

Critical Exchange

Democratic Inclusion

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Rainer Bauböck,

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Much of what political theorists have written about democracy over the past several decades presupposes, implicitly or explicitly, that democratic theorists need be concerned only with the ways in which citizens participate in the decision-making of their own states. In the last decade or so, however, this framework has become subject to increasing critical attention. The visibility of immigration as a public issue has brought into view the fact that every democratic state contains people who live within its boundaries but who are not citizens. Issues like climate change and the globalization of economic activities make it harder to assume that a given state's decisions only affect its own citizens. Finally, various factors have made it harder to ignore the fact that non-state actors like corporations and NGOs often exercise great collective power within and across state boundaries.

Whose interests and views should be taken into account in a collective decision? In what ways should their interests and views be taken into account? Why? These are the fundamental questions that Rainer Bauböck has tried to address in a recent book that draws together decades of his thinking and writing about these topics. His original essay was already the subject of several responses in the volume in which it appeared, and this Critical Exchange, which grew out of a panel at the American Political Science Association meeting in 2018, seeks to extend that conversation further. The exchange begins with a brief summary by Bauböck of the book's main themes. This is followed by critical challenges from Sean Gray, Jennifer Rubenstein, and Melissa Williams. The exchange concludes with a response from Bauböck to his critics.

Joseph H. Carens

Democratic Inclusion – a short summary

Who has a claim to inclusion in a democratic polity? The answer depends on what aspect of the democratic process we have in mind. I argue that (1) negatively affected interests need to be heard and taken into account before deciding on policies; (2) all those subjected to coercive jurisdiction have a claim to protection of their rights and political contestation; and (3) all those whose individual interests in their own autonomy and well-being are linked to the collective interests of a polity in its own freedom and flourishing have a claim to citizenship and voting rights.

The principles of All Affected Interests (AAI) and All Subjected to Coercion (ASC) have been proposed as alternative solutions to the much-discussed problem of how democracies can determine their own boundaries. I claim that instead of being rivals, these two principles complement each other. The conflict emerges only if we misconceive of AAI and ASC as answering the question of who should be admitted to citizenship. I propose that neither AAI nor ASC can provide a response to this question. Instead, we need a third and distinct principle of including all citizenship stakeholder (ACS). ACS builds upon the “genuine link” doctrine in international law according to which the attribution of nationality ought to be based on a genuine connection between an individual and a state. From a democratic perspective, what matters for attributing citizenship is not whether a person is affected by a policy outcome or subjected to coercive laws, but whether there is a relational correspondence between individual and collective interests in autonomy and flourishing.

The three principles of democratic inclusion form a strict sequence. We must first ask who the citizens of a polity are that authorize coercive government institutions through their votes before we can ask whom these institutions have to protect; and we have to clarify the scope of jurisdiction before asking whose voices have to be heard when taking decisions that may affect interests beyond the jurisdiction. Much of the confusion in the democratic boundary debate results from reversing this sequence by suggesting that the composition of the demos should be determined by the scope of interests affected by a particular policy or by the territorial reach of coercive government institutions.

This argument relies on several empirical premises. I identify circumstances and contexts of democracy that we have to take for granted before we can ask questions about democratic inclusion in a meaningful way. I conceive of circumstances of democracy (in analogy with John Rawls’ ‘circumstances of justice’) as conditions under which democracy is empirically possible and normatively necessary. Among these circumstances are a subdivision of humanity into a plurality of externally bounded polities and an internal diversity of interests, identities and ideas about the common good within each polity. The external plurality requires that individuals are recognized as members of particular polities who in turn recognize each other. The internal plurality requires democratic methods for arriving at collectively binding decisions that can be accepted as legitimate by all.

Apart from these universal circumstances for democratic inclusion, there are also historically changing contexts that we need to presuppose for a theory of democratic inclusion in the present world. Among these contexts I count the fact that coercive political power is territorially based and that the land mass of Planet Earth is subdivided into mutually exclusive territorial jurisdictions of states. Second, these territorial jurisdictions can be governed democratically only if they have relatively stable populations. These conditions were absent during earlier periods of human history and we can imagine a future with non-territorial and broadly overlapping jurisdictions governing hypermobile populations. However, if we

want our principles of democratic inclusion to apply to the current world, we need to assume territorial jurisdiction exercised over relatively sedentary societies.

The final part of the essay considers how to apply the citizenship stakeholders principle to laws regulating membership status and voting rights. Democratic theorists have been blinded by “methodological statism” when applying their principles. Democratic polities exist at state, substate and suprastate levels and we need to consider for each level how individual interests in citizenship correspond to conditions for collective self-government. I defend a rule of lifelong birthright membership in independent states with naturalization and renunciation options for migrants; of automatic residence-based citizenship in municipalities; and of derivative citizenship in supranational unions, such as the EU, and in federated states, provinces or cantons. Membership rules in such a multilevel conception of democratic inclusion are, once again, complementary rather than rivalrous. Taken together they promote intergenerational continuity at the state level, full inclusion of mobile populations at the local level, and solidarity and territorial stability in federated states and unions of states.

Rainer Bauböck

Globalization, Private Governance, and the Insufficiency of Stakeholder Citizenship

There exists a tension in our contemporary theories of democracy. Over the last half-century, popular demands for democracy have become widespread. Yet these ambitions are now outstripping the capacity of the state to deliver. Democratic governments today are less capable of protecting the interests of their citizens from decisions made outside their borders. And, increasingly, the decisions with the most impact on people’s lives aren’t being made by governments at all, but by non-state actors, such as international organizations, multinational corporations, and private foundations. In a world in which territorial states are just one of several important sites of governance, there is a pressing need to revisit the question of inclusion in democratic theory and practice.

Rainer Bauböck’s *Democratic Inclusion* is a significant contribution to our thinking about possibilities for democracy beyond the state. The project of the book is to develop a framework that specifies the degree of inclusion that different groups of people are owed in political processes at the domestic, transnational, and global levels. If we can get a handle on the democratic principles that are appropriate to these domains, Bauböck suggests, we can begin to imagine ways of giving people legitimate input. Bauböck takes a welcome, expansive view of the number and variety of institutional mechanisms through which popular self-government can be achieved. His vision of democratic citizenship is one in which individuals enjoy “simultaneous membership claims” within a “plurality of bounded polities” (p. 55). In this account, each individual can have multiple memberships—for example, in local governments and communities, regional or national jurisdictions, or international regimes—that entitles them to different kinds of voice and influence, depending on what’s at stake. The result is a valuable statement about what realizing democratic inclusion requires in an era of globalization and complex interdependence.

In this brief response, I want to highlight two innovative features of Bauböck’s approach. The first pushes our thinking and theorizing about democratic inclusion to consider the politically fraught relationships that people have with the governments of other countries, in addition to their own. A second innovation is to develop the analytical tools needed to define, distinguish, evaluate, and track

people's various competing demands for inclusion. In the end, however, my conclusion is a critical one: the responsibilities of governments to outsiders is not, I think, exhaustive of the domains to which democratic principles of inclusion should apply. We have just as much, if not more, reason to direct our energies towards democratizing the decisions of non-state actors, who can, and quite often do, profoundly shape our collective lives.

