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► **To cite this version:**

Benjamin Boudou. Representing non-citizens: A proposal for the inclusion of all affected interests. *Critical Review of International Social and Political Philosophy*, 2023, 26 (5), pp.747-768. 10.1080/13698230.2022.2062216 . hal-04490706

**HAL Id: hal-04490706**

**<https://hal.science/hal-04490706>**

Submitted on 5 Mar 2024

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# **Representing Non-Citizens: A Proposal for the Inclusion of All Affected Interests**

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This article defends the normative relevance of the representation of non-citizens in democracies. I argue that representation within nation-states constitutes a realistic institutionalisation of the All-Affected Principle, allowing justificatory practices towards non-citizens and establishing political institutions that can realise the ideal of inclusion of all externally affected individuals. I defend electoral, non-electoral and surrogate forms of representation of affected interests that satisfy both the cosmopolitan concern for the equal consideration of interests and the statist defence of the importance of a territorially and civically bounded demos. I assess piecemeal implementations of representation practices, namely reciprocal representation, ombudspersons, self-appointed representatives and deliberative and advocacy groups. Gradual and pluralised means of representation constitute necessary and feasible first steps to consider affected interests and offer an alternative route to an all-or-nothing defence of inclusion as national enfranchisement.

## **Introduction**

This article defends the representation of non-citizens as a practical form of due consideration of their interests and a second-best alternative to their inclusion in the demos. I aim to justify different forms of representation of people who are not citizens of a given state but whose interests are nonetheless affected by the state's decisions. This category of 'non-citizens' is intentionally broad but mainly understood in a migration context; it includes foreign residents, immigrants with or without legal status, asylum seekers and refugees.<sup>1</sup> Non-citizens face the following challenge: migration policies generate externalities for non-citizens, i.e. affect their interests and the fulfilment of their fundamental needs. For these policies to be legitimate, it has been argued that those who are affected should be included in the demos (Goodin, 2007) or that the externalities generated by the policies should be justified to those they constrain via cosmopolitan democratic institutions (Abizadeh, 2008).

I wish to narrow my focus by examining how to include externally affected interests while remaining inside the empirical constraints set by current state borders. Arguably, state borders remain part of the 'circumstances of democracy', which are the 'normal conditions under which democracy is both empirically possible and normatively necessary' (Bauböck, 2017, p. 7). Citizenship and the capacity to express one's voice in a democracy depend on a (relatively) bounded demos. As Rainer Bauböck argues, 'consolidated territorial jurisdictions, which need not be united under a single sovereign authority, create conditions under which subjects have reasons for preferring voice over exit and rulers have reasons to be responsive to their subjects' (Bauböck, 2017, p. 14). Sarah Song (2012, p. 59-60) also argues that 'the demos should be bounded by the state because the state secures the substantive conditions of democracy, serves as the primary site of solidarity conducive to democratic participation, and establishes clear links between representatives and their constituents'. Following this line of argument, a relatively bounded demos enhances the responsibility of its members for their

decisions, the accountability of their representatives and the overall continuity of its institutions. I do not intend to defend the ‘circumstances of democracy’ as strictly normative conditions; rather, I consider them as a given premise in order to explore achievable forms of inclusion that are compatible with political borders as we know them. My question is, then, how can we articulate the due consideration of non-citizens whose interests are affected by migration policies while preserving a demos able to exercise self-determination?<sup>2</sup>

A vast literature has emerged in democratic theory on how to appropriately select and define a principle of legitimate inclusion. Disputes regarding its scope of application and whether such a principle disrupts democratic institutions, citizenship and territorial borders have complexified the initial ‘boundary problem’ considerably (Whelan, 1983; Beckman, 2017; Hultin Rosenberg, 2020; Miller, 2020; Owen, 2012). Instead of engaging directly with this normative literature, I wish to spell out one of its possible outcomes, i.e. inclusion as representation. I embrace a form of statist cosmopolitanism (Ypi, 2008) and look at the institutional translation of inclusion given the circumstances of democracy. I argue that representation within nation-states could be the locus of justificatory practices towards non-citizens and establish political institutions and practices that can realise the minimal inclusion of all externally affected individuals. Representation can satisfy both the cosmopolitan concern for the equal consideration of interests and the statist emphasis on the importance of having borders bound the demos territorially and civically. To demonstrate this claim, I will defend ad hoc implementations of ‘inclusive representation,’ i.e. ‘any form of representative claim or system of representative claims that has as its consequence the increase of direct participation and the proliferation of activities of testing claims by the represented’ (Hayat, 2019, p. 136; 2013). These implementations encompass electoral, non-electoral and surrogate representation as well as participatory and advocacy practices.

