anti-democratic goals or planning to engage in criminal activities (Carens, 2013, pp. 276–279). It seems highly implausible to ascribe a right to democratic participation to persons who have neither a legal nor a moral right to reside in a given state. However, since illegal migrants are permanently and systematically subject to coercive state laws, both varieties of the ASP require their inclusion and lead, therefore, to over-inclusive results.⁸

A second major problem faced by both varieties of the ASP is the circularity of its argumentative structure. To answer the question of who should be allowed to participate in the process of political decision-making, the ASP focuses exclusively on subjection to given state laws. However, these laws must be the outcome of decisions that have been taken by an already existing demos. Clearly, the boundary lines between democratic communities are not immutable, natural facts but can be influenced by human decisions. For example, a state government can create new borders or abolish old ones by accepting the secession of a region or by unification with another country, respectively. Obviously, the size and composition of a political community can greatly impact the outcomes of democratic decisions. For the members of a group it can make a huge difference whether they are the majority in a small political entity or the minority in a larger one. Since the delineation of political communities can be changed through state action and is of great importance for those affected, it requires justification. The ASP fails, however, to offer normative criteria for the constitution of political communities; it must necessarily presuppose already existing political entities without being able to critically assess their demarcation (Näsström, 2011, Bauböck, 2015, Miller, 2020).

With regard to the circularity objection, Carmen Pavel (2018, p. 332) expressed the opinion that ‘we need to make peace with some contingency in political life’. In Pavel’s (2018, p. 330) view, ‘democratic theory is agnostic about how the demos is constituted on the first go, but has more to say about appropriate requirements to make the demos fully democratic and thus legitimate. And this limitation does not reveal any inconsistency or incoherence at the heart of democratic theory.’ Contrary to Pavel, I believe that democratic theory should not content itself too readily with historic contingencies. The constitution and delineation of democratic communities has sparked much

controversy in recent debates on, *inter alia*, secession or European integration, the resolution of which requires normative orientation. Furthermore, it is wrong to assert that by enfranchising every person subjected to state laws a political community necessarily becomes ‘fully democratic and thus legitimate’. Think, for instance, of a colonial power which withholds political independence from a colonial people but grants each of its members a right to vote. In my view, the political decisions taken by the expanded demos would not correspond to the ideal of democratic self-determination although they satisfied the requirements of the ASP (Altman & Wellman, 2009, Stilz, 2019). Since the original constitution of the political community was morally flawed, the members of the colonial people had – despite their inclusion – a justified complaint against the democratic procedures. Enabling every person to whom the laws apply to take part in the political process fails to guarantee legitimate results if the political community is wrongly composed.

The circularity objection reveals that the democratic boundary problem has to be analyzed at two levels. First, the composition of a democratic community and its delimitation from other democratic communities needs to be justified. It is at this level where conflicts on the division or integration of state units, *i.e.* issues of decolonization, secession or unification, are in the focus of attention. Second, the allocation of democratic participation rights within an already constituted political community has to be addressed. Questions concerning the enfranchisement of still excluded groups or the disenfranchisement of *e.g.* felons fall within this area. For the sake of conceptual clarity, I will use the term ‘political community’ only for the first and the term ‘demos’ only for the second level. Any successful attempt to solve the democratic boundary problem has to develop normative criteria that provide orientation for both dimensions of the dilemma. The ASP fails to do so because it only operates at the second level while at the first level taking the status quo as being given.

Finally, it should be noted that the here discussed objections are also pertinent to the AAP which offers a much-discussed alternative to the ASP. Since being subjected to a law is only one of several ways one can be affected by it, the AAP is even more inclusive than the ASP (Goodin, 2016, p. 369). Accordingly, in the examples I have cited above, the AAP also calls for the enfranchisement of transients and illegitimate migrants. Moreover, laws that affect the interests of a certain group of persons must have been enacted by an already constituted political community. Evidently, the AAP also relies on a preexisting demos which is beyond critical judgement and has, therefore, the same circular structure as the ASP.