To begin, let's take a closer look at Bauböck's innovations. Bauböck's account is based on a simple and compelling argument that expands our concerns when it comes to dealing with demands for inclusion from outside the state. Globalization and the many issues that it raises—about migration, financial regulation, human rights, climate change—has undermined our ability to draw clear boundaries of membership. Political decisions (or non-decisions) in one country can significantly impact the rights and wellbeing of those in others. What's more, with advances in technology and increased mobility, citizens can now bypass their own government and raise concerns *directly*—through organized protests, campaigns, transnational advocacy networks, and social media, among others. Under these conditions, Bauböck argues that theorizing democratic inclusion from a "single-polity perspective" is a form of "methodological statism" that is no longer tenable (p. 57). Updating our understanding of democracy starts by acknowledging that, "norms of inclusion across political boundaries must be specified for *constellations* of polities rather than for a single polity considered in isolation" (p. 55, italics original).

A second—more ambitious—innovation follows closely from this shift in focus. Expanding our democratic obligations to outsiders requires a principled method for distributing participatory rights and entitlements, within and across existing state boundaries and levels of government. How do we determine who is owed inclusion, on what basis, and to what degree?

This is no small task. The first step in Bauböck's solution is to distinguish three generic types of boundaries: those determined solely by the impact of a political decision; those corresponding to a legal or political jurisdiction; and, finally, those based on membership in a self-governing polity. The next step is to identify the underlying democratic principle that corresponds to each boundary. By knowing which principle applies, Bauböck's framework enables us to know the degree of inclusion that is warranted in a specific situation. The *all affected principle* specifies that everyone whose interests are affected by a decision is entitled to have those interests be considered. Much narrower is the *all subjected to coercion principle*, which concerns those—and only those—within a government's jurisdiction. It requires that all those subjected to a law or policy have the standing to contest it. Narrower still is the *all citizen stakeholders principle*, which grants full rights of political participation only to individuals who have a "genuine link" to a given polity, in the sense that such membership is essential to their overall freedom and wellbeing (p. 47). This framework supports issuing verdicts about when democratic inclusion is justified and determining appropriate institutional responses.

Let me leave aside whether Bauböck's attempt to reconcile these three principles of inclusion is successful or not. Defenders of the all-affected and all-subjected principles will no doubt have opinions (see, e.g., Näsström 2011). What I would like to do, instead, is to pursue a different line of criticism. In the book's closing pages, Bauböck hints that his real concern about democratic inclusion stems from a "deeper worry about the future of democratic citizenship" (p. 276). Bauböck's fear is that globalization threatens to make genuine democratic self-governance impossible. In an era of "hypermobility" and "superdiversity" there is a risk that people will not see themselves as having a stake in the communities in which they live. "[T]his is a dystopia in which not only citizenship but democracy itself would be much more difficult to realize" (p. 277). A theory of democratic inclusion should identify ways for countries to fulfill their obligations to outsiders. But, for Bauböck, such a theory must also preserve a robust

commitment to democratic citizenship premised on residence within a state's territory. Nonresidents should keep their citizenship in a country only if they can maintain a genuine link to that country.

Bauböck is certainly not alone in insisting on the necessity of well-defined state borders for securing democratic citizenship. But it is unclear to me how this justifies theorizing inclusion solely in terms of the relationships between individuals and states. Neither is it clear to me why a theory of democratic *inclusion* should be tasked with saving *citizenship*. If anything, the changing circumstances of politics in the world today underscore the need for theorists to also consider the decisions and actions of other organizations besides the state that may deeply affect people's lives. So, I think that it's important to ask: What is lost, democratically speaking, if we restrict our concerns only to cases where people are somehow wrongfully excluded from consideration by states?

For an example that wouldn't register in Bauböck's model, consider the phenomenon of "private government." Elizabeth Anderson writes about the power of private organizations to regulate people's lives in ways that once were the exclusive prerogative of the state (Anderson 2017). Walmart, Amazon, and other large multinational corporations are increasingly engaged in conventional governance activities. They supply public goods, such as health insurance, educational funding, childcare, and pension schemes. They dictate what their employees must do, by when, and what the sanctions are for non-compliance. And, they regulate the off-hour lives of their workers as well—everything from personal appearance, to political speech, to sexual partner, to use of recreational drugs, alcohol, smoking, and physical fitness. Employees who are denied the ability to control their own lives as free equals would rightly be seen as victims of undemocratic exclusion. But Bauböck's approach makes it difficult to frame such an employer-employee relationship in democratic terms. To assume that enfranchisement in state decision-making is sufficient for self-rule, is to overlook some important ways that our contemporary political landscape has changed.

My worry is that Bauböck's theory of democratic inclusion suffers from a slightly different version of the "methodological statism" that he otherwise decries. When faced with oppressive labour practices, overreaching financial institutions, or negligent industrial polluters, many of us have strong democratic intuitions. We feel entitled to a say in the decision-making of any organization upon whose actions our wellbeing depends. Globalization signals the ability of actors other than states—multinational corporations, philanthropic foundations, international organizations, transnational civic associations—to shape and influence people's lives in ways that may generate legitimate demands for more democracy. How can we reconcile these developments with Bauböck's claim that democratic principles aren't applicable "to 'weak' or 'functional' demoi whose scope is transnational and global"? (p. 11). The mere fact that an organization is not a state doesn't prevent us from conceiving of it as a bounded entity, with clear lines of membership and standing obligations to those affected. States are not the only entities that can be subject to pressures for democratic inclusion.

Of course, Bauböck could concede that non-state actors pose a threat to democratic self-government described above. But he might still reply that any efforts to democratize the decision-making of global or transnational organizations would require the cooperation of national governments. One can grant that contemporary democracies entitle individuals to participate in many kinds of decision-making outside of their borders, but maintain that access to these venues is mediated through the state and its elected representatives (p. 62). Only the state can make binding laws backed by coercive power, as Bauböck notes.

To be clear, I am not denying the central importance of the rights and protections that membership within a sovereign state affords. To the contrary, I believe a comprehensive theory of democratic inclusion can acknowledge the place of citizenship, while also addressing other relationships of domination and exclusion that undermine people's capacities for democratic self-rule. My strategy, simply, is to draw attention to what gets missed if democratic inclusion is defined too narrowly, in accordance with existing borders. What is needed—and what Bauböck doesn't provide—is a theory of democratic inclusion that justifies popular oversight and control of private forms of extraterritorial power that elude the modern state's grasp.

Where does this leave us? Much depends on how Bauböck's *Democratic Inclusion* is ultimately read. One possible reading is that what Bauböck presents isn't so much a theory of democratic inclusion (as the title of the book implies), as it is a theory of democratic citizenship. This would neatly explain the determination to derive durable boundaries of membership and citizenship across different countries and communities. It would also explain the overriding concern about protecting citizenship's future in an era of increasing diversity and mobility. But if Bauböck *does* intend for his book to be read as a theory of democratic inclusion, then I have serious reservations that it can account for the more radical democratic impulses that myself and many others share. At the very least, we are owed a justification for why "democracy" should be limited to states and state-based citizenship, at the expense of other possibilities.