Briefly put, I examine the inclusive function of representation and develop the representational form of the All-Affected Principle (AAP) as a feasible first step to realising the principle. Hence, I will not consider the possibility of simply enfranchising people whose interests are affected.<sup>3</sup> I focus instead on the justification of representation as the institutional form of due consideration owed to people whose interests are affected. In Section 1, I justify why it is crucial to consider externally affected interests. I adopt the AAP and argue that it could be institutionalised through representation: individuals who are affected by a law or decision should, at a minimum, have their interests represented in the institutions deliberating and deciding about that law or decision. I then expand on my inclusive understanding of representation, encompassing advocacy or surrogate forms. In Section 2, I define the constructivist view of representation and interests on which I rely to further justify representation as an inclusion device. In Section 3, I assess different possible approaches to institutionalising the AAP through representation, namely reciprocal representation, self-appointed representatives, ombudspersons, advocacy groups and deliberative forums. In Section 4, I consider the functions these institutions perform and discuss the ad hoc political arrangements necessary to articulate the different representative practices in conjunction with each other and negotiate the claims made by a heterogeneous group like non-citizens.

## **1. Inclusion through representation**

When global migratory movements involve more than 270 million people (IOM, 2019), the vision of a world made up of perfectly independent and autonomous states is no longer realistic. It is necessary to acknowledge the fact of migration. Current contentious issues like the attribution of political rights to foreign residents, the long-term settling of refugees or the legal precariousness of ‘irregular’ migrants highlight a multi-layered discrepancy between *de*

*facto* participation and *de jure* inclusion. This lack of congruence creates a legitimacy gap: democratic norms of inclusion mandating that those who are subjected to or affected by laws should have some say in their creation clash with national practices of border governance. What is needed is better control of the effects of democratic decisions that reach beyond territorial and civic borders, i.e. laws and decisions that affect people who do not belong to the demos, whether they reside inside or outside its territory.

In order to make democratic values the guiding principles for nation-states' policies, one should take into consideration non-citizens whose interests are affected by these policies. The normative argument for democratic inclusion in the context of migration is based on the following premise: greater inclusion of non-citizens allows both (i.) a better realisation of democratic principles and (ii.) more control by non-citizens over the powers that affect their social and political life (Bauböck, 2009; Benhabib, 2004; Held, 2000; Koenig-Archibugi, 2012). (i.) Since democratic deliberation and decision-making procedures work better and more fairly when they include the different affected interests, representatives must include the affected interests of citizens and non-citizens in their deliberation procedures (input) and take them into consideration when assessing the application and consequences of these decisions (output). (ii.) And since the possibility for people to participate in decisions that impact them is central to the logic of the democratisation of power relations (Shapiro, 1999), it ought to be available to non-citizens. Otherwise, they remain subdued by what Michael Walzer famously termed the 'most common form of tyranny in human history,' 'the rule of citizens over non-citizens, of members over strangers' (Walzer, 1983, p. 62).

Three principles of democratic inclusion have been put forward: the All-Affected Principle (AAP), the All-Subjected Principle (ASP) and the Stakeholder Principle (SP). The AAP states that individuals whose interests are affected by a decision should be duly considered by being given a voice in the decision-making (Dahl, 1970: 49; Shapiro, 1999, p.

37; Young, 2000, pp. 5–6; Habermas, 2006, p. 78). The ASP posits that anyone coerced by a political authority should be the source of this authority. In other words, ‘all and only those who are de facto subjected to coercive legal decisions should have a say in the making of those decisions’ (Valentini, 2014, p. 792). Finally, according to the stakeholder principle, individuals whose ‘autonomy and wellbeing is linked to the collective self-government and flourishing of a particular polity’ (Bauböck, 2015, p. 824) should become or remain citizens of it.