Freedom of association

After having discussed two major objections to the ASP (and the AAP), I will, in this section, argue that the right to associative freedom, complemented with a territorial principle, provides a suitable framework for a solution of the democratic boundary problem. In the following I will outline the concept of associative freedom, address the ethical implications of the territorial organization of states, and explain why my proposal is not vulnerable to the above discussed criticism. Although my proposal draws on some elements of Christopher H. Wellman's (2005, 2008) theory of associative freedom, it goes beyond his considerations in at least two respects. First, my argument brings the territorial dimension of political associations to bear that is largely missing in Wellman's approach. Second, by developing criteria for the granting of voting rights I offer, in contrast to Wellman, a comprehensive response to both levels of the democratic boundary problem.

Freedom of association has a positive and a negative side which both respond to basic human interests. On the one hand, the right to associate enables right holders to form and maintain associations with other persons who are likewise willing to associate with them. The positive aspect of associative freedom takes account of the great importance social affiliations have for a valuable and satisfying human life (Kateb, 1998, pp. 37–38). On the other hand, the right to *not* associate authorizes right holders to reject enrollment in a community or to leave a community to which they already belong. The negative side of associative freedom aims at protecting the individuals from the downside of communities, viz. the propensity to exert social pressure and control over their lives. It is important to note that freedom of association can also be claimed by collective entities which legitimately act on behalf of their members. Just as an individual may form an association with other individuals, so may an already established association merge with other associations; and just as an individual may terminate or deny membership in a social community, so may an association leave or refuse to enter into any union with other associations.

Freedom of association should be understood as a *prima facie* right which can be trumped in exceptional cases by more urgent moral considerations. Arguably, the right to dissolve a marriage is temporarily suspended if the life of a psychological unstable partner is acutely threatened. The negative freedom of association can be analyzed in Hohfeldian terms as a claim-right which imposes duties of omission on other parties. The entitlement of right holders not to enter or not to be prevented from leaving an association implies a general prohibition to interfere with their decisions. Everybody else is under a corresponding duty not to force them into an association or to keep them from resigning membership. By contrast, the positive freedom of association constitutes a privilege (or liberty-right) vis-à-vis other persons

which correlates with a no-right. Other persons are not duty-bound to meet the desires of right holders but may decline their invitations to create a community. They merely have no legitimate claim, i.e. a no-right, against right holders to refrain from uniting with individuals who likewise wish to do so. Interestingly, the privilege of person A to form and maintain an association can (and often does) compete with an identical privilege of person B. For instance, Adam's right to marry Clara, provided she accepts his proposal, does not foreclose Bert's right to marry Clara provided she accepts his proposal.⁹

From a liberal perspective it is an essential task of the state to guarantee associative freedom for a wide array of different associations, ranging from marriages over sports clubs, scientific organizations and trade unions to religious communities.¹⁰ However, as is well-known from the contractual tradition in political theory, the normative principles underlying the concept of associative freedom can also be brought to bear on the group of persons who constitute a state (Walzer, 2004, pp. 8–9). The basic human interests protected by the right to freedom of association are, with regard to states, no less relevant than in the context of other social communities. Positively, the individuals benefit from living in a state which provides them with a functioning legal system, infrastructural facilities, and basic social security. Typically, they also have an interest to create or maintain a state where many people share their social, cultural or economic goals, as this facilitates the realization of their life plans. Negatively, it is important for the individuals to have the right to leave a state if they fail to identify with the political community and experience their membership as being overly burdensome.

The concept of associative freedom offers important guidance on the legitimate composition of a political community and is able, contrary to the ASP and AAP, to provide answers to the *first level* of the democratic boundary problem. To begin with, every state must respect the negative rights of its citizens to terminate, individually or in groups, their membership. They must be allowed to emigrate and to create an independent political community by way of secession if certain conditions, such as a fair distribution of public debts, are met. However, the citizens are under no duty to associate with other persons and may freely opt for or against the acceptance of new members (Wellman, 2008).¹¹ Moreover, the citizens of an established state are entitled to reject their incorporation into other political communities. Hence, any form of annexation or forced unification clearly contradicts the ethical principles on which the right to associative freedom is based.