Let me reiterate my admiration for this book's many contributions. It is sharply argued, insightful, and clearly focused on providing tools for unraveling the complexities of our highly globalized societies. Some of my critical remarks take issue with Bauböck's privileging of the territorial state, and thus his neglect of other domains. My primary objective, though, has been to put a small question mark against the idea that what Bauböck has given us, in the end, truly is a theory of democratic inclusion; and a much larger question mark against the idea that the rights and institutions of citizenship are the only means for achieving it.

Sean W.D. Gray

The Complexity of Democratic Exclusion

"Who has a claim to be included in a democratic polity?" (p. 3). Some scholars have explored this question using a single principle, such as the "All Affected Interests" principle or the "All Subject to Coercion" principle (Goodin 2007; Näsström 2010). In his wide-ranging and revelatory new book, Rainer Bauböck argues that this approach is wrong-headed. What we need, he tells us, are several different principles of democratic inclusion, each of which provides critical leverage against different kinds of exclusion (pp. 6, 20). Bauböck elucidates three such principles: the All Affected Interests (AAI) principle, which accords outsiders who are potentially affected by the "negative externalities" (p. 34) of a polity's decisions a voice in those decisions; the All Subject to Coercion (ASC) principle, which gives people who are subject to ongoing coercion by a government (typically people within that government's jurisdiction) equal legal protection of their rights, and the All Citizen Stakeholders (ACS) principle, which gives all members of a polity equal rule-making power.

I find the pluralism of Bauböck's account persuasive and generative. Yet as Bauböck himself emphasizes, identifying a small number of principles that reflect the relevant forms of inclusion for different contexts, do not conflict with each other, and can be combined into "mixed" principles (p. 6), is an extremely daunting task. In part for this reason, I think that the value of trying to articulate these

principles is not only that we might eventually hit upon the right principles, but also that the very effort to do so helps us to “map” the bumpy terrain of democratic exclusion, including its relationships to domination, usurpation, and disenfranchisement (Allen 2005; Markell 2008; Kielty n.d.). In this essay I proceed in this topographic spirit, exploring potential difficulties with Bauböck’s AAI and ASC principles. My aim is not only to contribute to the task of articulating correct principles, but also to further elucidate the complexity of democratic exclusion. I conclude by turning briefly to the question of how Bauböck’s principles themselves might be more inclusively deployed.

Is Bauböck’s All-Affected Interests Principle Too Weak?

Bauböck’s AAI principle is weak by design: it gives outsiders whose interests are affected by a polity’s decisions a “say” in those decisions, but not a vote in general elections or agenda-setting power (p. 24). The AAI principle is limited in this way for two reasons. First, “government action normally affects the interests of those who reside permanently within its territory much more comprehensively than those living outside the border” (p. 23), and second, if the AAI principle allowed outsiders to vote or set the agenda, insiders’ ability to self-govern would be seriously undermined. While on Bauböck’s account “[t]he representation of externally affected interests depends... on these being effectively represented by a government that has the power to confront the authorities of the state that takes a contested decision” (pp. 24, 25), and while this “power to confront” sounds at first like it might have teeth, on my reading this confrontation must be limited to demanding a justification for a decision that is already on a government’s agenda, and must not involve any other pressure tactics.

I think that Bauböck’s AAI principle is likely too weak to enable outsiders to protect themselves against normatively objectionable forms of exclusion, and that this difficulty can be traced largely to the first of the two aforementioned arguments. As just noted, Bauböck states that people inside a country are usually affected “more comprehensively” by that country’s government than outsiders are. But is this the most relevant criterion? Even if insiders are affected *more* than outsiders, outsiders are often significantly affected in *absolute terms*. And even if insiders are affected more *comprehensively* in the sense that they are subject to all of their government’s laws, outsiders can also have their whole lives turned upside down (or ended) by a foreign government’s actions. Outsiders might need less than what the ASC principle provides (equal protection of their rights), but more than what the AAI principle offers.

The AAI principle is designed to address effects that are “negative externalities” of governments’ decisions (p. 34) —and more generally, negative effects that are one-off, unintentional, and shaped by discrete decisions. But of course, governments often negatively affect outsiders in ways that are ongoing, intentional, and shaped by more structural factors. For example, the US government’s participation in global trade regimes, its rules governing patents, its enforcement of rules governing bribery of foreign leaders, and its practice of recognizing the sovereignty of foreign leaders who usurp power have all affected outsiders in significant and negative ways (Pogge 2002; Wenar, 2015). These practices are also ongoing, intentional, and/or structural. Yet changing them is frequently not on the US government’s agenda (or the agendas of other governments that engage in these practices). As a result, any principle of inclusion that denies outsiders agenda-setting power will be severely constrained in the kind and degree of inclusion it can deliver.

One possible response to this worry is Bauböck’s suggestion that “discursive publics (often promoted by advocacy groups in civil society) will represent externally affected interests within democratic polities” (p. 25, n. 17). Yet if outsiders depend on insiders to defend their vital interests, insiders in effect dominate outsiders. Moreover, even well-intentioned domestic advocacy groups can

“represent” outsiders badly, distorting their message or co-opting them (Rubenstein 2014, Mamdani 2010, Kane 1996). (At the other extreme, powerful outsiders can manipulate or pay off insiders in order to get issues onto a country’s domestic agenda, e.g. Russian meddling in the 2016 U.S. election.)

Bauböck’s second response to the worry that the AAI principle is too weak is to extend the ASC principle, which typically applies domestically, to contexts in which governments make decisions that subject outsiders “comprehensively to coercion in a way that fundamentally restricts their autonomy” (p. 29). This extension of the ASC principle addresses some, but not all, negative effects that the AAI principle misses. For example, suppose that the government of country A does not enforce its own environmental laws, with the predictable result that a river in country A that flows into country B is contaminated. Impoverished residents of country B, who use the river for drinking and washing, then get sick and die at higher rates than they would otherwise. This issue cannot be addressed by the AAI principle, because it is not on the agenda of country A and residents of country A have no interest in putting it on the agenda. It also cannot be addressed by the ASC principle because (one could argue) it does not involve autonomy-constraining coercion. In short, neither the AAI nor the ASC principle offer a basis for including outsiders who are being significantly harmed if a) people in the offending country wish to ignore the issue and b) the harm does not involve subjecting outsiders “comprehensively to coercion in a way that fundamentally restricts their autonomy” (p. 29).

The extent to which this is a problem depends on the broader normative context within which Bauböck’s principles of democratic inclusion are taken to operate. Bauböck describes his principles as “critical standards” of democratic inclusion against which existing practices can be evaluated (p. 65), and that also exist alongside (unspecified) principles of justice that are not reducible to democratic inclusion (p. 10). On the one hand, if these principles of justice also prevent serious harm, then the fact that the river example flows through the cracks of Bauböck’s principles is less concerning. On the other hand, if we assume the existence of principles of justice aimed at (among other things) preventing serious harm across borders, this raises the question of what *additional* work the AAI principle is supposed to do. In particular, if the AAI principle is intended to address harms that are not already recognized as injustices, then it appears even more problematic that it does not grant outsiders agenda-setting power.

Is Bauböck’s All Subject to Coercion (ASC) Principle More Demanding than He Acknowledges?