As is commonly argued by its many critics, the AAP risks stretching the demos so far that it stops being a demos (Miller, 2009). Since it is possible to show that everyone can be potentially affected by any decision, in one way or another, the AAP inevitably has a cosmopolitan scope.<sup>4</sup> In fact, the same applies to the more intuitively limited ASP. Robert Goodin (2016) has forcefully argued that even the ASP leads to the enfranchisement of many people who remain far away from the polity while still being subjected to the polity’s laws. Thus, the institutionalisation of such an inclusive concept remains contentious and could have detrimental effects upon democratic governance, shifting too far from the ‘circumstances of democracy’.

I do not wish to engage in the conceptual debates regarding the exact articulation of these different principles. Rather, I focus on the AAP as a principle broadly requiring the consideration of externally affected interests and argue that representation is the basic mechanism for realising this principle: individuals who are affected by a law or decision should at a minimum have their interests represented in the institutions deliberating and deciding on that law or decision.

Many interpretations of the inclusion of externally affected interests have focused on enfranchisement: being considered and granted some voice over impactful decisions means having a right to vote (Angell and Huseby, 2017; Arrighi and Bauböck, 2017; Beckman,

2006; Pedroza, 2019; Ziegler, 2017). However, as I have begun to demonstrate, the practical consequences can be contentious. On the one hand, an unbounded or global demos might be the inevitable conclusion of democratic inclusion (Abizadeh, 2008; Goodin, 2007; Valentini, 2014), which would jeopardise borders as we know them. On the other hand, there might still be a large number of people in need of consideration without a legitimate right to vote or whose right to vote needs to be supplemented by more active and diverse practices of interest representation. Non-citizens might indeed constitute a structural minority or remain socially excluded despite legal recognition. The sociological literature has clearly illustrated how non-citizens tend to participate less in the political life of the host country. Different factors, such as low socio-economic status, lack of familiarity with the political system, unequal access to informal channels of information, approximate knowledge of the official language, fear towards state bureaucracy, and so on, impede the disposition to vote (Hammar, 1994; Rudiger and Spencer, 2003). Consequently, mere enfranchisement might give non-citizens votes without sufficient traction to impact elections and the interests of representatives.

In sum, enfranchisement alone might lead either to the unrealistic inclusion of all or enduring forms of exclusion. I suggest that inclusive representation encompasses the aspiration to expand consideration and offers practical channels of inclusion. Inclusive representation comprises different forms of electoral and non-electoral representation, advocacy and deliberative groups and surrogate representation, i.e. representatives speaking or acting for constituents who did not vote for them (Mansbridge, 2003). Realising the AAP via representation might be less inclusive than the enfranchisement of all, but this approach is still more inclusive than mere awareness (Kumm, 2016, p. 245). Hence, a representational interpretation of the AAP seems a necessary supplement to democracy to ensure that all affected interests are considered even when the interest bearers cannot (or should not) vote.



To further justify this point, I should address one immediate possible objection related to surrogate forms of representation for non-citizens as opposed to enfranchisement. Surrogate representation is usually defended for people who cannot be part of the constituency. Notably, surrogate representation is more meaningful than enfranchisement for people without clear agency or autonomy, such as children (Campos, 2019; Rehfeld, 2011) or future generations (Ekeli, 2005; Karnein, 2016), or non-human animals (Donaldson and Kymlicka, 2011; Cochrane, 2018). Is it acceptable, then, to imagine that non-citizens need non-elected representatives when they are human adults who can explicitly voice their interests and needs by themselves? I argue that the exclusion of non-citizens from surrogate representation solely because they are physically able to participate is illegitimate. Again, this exclusion is based on an abstract view of political agency, according to which people must participate whenever technically able to do so. A framework that is sensitive to social barriers to participation informs the normative argument for representation of affected interests. Inclusion cannot be strictly legalistic; enfranchisement as the sole way of realising inclusion is not satisfying.