Evidently, the creation of new states by way of secession or the unification of two (or more) independent political entities must be based on majority decisions. In large communities there is almost never complete agreement on separation from or merger with an existing state. However, the involvement of members of the minority in the newly formed political community against their will disregards their individual freedom of association. Even if this

tension within the concept of freedom of association cannot be completely resolved, there are strong reasons for the legitimacy of a majority procedure. Without any collective decision-making mechanism each individual would be able to block the desire of all others to enter into an association. Majority votes allow the largest possible number of people to realize their preferences and thus provide the most effective implementation of the freedom of association (Gauthier, 1994, pp. 359–362).¹² In my view, maximizing the realization of associative freedom is legitimate if the newly formed states adequately protect the basic rights of minority members.

An essential characteristic of modern states is their territorial organization, which distinguishes them from other types of association, such as sports clubs, professional associations or religious communities. They claim exclusive jurisdictional authority over a well-defined area and apply their laws to everybody staying within their boundaries. Territorial rights are of great importance for the group of people who constitute a political community: without a secure territorial basis they would be unable to attain the goals that motivated the formation of a state in the first place. To begin with, protection against aggression may be very difficult to guarantee if persons who are not bound to legal rules coexist within the same geographical space. Likewise, the ability to coordinate individual actions, e.g. by traffic laws, and to prevent free-riding on the provision of public goods depends on territorial jurisdiction. Furthermore, attaining the specific cultural, social or environmental goals of a collective requires the authority to prohibit or encourage certain activities in the relevant area. However, the territorial dimension of states has problematic implications that do not pertain to other forms of association. While one can found a religious community without involving dissenters, the creation of a state almost always entails the enclosure of persons who disagree with living in this particular state or any state at all.

The problem under consideration must not be eliminated by the forced removal of those persons who do not wish to be incorporated into the state. Typically, individuals pursue life plans that are closely connected to the economic opportunities, cultural surroundings and personal ties of a particular place. They can only accomplish many of their most important projects if they are able to permanently reside in the area they feel attached to. These foundational interests ground a right of occupation that prohibits others to expel them from the place where they grew up and developed their life perspectives (Moore, 2015, Stilz, 2019). Although persons who disagree with their inclusion into a territorial state enjoy full exit rights, they may have weighty reasons to not exercise them. Apart from the local attachments mentioned above, they may anticipate how difficult it is to establish new social contacts and to earn a living elsewhere. Moreover, their right to leave the state does not implicate an obligation of any other political community to open its borders and accept them as members. Consequently, remaining in

the place where they presently live may be the only – or the only acceptable – option they actually have.

Up to now I have argued that the jurisdiction of modern states, due to their territorial organization, cannot be limited to the members of the political community. However, persons who enjoy a right of occupancy must neither be removed from the relevant area nor can they be expected to exercise their exit rights. Nevertheless, most individuals have significant interests to live in a state that provides them with basic goods, such as protection from aggression and social security. In my view, these interests are weighty enough to ground a positive right to associate if three conditions are met that take the conflicting interests of ‘dissenters’ into consideration. First, the persons who wish to establish or maintain a state must form the majority in the relevant area and must be entitled to reside there, i.e. they must not have expelled any original inhabitants. Second, the state must grant to every person under its jurisdiction basic human rights and far-reaching exit rights, including emigration and secession. Third, every mature person who lives permanently and legitimately on the state territory must be included in the demos and enjoy the same participation rights as any other member of the electorate.

These conditions take into account the fact that the formation and maintenance of a state places heavy burdens on persons who do not wish to live under its jurisdiction. Due to the territorial organization of states, far-reaching obligations are imposed on them: they must pay taxes, possibly do military service and comply with a variety of other laws. Therefore, they must be given the opportunity to evade these burdens by exercising exit rights, such as emigration or secession. If it is not possible or reasonable for them to leave the state, they must be put in a position to influence the extent and content of their obligations. Consequently, they must be granted the right to vote, so that they can take part in democratic decision-making and will be more readily heard in public discussions (Rieber, 2004, pp. 535–538). In contrast to other – non-territorially organized – associations, participation in the process of collective self-determination must not be limited to individuals who wish to form a community with one another. Evidently, the argument for the enfranchisement of every competent person who permanently and legitimately resides within the state’s boundaries directly addresses the *second level* of the democratic boundary problem. By binding the right to associative freedom to the territorial principle specified in the third requirement it provides sensible criteria for the constitution of the demos.