While Bauböck’s AAI principle seems too weak, his ASC principle appears to be more demanding than he acknowledges. Bauböck writes that “the ASC principle would support our moral intuitions that states engaging in... extra-jurisdictional coercion have special duties to admit refugees” (p. 29). This is especially so for “comprehensive” coercion that “fundamentally restricts” people’s “autonomy,” the “most obvious” example of which is military intervention (p. 29). This raises two questions: 1) what *other* forms of comprehensive extra-jurisdictional coercion generate a duty to admit refugees, and 2) why (if at all) is this duty limited only to admitting refugees? For example, if states knowingly contribute to anthropogenic climate change which in turn poses an existential threat to small island states, does this generate a duty to admit so-called “climate refugees”? If states impose harsh and unfair terms of trade on other countries does this generate a duty to accept economic migrants, or perhaps provide other kinds of assistance?

In posing these questions I do not mean to imply that the ASC principle is too demanding. Rather, I mean to suggest that the implications of Bauböck’s account depend significantly on what, exactly, we take coercion to be. And elucidating the duties generated by different kinds of coercion requires looking beyond “obvious” examples such as military intervention, to also probe (what are

perhaps) “lower boundary” examples, such as contributing to climate change and participating in exploitative trade agreements.

Pluralist principles of democratic inclusion and Non-state Actors

Even if one agrees with Bauböck that the nation-state and traditional nodes of citizenship are not facing imminent demise (pp. 276-81), non-state actors such as international NGOs, corporations, and supranational organizations *do* sometimes engage in governance activities. While these actors are not coercive in the way that a state with an army is coercive, they can be coercive nonetheless. For example, INGOs are sometimes the only sources of life-sustaining basic services to large populations for extended periods; they also sometimes help to write government policy (Rubenstein 2015). To be legitimate, this sort of coercion would seem to require some kind of democratic basis, which in turn would seem to require some sort of inclusion. But what form should this inclusion take?

Consistent with Bauböck’s own emphasis on pluralism, I doubt that his principles of democratic inclusion can be extended directly to INGOs. Just as we need different principles of inclusion for different types of exclusion, we also likely need different principles of inclusion for different types of actors. For example, Bauböck presents two interpretations of the ASC principle, one for domestic governments and the other for governments acting across borders. The domestic version is responsive to the comprehensive coercive power of domestic governments over people in their jurisdictions. The cross-border version of the principle is responsive to the worry that invading governments will annex new territory; it therefore directs invading militaries to “treat [civilian populations] with equal respect and concern” (p. 29).

A principle along the lines of the ASC principle for INGOs—one that would be relevant to people living in the areas where they work and subject to the policies that they help to construct— would need to recognize that while INGOs risk undermining governance by domestic conventional governments, they are far less likely to annex territory than an invading military. INGOs are also committed to other principles that stand in, if not a conflictual then at least a complex relationship to democratic inclusion. For example, Doctors Without Borders’ principle of independence states, “we strive to ensure that we have the power to freely evaluate medical needs, to access populations without restriction, and to directly control the aid we provide” (“MSF Charter,” 2018). In short, while Bauböck’s principles cannot be directly extended to INGOs, his account is richly suggestive of how principles of democratic inclusion for them might be developed.

The Inclusiveness of Democratic Inclusion

As I noted above, Bauböck begins his essay by asking, “[w]ho has a claim to be included in a democratic polity?” (p. 3). In his reply to critics, however, Bauböck characterizes his question differently: “Which principles should guide *citizens of a democratic polity and their representatives* when considering whose interests should count in *their* political decisions, whom to offer protection, and whom to include in *their* midst as citizens?” (p. 228, my italics). While the difference between them is subtle, these two versions of Bauböck’s question bring into view two importantly different ways of understanding his contribution.

According to the first version, Bauböck’s principles are for everyone—outsiders and insiders. They are a tool for those on the outside to demand inclusion, and provide a basis for solidaristic alliances between outsiders and insiders to demand inclusion for outsiders. On the second version, in

contrast, the principles are for insiders only: they are for citizens of democratic polities to use in deciding whom to grant different types of inclusion. The community that this second version of Bauböck's question calls into being is therefore itself exclusive: it is constituted by the question of what we should do for (or about) *them*. I therefore think that the first version of the question is more inclusive than the second, and so is the better way to frame Bauböck's fascinating inquiry into democratic inclusion.

Jennifer C. Rubenstein

Democratic Agency: Beyond Methodological Statism

"The primary purpose of democracy," Rainer Bauböck tells us in his masterful essay, "is to provide legitimacy to coercive political rule through popular self-government" (p. 10). This statement is already a reason to celebrate Bauböck's argument, for it highlights something that we sometimes overlook in disputes about political practice. We cannot give up on democracy, because we cannot do without binding decisions backed by coercive power if we are to solve pressing collective action problems, and democracy is how we can make that power legitimate.

Bauböck's theoretical goals in this essay are ambitious. First, he seeks to specify the normative principles of democratic inclusion that must be met if binding political decisions are to count as democratically legitimate. Second, in articulating these principles and their contexts of application, Bauböck seeks to solve the vexed "boundary problem" in democratic theory: that for the people to rule itself, it must be clear who is included (and who is excluded) from membership in "the people" (Whelan, 1983; Dahl, 1990, 1989; Goodin, 2007). Third, by addressing his theory to complex "constellations of polities" rather than theorizing from a "single-polity perspective," Bauböck aims to overcome the problem of methodological statism in democratic theory, the common presupposition that normative principles of democratic legitimacy can be met only within the boundaries of territorial states (p. 57).

Bauböck offers a compelling pluralistic account of the principles of democratic legitimacy. He identifies three principles – All Affected Interests (AAI), All Subject to Coercion (ASC), and All Citizenship Stakeholders (ACS) -- and shows that each principle highlights different duties of inclusion and justification and has a distinct role to play in an overarching account of legitimacy. Bauböck's attentiveness to collective agency as the factor that distinguishes democratic legitimacy from legitimacy *simpliciter* is also important. Yet, as I will argue in what follows, Bauböck's theoretical strategy for solving the democratic boundary problem succumbs to the temptations of methodological statism, despite Bauböck's intentions. This mistake carries regrettable consequences for our ability to think through both the failures of democratic legitimacy that are characteristic of our age and the potentials for democratic agency that exist in our world as it is.

The first move in Bauböck's proposed solution of the democratic boundary problem is to argue that democratic theory must be attentive to the "circumstances of democracy," the conditions under which democracy is both possible and normatively necessary. Bauböck takes these conditions to be internal diversity (without which democracy would not be necessary to secure political legitimacy) and distinct boundaries (without which the authority to making binding political decisions would have indeterminate scope) (p. 8).

The second move is to claim that bounded political communities must meet three further criteria in order to govern themselves democratically. They must have "comprehensive" rather than partial or

issue-based jurisdiction (otherwise the demos would lack full collective autonomy because it would not be setting the political agenda, but only choosing among option sets determined by some other agent) (p. 11). Further, this jurisdiction must have a territorial basis (which secures the condition of internal diversity and increases incentives for individuals to exercise “voice” within the polity rather than “exit” from it) (pp. 13-14). Finally, Bauböck claims, they must be societies with “relatively sedentary” populations, which he distinguishes from “static,” “nomadic,” and “mobile” societies. According to Bauböck, only sedentary societies have the stable territorial boundaries that are necessary to clearly delineate who is and who is not a member of the transgenerational demos that has the capacity to legislate for itself (pp. 15-16). Relative sedentariness, therefore, is “a background context for democracy ... [at] the highest or strongest level of self-government” for a transgenerational community: either a federal constitutional state or member states within a union (p. 16). The existence of stable democratic citizenship at the scale of the state makes possible less robust forms of citizenship at substate and suprastate scales, enabling residence-based citizenship rights at the scale of the city, and citizenship in suprastate polities such as the EU as derivative from citizenship in a member state.