In sum, the here defended view offers an attractive alternative to the ASP (and the AAP) that does not face the problems discussed in the second section. The concept of associative freedom avoids circularity by providing normative criteria for the composition and modification of a political community that are independent of the decisions of an already constituted

demos. Moreover, if applied to the above given example of illegal (and illegitimate) migrants, it does not require an implausible assignment of participation rights. Since the concept of associative freedom allows to deny these persons membership in the political community despite their factual subjection to state law, it does not frame the demos in an over-inclusive way.

Two objections

The answer to the democratic boundary problem I have sketched in the previous section may give rise to, at least, two objections. First, one may doubt whether the right to associative freedom on which my proposal draws is readily applicable to state communities. Evidently, modern states have not come into existence by the free agreement of their members but are largely the result of wars or other forms of power politics. Hence, it may seem wrong to grant present political communities the same moral rights as *voluntary* associations, such as marriages, sports clubs or professional organizations. Moreover, according to some authors, an association can only claim important entitlements, especially the right to exclude, if it meets some basic requirements (White, 1997, Gutmann, 1998, Fine, 2010). In their view, the denial of membership is illegitimate unless it comes at trivial costs for the persons concerned or is necessary for the protection of valuable goals, such as the realization of intimate relationships or the exercise of religious freedom. Contrary to exclusion from a sports club, refusal of entry to a prosperous and safe state can be very detrimental to persons who seek to escape violence or poverty. Moreover, modern states are a largely anonymous and pluralist kind of association whose members for the most part do not know each other and fail to share any common faith. Hence, state communities do not seem to meet the requirements necessary for enjoying the full set of privileges that freedom of association entails.

As regards the involuntary character of political communities, it has first to be emphasized that my argument is not based on an *empirical* thesis about the creation of modern states. Instead, the concept of associative freedom advocates a *normative* thesis on the correct composition of a demos. It provides ethical criteria for the delineation of different political communities and for conferring participatory rights within the various states. Therefore, the empirical fact that the vast majority of people did not freely choose to join a particular political community does not militate against my solution of the democratic boundary problem. The argument for granting modern states the right to associate, which I have advanced in the previous section, draws on important individual interests. Although individuals are for the most part born into a state, they typically come to develop close ties to their political community. The fact that they have never opted for membership does not

prevent them from identifying with the democratic values and political institutions of their country of birth. They usually place high importance on the ability to determine the future course and the particular composition of their political community. However, since the development of a strong sense of belonging may fail and living outside the political community may seem to be more attractive, exit rights are nevertheless of great importance. Therefore, the relevant interests do not depend on a previous decision to join the political community and are strong enough to justify the attribution of associative rights.

It may be worth noting that freedom of association clearly applies to religious communities although in many cases the individuals were included during childhood on their parents' initiative. However, the fact that many believers joined a religious denomination when they still lacked the ability to consent is generally not seen as a reason to deny the right of associative freedom. Quite often the individuals attach great value to the flourishing of a religious community which they have not joined freely. Therefore, they must be able to decide matters of common concern on their own and to refuse, if necessary, membership to persons who fail to share their beliefs. However, since in some cases they do not develop the faith in question or lose it at some point, the right to leave a religious community is highly significant as well. The example of religious communities clearly shows that the interests the freedom of association in its positive and negative dimension seeks to protect can also be relevant for non-voluntary communities.