Thus, despite Bauböck’s stated rejection of methodological statism, his own theory of democratic legitimacy is strikingly state-centered, not only as an empirical account of democracy as it currently exists, but also on a normative level. The normative state-centeredness of Bauböck’s view becomes even clearer when we examine his account of the three normative principles of democratic inclusion more closely. Although he presents them as complementary, they do not carry equal normative weight in his overall view of democracy. Rather, he argues, because the principles can conflict with one another, they need to be set in a priority sequence, and that sequence must begin with the ACS because it is capable of generating an account of stable membership boundaries for the self-governing demos, while AAI and ASC are not. “A political community must first constitute itself as a legitimate polity through including all citizenship stakeholders and adopting a constitution under which it can authorize a government” before government can provide the equal protection of laws or be accountable for the impact of its policy decisions on those who are affected by them (pp. 49-51). Although Bauböck does not make the argument explicitly, his taxonomy of polities (in which the democratic authority of substate or suprastate polities is either subordinate to or derivative from the authority of the constitutional demos of the territorial state) entails that only these demoi – the ones bounded by state territory – possess this constitutive power in its most robust form. The claim to democratic legitimacy of non-state polities, then, is contingent on the democratic legitimacy of the states within which they are “nested” (pp. 7, 11, 15, 42-44, 56, 81, 90, 93) or of which they are formed.

I am wholly sympathetic to Bauböck’s claim that a robust theoretical account of democratic legitimacy must include space for democratic collective agency, read as the people’s capacity to constitute itself as a self-authorizing source of binding law. I also agree with him that a self-legislating people must be able to imagine itself as a transgenerational community, many or most of whose members enter at birth – a key feature by which Bauböck distinguishes a democratic community from a voluntary association which members join by deliberate choice (p. 46). Citizenship as democratic agency is grounded in a shared subjective sense of what Bauböck, borrowing the words of Iseult Honohan, calls “future-oriented interdependence,” (Honohan, p. 155, quoted favourably by Bauböck, p. 245). But as he acknowledges, territorially bounded peoples and the states that have been formed around them are a historically contingent context of democratic collective agency. I think that it is a theoretical mistake to identify the possibility of democracy in its robust sense with the empirical conditions Bauböck associates with such peoples and states: comprehensive jurisdiction, territorial jurisdiction, and (relative) sedentariness.

To see this, we can look to empirical examples in which people have exercised democratic collective agency – the constitution of the orders of law to which they would be subject – in the absence of these conditions of territoriality, comprehensiveness, or relative sedentariness. Consider, for example, the many examples of Indigenous constitution-making that are unfolding across settler democracies such as Canada, the United States, New Zealand and Australia. In contrast to Bauböck’s account of arrangements for Indigenous self-government, these constitutional projects are not premised on Indigenous peoples’ recognition of the authority of a territorial state “that *grants them* sufficient autonomy and *accepts them* as constitutive communities in a plurinational state” (p. 43; emphasis added). Rather, as Stephen Cornell has documented, “this emerging movement for self-government is less concerned with what central governments do by way of the recognition of Indigenous peoples or their rights, ... and more concerned with what Indigenous peoples do with rights, including those that they believe they possess even if other governments disagree” (Cornell, 2015: 1-2). The jurisdiction they assert is not necessarily bounded by territorially contiguous space but has a *topographical* reference, pertaining to the land with which the Indigenous people has deep historical, cultural, economic and spiritual connections, and to their interdependence with each other and that land. Moreover, the jurisdiction they assert is not necessarily comprehensive, in the sense of covering all the policy domains in which authoritative decisions might be needed, but is focused on those matters that are most essential to a people’s capacity to maintain itself as a self-governing intergenerational community (Cornell, 2015: 3-4), including the right to determine citizenship in their communities according to their own legal traditions (Gover, 2017).

Furthermore, the populations of many Indigenous peoples are (and historically were) neither “nomadic” nor “sedentary” in the sense in which Bauböck uses those terms. For Bauböck, nomadic societies “move collectively through geographic space without ever settling down and taking permanent residence anywhere” (p. 14), whereas most of a sedentary society’s members “spend most of their lives in a particular territory.” But for those Indigenous peoples that did not historically reside year-round in a single location, movement through a territory – which they might have shared with other Indigenous peoples – was seasonal, cycling through the same summer and winter grounds on an annual basis, and relating to one another through kinship networks that also provided the foundation for their political orders (see, e.g., Borrows, 2010: 77-84). The *topos* of their homeland was not indeterminate, even if the boundaries of their territory overlapped with the territories of other peoples and required continual negotiation through practices of shared and non-absolute sovereignty (cf. Tully, 1995: 195). In the 21st century, many Indigenous people have moved to urban areas but retain strong ties, including citizenship and voting rights, in their Indigenous communities (Gabel et al., 2016).

The experience of indigenous peoples shows that the democratic collective agency that Bauböck prizes – the capacity of a people to constitute itself as a self-legislating demos – is not intrinsically tied to the conditions of territoriality, comprehensive jurisdiction, or sedentariness. What makes a demos is, indeed, a shared sense of “future-oriented interdependence,” a belief in a shared fate that could be made legitimate through democratic self-legislation (Williams, 2007, 2009). But acting in concert to bring into being an institutionalized capacity for self-legislation, where it does not currently exist, is not unique to sedentary peoples asserting comprehensive jurisdiction within a territory.

Overcoming methodological statism in our conceptions of democratic collective agency is important not only to enable us to perceive and understand sources of legitimacy for the non-state polities formed by Indigenous peoples, but also to identify democratic potentials in a time when globalization has irrevocably complicated relations of political power and coercive authority. The democratic legitimation of coercive power within already-constituted states and the polities that derive from them, which

Bauböck's theory clarifies immensely, is and will remain vitally important. Yet in the global era we confront major collective action problems that *no* organized polity, at any scale, has the institutionalized capacity to address. Climate change is the leading example, but there are many others, such as the rising number of refugees, or tax avoidance generated in part by tax competition between states, whose net effect is to diminish public capacity to address collective problems. Can the coercive powers necessary to address such problems be brought into existence in a democratically legitimate way?

If we assume that democratic collective agency can only be exercised by the *demos* of territorial states, or polities that derive from them, then the answer must be no. This seems to be Bauböck's judgment. Although existing global institutions (which derive from states) can be democratized, and existing states can be made more democratically accountable to externally affected interests, he argues (p. 233), "global regulatory regimes can only be built if states put them on the international agenda. There is no global *demos* that controls that agenda" (p. 11n.10).