As regards the specific nature of state communities it is, of course, correct to claim that most citizens do not entertain valuable personal relationships with each other. Moreover, the citizens of modern liberal states are not united by any common confession but adhere to a variety of different religious and non-religious worldviews. Hence, the exclusionary rights of states which are implicated in their associative freedom cannot be explained by the protection of intimate relationships or a shared religious practice. However, as I have argued above, there are other reasons why citizens are highly interested in being entitled to decide on the composition of their political community. The citizens may be unable to attain important social, economic or cultural goals if they lack the competence to control membership in the state community.¹³ For instance, an ambitious social security system that provides for comprehensive transfer payments in the case of unemployment may be impossible to implement if the influx of poorly trained persons cannot be limited. Likewise, the aim to preserve a social climate of tolerance and mutual respect may be thwarted if the immigration of antagonistic religious groups cannot be regulated. Although the members' interest in deciding on the composition of their community may be weaker in the case of states than in the case of intimate relationships, it is strong enough to establish a *prima facie* right to free association.¹⁴

A second objection that may be raised to my proposal concerns the claim to offer a new solution of the democratic boundary problem that avoids the shortcomings of the ASP. In the previous section I have argued that the concept of associative freedom has to take the territorial dimension of modern states into account. Since the jurisdiction of modern states is spatially organized, it inevitably extends to persons who do not wish to live in the respective political communities. I have maintained that their involuntary inclusion in a given state's domain can only be justified if they are granted basic freedoms and full voting rights. Consequently, on my proposal, every mature person who permanently and legitimately lives under a state's legal order is entitled to participate – directly or indirectly – in the process of law-making. This may, however, seem tantamount to treating *subjection to state laws* as a reason for enfranchising the persons concerned. Therefore, one may suspect that my argument implicitly draws on the ASP which I have rebutted in the second section.

To see why this objection fails, one has to be aware of the different rationales behind the ASP and the concept of associative freedom. As outlined in the second section, the adherents of the ASP are divided into two camps which advocate slightly different interpretations of the principle. According to Abizadeh, the curtailment of individual autonomy, which is caused by the threat or enforcement of state coercion, needs to be justified. Coercive state laws can only be legitimate if those to whom they apply are entitled to participate in their making. According to Beckman, the ideal of democratic self-government requires to include all those over whom a state claims to have normative authority. Every person who is bound by a law and expected to obey it must be granted the right to participate in the democratic decision-making process.

My proposal, by contrast, looks upon the conditions under which the formation and continuation of territorially defined states can be vindicated. It specifies, based on the concept of associative freedom, standards of legitimacy for the creation and maintenance of political communities. The underlying idea is that every competent person who constantly lives within the state boundaries and is, therefore, pervasively affected by its jurisdiction must be granted full participation rights. In other words, those who are qua their place of residence *de facto* included in a political community have to be treated as equal members of the self-governing collective. Thus, contrary to the ASP, I do not claim that *every instance* of 'subjection to law' requires the enfranchisement of *every person* who is coerced or bound by a regulation. Instead, I take the more limited view that every permanent resident of the state territory must be enabled to influence the process of democratic decision-making.¹⁵

Of course, one may still ask why I wish to accord persons who permanently reside within a state's territory the right to participate in democratic decision-

making. One may surmise that their subjection to state law can be the only reason for giving them a say in the making of the relevant regulations. Indeed, my proposal responds to the fact that the spatial inclusion in the jurisdiction of a state has far-reaching consequences for those concerned. The imposition of a system of legal obligations which is enforced by the threat of coercion is certainly the most salient factor. However, modern states typically also care for the provision of basic goods, such as health care or education, and strongly affect the cultural environment, e.g. by erecting monuments or subsidizing museums. Participation in the democratic decision-making processes is of crucial importance because the political community pervasively shapes the present and future lives of its members in many different ways.¹⁶

Theorists, such as Erman, who seek to limit the validity of the ASP to permanent and systematic subjection to the law, have precisely these far-reaching effects in mind. As pointed out in the second section, however, they fail to provide a conclusive explanation why the ASP should not apply to every act of subjection. My proposal is able to offer the required justification because it focuses on the territorial claim of a political community. It is not subjection to law per se but permanent inclusion in the domain of a self-determining collective what establishes democratic participatory rights. Moreover, my approach differs from the ASP in that it limits the franchise to permanent residents who have a legitimate moral claim to live in the relevant area. The demos need not be extended to persons who have not been admitted by the political community enjoying territorial sovereignty.

In sum, the here defended position shares important positive features of the ASP while it corrects its main deficiencies. A major advantage of the ASP is its ability to justify the enfranchisement of historically underprivileged groups, such as people of color, women, or persons without possession. Likewise, my proposal calls for the democratic inclusion of every person who lives within the borders of a state irrespective of their race, sex, or wealth. However, my proposal is not vulnerable to the criticism I have offered to the ASP in the second section. Importantly, the charge of over-inclusiveness does not apply, because the franchise is limited to persons who permanently and legitimately reside on the territory of a state. Moreover, my proposal addresses both levels of the democratic boundary problem and can, therefore, not be accused of circular reasoning.

Immigrants, state-rejecting residents, and expatriates

Having defended the proposed solution of the democratic boundary problem against two objections, I will conclude by sketching some of its practical implications. Interesting questions arise with respect to groups where the two central elements of my conception – freedom of association and the territorial principle – seem to be in tension.

Therefore, in what follows I will discuss the democratic participation rights of immigrants, state-rejecting residents, and expatriates. Those belonging to the first two groups live permanently on the state territory but are yet to acquire or even oppose full membership in the political community; those belonging to the latter group are, as citizens, part of the political community but have their main residence outside the state borders. By discussing these cases I hope to provide a clearer picture of the interplay between freedom of association and the territorial principle in my approach.

The implications of my view for the democratic participation rights of immigrants who settle permanently in the receiving country are straightforward. The negative aspect of freedom of association, i.e. freedom from unwanted association, gives political communities wide latitude to decide on the admission or rejection of new members. However, as I have argued in the penultimate section, the territorial dimension of states entails obligations to persons who live permanently and legitimately in the relevant area. By accepting immigrants, a political community entitles them to reside on this state's territory and to be included in the process of collective self-determination. This is a consequence a political community has to consider when debating its border regulations; enduring immigration requires an expansion of the electorate.

Of course, it can be difficult to determine whether a person meets the requirement of being a *permanent* resident of the given state. For some immigrants, permanent residence in the state is still uncertain, while others live in two or more states without any obvious primary residence. Although I cannot offer a detailed solution for all possible scenarios within the scope of this essay, I would like to provide at least two clarifications. First, in some cases a transitional period for the granting of participation rights, taking into account the unresolved situation of migrants, is permissible. For instance, as long as there is reason to believe that war refugees will soon return to their country of origin, they need not be enfranchised. However, for groups who have no opportunity to return, e.g. climate refugees whose original settlement areas have become uninhabitable, the temporary withholding of participation rights is unjustified. Second, state communities are entitled to limit the time foreigners may stay on the state territory in order to avoid the obligation to enfranchise them. If the actual center of life of 'seasonal workers' is still in their country of origin, they do not have to be involved in democratic decision-making. Receiving states must, however, keep in mind that repeated – albeit temporary – arrangements with foreign workers may establish a claim to democratic participation. For instance, live-in nurses who over a long period of time regularly care nine months each year for dementia patients in a state community but spend the remaining three months in their country of origin must be included.¹⁷

While most immigrants wish to become full members of the political community, some native-born individuals object to their involvement. The group of state-rejecting residents comprises, above all, anarchists and separatists who cannot achieve their own state, e.g. because their supporters are too few or live too dispersed. Since these persons are exposed to a state order they explicitly reject they pose a particular challenge to the concept of freedom of association. In the penultimate section I have argued for supplementing freedom of association with a territorial principle that demands the enfranchisement of every permanent and legitimate resident. However, granting democratic participation rights to persons who reject their inclusion in the political community may seem to be an unsatisfying response to their worries.

With regard to this concern, it is important to see that state-rejecting residents have a genuine interest in being able to influence the outcomes of democratic decision-making. Even if they cannot realize their political ideals, it is rational for them to participate in shaping the current political order. For anarchists it makes sense to oppose interventionist state policies that severely curtail their freedoms, while separatists typically have an incentive to advocate the cultural rights of their particular group. However, although it is in the interest of state-rejecting residents to exercise their voting rights, they do not have to participate in democratic decision-making. Permanent residents have neither an obligation to cast their ballot nor to otherwise play an active role in the political process.