As a matter of empirical fact, however, states are not the only collective agents that put issues on the international law-making agenda and bring about real changes in effective regulatory capacity at the global scale. There is no element of constitutional cosmopolitanism that is more fundamental than international human rights law, and yet the introduction of new human rights law, and its translation into the practical realization of human rights on the ground through coercive enforcement, does not come about solely through the actions of states. Rather, as Margaret Keck and Kathryn Sikkink showed two decades ago, sometimes human rights become a practical reality through the *interaction* of self-organized human rights activists with existing states and global institutions. In their "boomerang model" of changes to both domestic legal orders and international policy regimes, activists within a rights-violating state mobilize transnational networks to put pressure on other state and non-state actors to put pressure, in turn, on the rights-violating state (Keck and Sikkink, 1998). Not only do transnational activist networks play a vital role in the implementation of international law that has already been nominally affirmed by states, as is arguably the case with human rights codes, but they also put new legal norms on the global agenda. A signal example is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), an instrument that has been important in pressing states (especially the settler states noted above, which were initially resistant to ratifying it) to recognize and accommodate Indigenous claims to self-determination (Anaya, 2004). More recently, the transnational peasants' movement, La Vía Campesina (LVC), has made significant inroads to a UN Declaration on the Rights of Peasants and Other People Living on the Land, modelled on UNDRIP, which aims to protect land-based communities from the encroachments of international development and resource extraction agendas. LVC is organized democratically at the local, state, regional and global scales (Desmarais, 2007; Menser, 2008). The climate movement, as well, has to a significant degree been self-organized through transnational networks, developing agendas for climate regulation relatively autonomously from states, including the Loss and Damage article of the Paris Agreement, which provides some regulatory bite for addressing the consequences of climate change (Dryzek, 2017).

I believe that we should see these and similar cases as examples of democratic collective agency at the global scale, nascent forms of self-legislation for a self-authorizing global *demos*. While it is true that these activist networks have organized around issue-specific rather than "comprehensive" legislative agendas, they arise from a shared consciousness of "future-oriented interdependence" and have been focused on issues that lie at the core of their constructions of that interdependence. Although they interact with states for both strategic and pragmatic reasons, and use the empowerments they enjoy as citizens of states (e.g., rights of free speech, association and mobility), they do not derive their

normative authority from their members' citizenship in states. Rather, they assert a "representative claim" (Saward 2010, cited by Bauböck 43n.30) in the name of "the people". In the case of climate activists, the claim is advanced in the name of all human beings affected by climate change. In the case of UNDRIP and LVC, the claim is advanced in the name of Indigenous peoples and peasants, respectively, as "constitutive communities" (to borrow Bauböck's term) of the global demos.

Such representative claims – like those advanced in the name of the demoi of territorial states – are not self-validating, but can be subjected to tests of their democratic legitimacy (Bauböck, 2017: 43). Indeed, the three principles canvassed by Bauböck – the AAI, the ASC and the ACS – are an excellent place to begin a test for the democratic legitimacy of representative claims advanced in the name of the global demos or its constitutive communities. Would their claims, if met, adequately respond to the importantly affected interests of others? Would all subject to the coercive laws they propose have equal standing to contest the coercive power that might be exercised over them? Would all those who have a stake in the intergenerational community they imagine be enfranchised as equal participants in collective self-legislation? If the answer to any of these questions is no, the representative claim they assert is assailable from a democratic point of view.

It has not been possible in this short comment to do justice to the nuance, subtlety and persuasiveness of Bauböck's argument. Although I have criticized the argument for not going far enough in overcoming methodological statism in democratic theory, I see my own argument as a friendly, if somewhat radical, amendment to Bauböck's in that it seeks to address the need for democratic theory in a global era to liberate its core normative principles from the "single-polity perspectives" and territorial presuppositions in which those principles have historically been embedded. I have argued that it is a theoretical mistake to read the empirical conditions of existing democratic polities – territoriality, comprehensive jurisdiction, and sedentariness – into our conceptual analysis of what democratic legitimacy entails, and in particular into our articulation of the concept of democratic agency. Giving up those presuppositions does mean, at least for the moment, accepting that the democratic boundary problem has not yet been solved at the level of theory. But that is a small price to pay for an enriched understanding of democratic potentials in the world as it is, an understanding that Bauböck's important essay has considerably advanced.

Melissa S. Williams

Outsiders and Non-state Actors. A Reply to Gray, Rubenstein and Williams

I am very grateful to Sean Gray, Jennifer Rubenstein and Melissa Williams for their appreciative words and even more so for their challenges and critiques. All three comments point out that my theory of democratic inclusion does not deal adequately with collective or corporate non-state actors. I accept this critique fully and merely claim that my account provides resources for addressing this issue. This question is closely connected to doubts about my interpretation of the All Affected Interests principle when it comes to including jurisdictional outsiders that I will address first. I will conclude my rejoinder as I concluded the original essay by considering the historic contingency of current norms of democratic inclusion and possible future changes that might undermine the international state system and its territorially-based jurisdictions.

Before I start let me point out that none of my three critics challenges what I regard as my two most important contributions – the citizenship stakeholders principle and its application to multilevel democracy; and my argument that the three principles of democratic inclusion complement each other

because they apply to different stages in the democratic process. My focus on these two claims meant that I could not sufficiently elaborate implications and applications of the principles of including all affected interests (AAI) and all subjected to coercion (ASC). Thanks to my critics, I can now try to address some of the widest gaps, even if I cannot yet fill them.

How to include affected interests of outsiders?

Rubenstein's comments give me an opportunity to clarify what it means to include externally affected interests. I fully agree with her, and say so in my essay, that the current norms of the international state system make it unlikely that the interests of non-citizen non-residents who are severely and negatively affected by the policies of a particular state will be adequately represented. Rubenstein's example of country A polluting a river and thereby worsening the conditions for the citizens of country B who live downstream provides a classic illustration of negative externalities. The radical implication of AAI is that country A's policies are *democratically illegitimate* – even when adopted according to otherwise impeccably democratic procedures – if the interests of citizens of country B have not been heard and taken into account. This does not entail that the institutions of A's government themselves become democratically illegitimate (which would follow from regarding AAI as a principle for determining citizenship and voting rights), but its *policies* become illegitimate. The affected citizens of country B and their representatives have every right to sanction country A, e.g. through boycotts.

Rubenstein thinks that my interpretation of AAI implies that “outsiders depend on insiders to defend their vital interests”. But this is not what I argue when proposing intergovernmental negotiations, regional and global governance regimes and transborder referendums (pp. 24-26). Rubenstein is, however, right that I should have said much more about the role of civil society in promoting the inclusion of affected interests. Unlike Rousseau, who wanted to abolish all intermediary associations, I regard political parties, organized interest groups and social movements as crucial for shaping the agenda of democratic legislatures and for mobilizing pressure before policy decisions are taken. This is not only true within territorial jurisdictions, but also beyond borders. We cannot trust governments who aim to increase their revenues from local energy resources to represent the interests of humanity in slowing down climate change. Without a global public sphere in which the voices of climate scientists are heard and without transnational social movements campaigning for globally binding goals there is little prospect of coaxing governments into urgently needed action. Williams raises the same point with regard to international human rights regimes. “[S]tates are not the only collective agents that put issues on the international law-making agenda and bring about real changes in effective regulatory capacity at the global scale.”

How is this view compatible with my claim that self-governing citizens and the legislators they elect must have comprehensive agenda-setting powers? (pp. 23-27). We need to distinguish agenda-setting powers from external agents' capacity to *influence* agendas. Within the constraints of domestic constitutions and international agreements democratic legislators must be free to set their own agenda and take decisions on policies. This does not mean that they should be shielded from the voices of public opinion, political parties, non-governmental organizations and of foreign governments when doing so. On the contrary, when legislators fail to consider externally affected interests, their decisions become substantively illegitimate.

This normative answer still leaves Rubenstein's question somewhat open in practical terms. How can we avoid that externally affected interests are dominated by domestic legislators that are free to set their own agenda? I acknowledge in my essay that there is a tension between tracking and giving voice to

affected interests, on the one hand, and tracking the will of the citizens to whom legislators are accountable, on the other hand. I believe that this tension cannot be overcome through changing the composition of the demos. It can be fully resolved only if “a democratic people is capable of integrating the interests of externally affected outsiders and of non-citizens subjected to its laws into its own political will” (p. 34). I also think the tension is likely to persist and but can be mitigated through institutional innovations, such as including representatives of externally affected interests in policy deliberations of democratic legislatures.

Rubenstein suggests another escape route. If my interpretation of AAI is too weak to ground necessary forms of inclusion, couldn't we expand the stronger principle of ASC to cover the missing ground? If states fail to prevent climate change they do not merely affect negatively the interests of all human beings but destroy also the capacity of territorial self-government of island states at risk of being submerged. And can't we say that unfair trade agreements imposed on less developed countries coercively subject individuals who emigrate because their livelihoods have been destroyed? I acknowledge the force of these examples. It is sometimes indeed difficult to distinguish between negatively affected interests and coercive restrictions of collective or individual autonomy, since the latter can be regarded as a special case of the former. However, the point of distinguishing the AAI and ASC principles lies in their distinct institutional implications. AAI creates a duty to take externally affected interests into account when deliberating and deciding on a policy. ASC requires instead to protect the rights of those subjected to legitimate coercion. A state that coercively subjects non-citizen non-residents cannot gain legitimacy for doing so by expanding its jurisdiction to foreign territories under the pretense of protecting their inhabitants' rights.

I share Rubenstein's intuition that states that fail to slow down climate change and those contributing to global poverty through their trade policies have duties of development assistance and duties of admitting forced migrants. But I am inclined to think of these duties as generally grounded in AAI rather than ASC. What Rubenstein's examples demonstrate is that AAI does not only impose constraints on policies that may negatively affect outsiders; it can also mandate the adoption of compensatory policies. This is an important addition and I am grateful to Rubenstein for pointing me in this direction.

Non-state actors

All three of my critics urge me to pay more attention to non-state actors. Sean Gray says that a book on democratic inclusion should not only be concerned with citizenship. Instead we should “direct our energies towards democratizing the decisions of non-state actors, who can, and quite often do, profoundly shape our collective lives.”

I have heard this critique often and I have become convinced that it merits a more elaborate response than I can provide here – maybe even a sequel to the book. A first line of defense could be to try and hold my ground. My theory is not only about citizenship, in the sense of membership in a self-governing polity. The AAI and ASC principles specify democratic inclusion claims of non-citizens. It is, however, a theory of democratic inclusion in *territorial polities*. Since this was my focus in the book, I have not yet sufficiently considered non-territorial communities and non-state actors either in terms of their impact on territorial polities or as potential alternatives to these.

Gray's, Rubenstein's and Williams' comments raise four different questions about non-state polities that we need to keep separate and which I rank here by the degree of challenge that they pose to my theory: (1) Do principles of democratic inclusion apply only to government institutions or also to political claims

raised by non-governmental actors? (2) How do quasi-governmental powers exercised by some non-state actors impact on democratic inclusion in territorial polities? (3) Do principles of democratic inclusion apply also internally to non-state actors exercising coercive powers? (4) How would democratic inclusion principles apply to non-state non-territorial polities?

On the first question Williams suggests that the legitimacy of representative claims raised by non-state actors on behalf of a global demos or its constitutive communities can be tested using the AAI, ASC and ACS principles as yardsticks. I am skeptical about the existence or desirability of a global demos, but I fully endorse the idea to extend the democratic legitimacy tests to non-state actors. Political parties, civil society organizations and movements raise demands that are mostly addressed to existing territorial polities and their authorities. Some of these demands involve claims to represent not only special interest groups but also distinct political communities that currently lack recognition. And some demands involve policy proposals how territorial polities should include affected interests, protect the rights of groups subjected to their jurisdiction, or admit new members. The institutions of territorial polities are thus not the only addressees of the three inclusion principles; these apply also to testing representative claims and policy proposals made by non-state actors. This is a very welcome and obvious extension of my theory, as long as we apply it to non-state actors pursuing political goals within the arenas built by territorial polities.

The second question is a somewhat harder one. Referencing Elizabeth Anderson (2017), Gray takes me to task for ignoring the 'private government' exercised by corporations over their employees. There is indeed a huge gap in liberal and republican theories when they focus only on domination in horizontal relations between individuals and in vertical relations between individuals and governments. Most citizens spend much of their time in employment relations that are strictly hierarchical and that constrain also strongly their lives during off-work hours. I would go even further than Anderson, whose diagnosis focuses on the political ills of industrial capitalism. The giant corporations of the new digital economy generate profits not so much from exploiting the labour of their small numbers of employees but from collecting personal data from billions of users that they sell to advertisers and sometimes even to political parties and candidates. Neo-republican authors need to update their theories of domination in order to capture new forms where users voluntarily supply data to private companies that enable unprecedented surveillance of their lives, because doing so yields benefits in terms of access to information, services and social networks (Cheney-Lippold 2017). Artificial intelligence based on self-learning algorithms conjures up the prospect of domination exercised by non-human data processing machines who are no longer fully under the control of their human programmers (Harari 2016).

The question is how these developments matter for a theory of democratic inclusion. One answer is again to try to extend the scope of application of the three principles. AAI should then not only apply to policy decisions taken by governments but also to their non-decisions that leave individual interests unprotected when they are affected negatively by powerful corporate actors. Similarly, ASC should not only apply to coercion exercised by political authorities, but also protect the rights of individuals within a territorial jurisdiction who are comprehensively coerced by non-state actors. Finally, and most importantly, the citizenship stakeholders principle specifies not only who has a claim to membership in a territorial polity, but also the conditions under which such polities can be self-governing (pp. 18-20; 41; 64). The power of global digital corporations can undermine both sides of this equation: individuals lose autonomy through erosion of privacy rights and polities lose their capacity to self-government if digital corporations can avoid being taxed and regulated and if they hoard and control massive amount of data.

While the theory of democratic inclusion is thus useful for the diagnosis, it is less obvious that it also provides the therapy. My hunch is that the most urgent task is regulation and this implies betting on the power of territorial polities. Stepping up individual data protection and ownership and reining in the global corporate tax competition between states requires intergovernmental coordination and even pooling of state sovereignty. The General Data Protection Regulation adopted recently by the EU provides a hopeful example for how states might be able to curb the excesses of digital corporations' power if they are ready to coordinate their policies at a supranational level.