Finally, it should be noted that the territorial principle grants the right to vote on the basis of residence, regardless of whether a person enjoys citizen status or not. Since my conception does not make citizenship a prerequisite for political participation rights, it is in principle open for allowing state-rejecting residents to renounce their citizenship.¹⁸ However, the rejection of citizenship would be more of a symbolic act, since the persons concerned would not thereby lose their franchise or other fundamental rights guaranteed by the territorial principle. For the same reason, immigrants do not have to acquire the citizenship of the receiving state in order to obtain the right to vote. For some immigrants, such as EU citizens moving to another EU member state, the incentive to change citizenship may be relatively low because in many respects they already enjoy equal status under the law. In some cases, acquiring a new citizenship may even entail disadvantages, such as sanctions imposed by the state of origin that make family visits more difficult.

As regards expatriates, i.e. citizens who have their main residence abroad, it is important to note that the territorial principle establishes a sufficient though not necessary condition for the granting of voting rights. According to the territorial principle, every person who permanently and legitimately lives within a state's borders must be empowered to participate in democratic decision-making. However, the territorial

principle does not demand the franchise to be limited to persons who mainly reside on the territory concerned. If the requirements of the territorial principle are satisfied, freedom of association gives political communities wide latitude in determining the participation rules of their self-governing processes. Thus, the members of the demos may freely decide whether or not they wish to confer voting rights to citizens who mostly live abroad. If the majority of the electorate sees expatriates as an integral part of the political community, they are free to give them a say in democratic decisions. However, they are not obliged to grant participation rights due to their citizen status to persons whose center of life is elsewhere.¹⁹

It may be worth mentioning that the options political communities have for expanding the electorate are not confined to expatriates. If they have satisfied the requirements of the territorial principle, they are free to decide whom they additionally entitle to participate in the process of collective self-determination. Besides citizenship, they can also consider other criteria for awarding democratic participation rights that implicate the inclusion of persons living abroad. For instance, based on a widely shared nationalist self-understanding, political communities may enfranchise 'fellow nationals' in other countries irrespective of their citizenship.²⁰ Given the far-reaching consequences of certain decisions, they may also include particularly affected persons living outside the state territory in individual votes. However, contrary to what the AAP suggests, they would not violate the democratic rights of non-residents if they refrained from expanding the demos. Although this possibility can theoretically lead to a large expansion of the electorate, the objection of over-inclusivity does not apply to my concept. As explained in the second section, I only consider the granting of suffrage to be over-inclusive if there is, as in the case of transients, very broad agreement on its implausibility. Since, according to my proposal, the current demos decides in a majority vote on the enfranchisement of additional persons, results that are widely perceived as being counter-intuitive are not to be expected.

Conclusion

I have argued that any solution of the democratic boundary problem must address two issues – the composition of a political community and the enfranchisement of democratic citizens. The ASP fully ignores the first level of the problem and exposes itself, therefore, to the circularity-objection. Moreover, the ASP applies on the second level an unconvincing criterion for the allocation of participatory rights, which gives rise to the objection of over-inclusiveness. By contrast, the concept I have outlined and defended in the previous sections offers a coherent answer to both aspects of the demos problem. The right to freedom of association

provides criteria for the formation and dissolution of political communities that are widely accepted for other types of voluntary and non-voluntary communities. The territorial principle, that takes account of the spatial dimension of state sovereignty, complements (and corrects) the concept of associative freedom. It tackles the second level of the demos problem by grounding an obligation to enfranchise every mature person who legitimately lives on a permanent basis within the boundaries of a state.