This response points to external regulation of non-state actors instead of considering them as being themselves the addressees of democratic inclusion norms. The third question casts doubt upon this deflection strategy. Referring to international non-governmental organizations (INGOs), Rubenstein suggests that "we need different principles of inclusion for different types of actors", while Gray thinks that we should aim at internally democratizing non-state actors. Anderson, too, suggests that private government by corporations should not only be curbed from the outside through state regulation, but also be democratized from the inside, through giving workers a voice in how they are governed within firms (Anderson 2017, pp. 69-70). I am happy to endorse such reforms, but with two caveats.

First, given the strong asymmetry of power between employers and employees or producers and consumers of digital services, such democratization cannot be brought about only through pressure built up by grassroots movements. Eventually, political regulation will be needed in order to mandate the inclusion of employees and users in corporate governance, as illustrated by continental European laws on worker co-determination. Second, the goal of democratic inclusion to provide legitimacy to coercive political rule through popular self-government does not apply in any straightforward way to private corporations. Their goal is to make profit and their usefulness for society consists in how the goods and services they provide contribute to individual well-being and collective flourishing. The purpose of democratizing corporations is thus not to turn them into arenas for democratic self-government. The Marxist grand utopia of collectively owned means of production and smaller scale experiments with cooperative ownership do not provide plausible templates for organizing a modern economy.

But what about non-state actors that do not seek profits but exercise quasi-governmental powers? Doctors Without Borders currently runs rescue operations for boat people trying to cross the Mediterranean Sea, with the NGO's private vessels taking over tasks insufficiently met by maritime states and the EU agency Frontex. Right wing populist governments and parties throughout Europe have started a campaign to end such private rescue operations and the Italian government has denied MSF and other NGOs disembarkation rights in Italian ports, challenging the democratic legitimacy of such non-state actors.

I do not think that it makes sense to ask private non-profit organizations to justify their activities in terms of democratic accountability or inclusion. In the best cases, such as that of Doctors without Borders, their actions compensate for state and market failures. The legitimacy of saving human lives endangered by state actions or non-actions is humanitarian rather than democratic. In the worst cases where non-state actors worsen conditions, as US-based Evangelical organizations do when campaigning against contraception and gay rights in Africa, it will take again territorial political power to curb their activities. Of course, the substantial legitimacy of these organizations depends on how they include the interests of those affected by their actions and their decisions. This does not mean, however, that standards of democratic self-government apply to them in a similar way as to territorial polities. Doctors

Without Borders do not have to invite potential migrants to their board meetings before deciding to stage a rescue operation or let them vote when electing the organization's governing bodies.

Non-territorial polities and the future of democratic citizenship

Williams' comment focuses on the fourth question. She writes that "it is a mistake to identify the possibility of democracy in its robust sense with the empirical conditions Bauböck associates with such peoples and states: comprehensive jurisdiction, territorial jurisdiction, and (relative) sedentariness." Indigenous self-government illustrates her claim. Indigenous peoples form distinct polities, but – according to Williams – they rarely wield comprehensive jurisdiction, their jurisdiction is partly non-territorial when including members living in urban settings outside self-governing homelands and their traditional patterns of habitation do not fit the templates of either nomadic or sedentary lifestyles.

A facile response would be to challenge each of these assertions. First, I consider municipalities as local democracies with a distinct citizenship although their powers of self-government are generally much weaker than those of indigenous peoples in autonomous homelands. Second, independent states include non-residents among their citizenry and exercise some forms of personal jurisdiction over them just as indigenous peoples do. Third, we can define relative sedentariness as a pattern where most citizens reside within the territorial jurisdiction over most of their lives. This pattern does not apply to some small island states and it may not apply to some indigenous peoples either, but these are anomalies that would create problems for democratic inclusion if they became the norm.

Williams raises another point that I fully concede: indigenous self-government does not fit my model of derivative citizenship in federated states and unions of states and I have not sufficiently distinguished between national minorities and indigenous peoples in this respect (pp. 80-87). Indigenous peoples do not form constitutive polities whose powers are derived from a federal constitution. Their self-government rights originate instead from pre-colonial history and their constitutional recognition in white settler states is necessary in order to overcome a legacy of internal colonialism by restoring their self-government powers. Just as overseas colonies had rights to external self-determination rather than inclusion into metropolitan citizenship, so indigenous peoples have rights to internal self-determination over the modes and extent of their integration into settler states. The question is whether the special case of indigenous peoples can provide us with a general model of non-state polities and norms of democratic inclusion in these. And here my answer is no. Democratic states have good reasons to resist the formation of non-indigenous polities in their territories that would claim similar kinds of self-determination rights. (Think of right-wing libertarians establishing territorial communities where governments cannot impose taxes, education requirements or send in police to catch criminals.)

This is certainly not the kind of generalization that Williams has in mind. She points instead to social movements generating new global rights through their interactions with states, such as peasant movements or those fighting climate change. Here we have little disagreement. As I have already explained above, interaction between civil society and political authorities is crucial in generating new political agendas not only domestically, but also globally. It still remains the case that a successful outcome of such interventions must involve new international law and binding agreements among states. Moreover, in democratic states, signing up to such agreements depends also on citizens of states authorizing governments that have the power to do so.

A more disturbing challenge to my theory are claims that the era of the Westphalian state system is coming to an end and with it the much longer history of democratic citizenship in territorial polities.

None of my commentators suggests that this is the case. But, as stated by Gray, I am concerned about “protecting citizenship’s future in an era of increasing diversity and mobility.” Well, I am not at all worried about diversity within territorial polities, which I see as the very life-blood of democratic citizenship. Mobility is a greater concern. One worry in this regard is that contemporary democracies are increasingly divided between transnationally mobile and relatively static citizens and that this cleavage is increasingly reflected in democratic politics and aligned with the ‘democratic disfigurements’ of technocracy and populism (Urbinati 2014). The other worry is that technological change and increased mobility may eventually undermine the link between territory and democracy in such a way that territorial jurisdictions no longer gain political legitimacy through democratic inputs from their citizens while non-territorial associations assume more and more political functions and power. In my essay I associate this latter concern with a hypothetical scenario of hypermobile societies (pp. 16-17, see also Bauböck 2017b).

In the meantime, I have become involved in a debate about digital technologies and their potential to create “cloud communities” that provide governance services to their members (Orgad & Bauböck 2018). Even more than hypermobility, “decentralized voluntary borderless nations” based on blockchain technology (De Filippi & Wright 2018) are currently a marginal phenomenon. However, given the pace with which the digital revolution has changed contemporary societies over just a few decades and the dramatic loss of states’ power to determine their own future, we should better think ahead how democracy and citizenship could be organized in non-territorial cyberspace. While the principles of including affected interests, those subjected to coercion and stakeholders in the political community might still apply, the internal relations between non-territorial polities and their members and their external relations to each other would be radically different from those in the present territorially structured political world. My approach to democratic inclusion breeds dystopian worries but does not yet offer any guidance for this possible future.

Sean Gray’s, Jennifer Rubenstein’s and Melissa Williams’s probing questions have not changed my mind about the core arguments in my essay, but they have convinced me that there is a broader agenda for a theory of democratic inclusion that still needs to be addressed.

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