Notes

1. For brief discussions of the extent of democratic citizenship see Cohen (1971, pp. 49–52) and Lively (1975, pp. 10–12); a comprehensive examination of the democratic boundary problem can be found in Whelan (1983).
2. The ASP has also been defended by, for instance, Abizadeh (2008), Beckman (2009, 2023), Erman (2014, 2021), Karlsson Schaffer (2012) and Pavel (2018).
3. Since state decisions often affect persons who live in foreign countries, the AAP tends to transcend the concept of a national demos. Accordingly, many proponents of a ‘global democracy’ who seek to overcome the traditional state system draw on the AAP (Bartelson, 2008, Owen, 2012, Arrhenius, 2018). For critical discussions of the AAP see Näsström (2011) and Lagerspetz (2015).
4. Beckman (2023, pp. 10–13) argues that ‘subjection to the law’ should merely be seen as a presumptive reason that can be trumped by more pressing considerations. However, he concedes that the ASP is typically understood to provide conclusive reasons for inclusion in the demos.
5. Based on a conceptual distinction between coercion and prevention, Miller (2010) has levelled a much-discussed criticism of Abizadeh’s argument. For a defense of his position see Abizadeh (2010).
6. Admittedly, some proponents of the AAP dispute that the electorate of democratic states can be defined in an over-inclusive way. According to Goodin (2016, p. 365), given global interdependencies, ‘virtually everyone should have a vote virtually everywhere’.
7. Formulations suggesting that the ASP is meant to apply only to long-term residents who are on a regular basis subjected to state law can also be found in Dahl (1989, p. 129), and Miller (2009, p. 225); see also Erman (2014, pp. 538–541) for an earlier account of her position.
8. It may be worth noting that I do not deny that illegal migrants are owed a moral justification for how they are treated, especially if they are exposed to state coercion. However, the required justification need not take a democratic form; instead it can build on moral rights vindicating the exercise of political power. As Saunders (2011, p. 291) puts it: ‘Agents acting within their rights do not need the permission of others (. . .). Thus, the citizens of one country may act in ways they have a right to, without including others affected by the exercise of that right.’
9. The individual claim right to form and maintain different kinds of association implies, however, an obligation of the state not to thwart these activities. Thus, the positive freedom of association is perhaps best characterized as a claim-right in relation to the state and a privilege in relation to other individuals.

10. For helpful classifications of different types of associations see Alexander (2008) and Brownlee and Jenkins (2019).
11. Here it is important to recall that the freedom of association is understood as a *prima facie* right. Some persons, such as war refugees, may have very weighty interests that are able to trump possible interests of local inhabitants in rejecting new members.
12. For possible answers to the problem of justifying majority procedures see also Beran (1984), Wellman (2005, pp. 34–64), and Dietrich (2014, 2018). Primary right theories of secession have been criticized by proponents of liberal nationalist theories (Miller, 1995, Moore, 2001) and remedial rights only theories (Brilmayer, 1991, Buchanan, 2004).
13. Similar arguments have been advanced by proponents of collective forms of political self-determination, such as Miller (2016, pp. 62–66) and Song (2019, pp. 52–75).
14. As I have argued in the previous section, the freedom of association does not confer absolute exclusionary rights to the relevant political communities (see note 11). Thus, what has to be justified is a state's general competence to decide on the admittance of new members that can be trumped by more urgent needs of outsiders.
15. As I will explain in the next section, the principle of freedom of association also permits the inclusion of persons who do not live predominantly on the state territory. However, according to the here defended concept, a moral obligation to grant the right to vote only exists with respect to the group of permanent residents.
16. In a similar fashion, Rainer Bauböck (2007, pp. 2420–2423) argued that permanent residents need to be enfranchised because they are stakeholders of the relevant political community. He considers the stakeholder principle, however, as an alternative to the principle of voluntary association (Bauböck, 2015, pp. 824–825). Instead, the third requirement I have outlined in the previous section seeks to integrate the insight that permanent residents are stakeholders of the political community into the concept of associative freedom.
17. For a detailed discussion of seasonal workers that focuses, however, primarily on economic and social rights, see Carens (2008).
18. A concept of mandatory citizenship with regard to immigrants has been defended by De Schutter and Ypi (2015).
19. Note that leading proponents of the ASP share the view that citizenship is not a necessary condition for granting participation rights (Beckman, 2023, pp. 6–10). However, contrary to my approach, the ASP does not allow for the democratic inclusion of citizens living abroad who are permanently not subjected to state law (López-Guerra, 2005).
20. Some states, such as Hungary, already enfranchise national minorities living in neighboring countries, typically by granting them citizenship. This policy often leads to conflicts with the neighboring countries concerned, which consider this an interference with their internal affairs. However, a closer look shows that their right to self-determination is not violated. By including residents of other countries in its electorate, a state neither alters the demos nor influences the democratic decision-making process of the countries concerned.

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