An institutional orientation to the AAP has already been defended (Benvenisti, 2013; Dobson, 1996; Koenig-Archibugi, 2017; Montanaro, 2017; Ron, 2017), but its realisation through representation in the context of migration scarcely appears in the normative literature, where it is mentioned but not elaborated on (Bauböck, 2017, pp. 24–26; Goodin, 2016, p. 385; Landemore, 2020, pp. 214–215; Miller, 2009, pp. 223–224). Meanwhile, the empirical literature has documented the many ways the interests of those legally or politically marginalised are effectively voiced in daily politics through transnational activism (Isin, 2012; McClean, 2018); urban integration and forms of local citizenship (Squire, 2011; Varsanyi, 2006); the civic participation of migrants or the mobilisation of local and national actors defending migrants' rights and interests (Meyer and Fine, 2017; Zapata-Barrero et al.,

2013). Overall, a normative framework for the democratic representation of non-citizens' interests is still missing. Such a framework could reconcile democratic aspirations for inclusion and political channels of governance. This framework relies on the AAP but embeds the principle in the current constraints of bounded democracies.

The scope of inclusive representation for non-citizens is limited in two ways. First, the decision in question must be related to issues affecting non-citizens. Second, inclusive representation should not replace pre-existing paths to inclusion. Representing the interests of non-citizens should not preclude stronger forms of inclusion, such as citizenship rights for long-term foreign residents. Representation is the second-best option for people who would be included in the demos under a literal application of the AAP but who are not due to the functional constraints of democracies.

## **2. A constructivist account of representation and interests**

Before developing more in-depth what representing externally affected interests could look like in practice, I need to make an epistemological point to justify my articulation of representation and affected interests.

Representation, classically understood, relies on the formation of relatively closed constituencies that are representable, whereas the AAP requires flexibility and the consideration of non-constituents. The 'standard account' of representation indeed '1) presupposes territorial constituencies with more or less rationally specifiable interests; 2) reduces political representation to parliamentary representation; 3) models it juridically as a principal-agent relationship; and 4) requires that relationship to be unidirectional with the representative taking the principal or constituency as its reference point' (Disch, 2015, p. 489). By contrast, the constructivist account of representation suggests that representation

encompasses more flexible, informal and multifaceted practices. Its main tenet is ‘to conceptualize representative and represented as linked not by a static “correspondence” but in a dynamic process of mutual constitution’ (Disch, 2015, p. 489).<sup>5</sup> This constructivist account seems more suitable for including in the analysis the many shapes and sizes representation can take in practice and normatively more desirable as it expands the domain of democratic deliberation to representational practices previously considered apolitical, informal or marginal. Therefore, a constructivist understanding of representation is conceptually fruitful for my argument of representing the interests of people who are not part of the national constituency.

This approach, however, poses a conundrum: representation is understood in a constructivist manner, while the focus on interests suggests an objectivist and aggregative vision of politics. People have clear interests, which either need to be taken into account or not. Does that imply, then, that implementing the AAP through representation is incoherent? I suggest that a constructivist understanding of both representation and interests will help solve these tensions. I argue that interests should not be understood as already given, fixed and objective. They are relational and partially constructed through the very practice of representation.

Interests need not be defined in an objectivist way, referring to a pre-political moral consensus on what is generally desirable for human beings or to a universal human nature with biological non-contestable needs. Having one’s interests affected is a process of becoming aware of certain relations of impact. To become aware of one’s interests means shaping (rather than discovering) them politically in response to power relations. Thus, interests exist as the basis of claims and rights to ensure that their bearers participate in their definition in order to control what affects them. Interests are neither strictly subjective (as opposed to wants or desires) nor strictly objective (pre-politically given); they are *relational*.

They are the grounds for people's objection to power, either because it affects them negatively (domination) or, when the affection is positive, because it excludes them from its exercise (paternalism). They are based on the intimate knowledge individuals have about those, and on the power structure in which they are enshrined. What matters is the relation between the affecting and the affected agent, i.e. to consider whether the affected agent have a say in the shaping of her interests, and some control over the affection.

The AAP helps track these power relations and buttresses claims to consideration and inclusion. In this way, the AAP constructs publics, which I interpret from a pragmatist perspective: 'The public consists of those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for' (Dewey, 1954, p. 16). This definition rests upon an equal capacity to be affected and a common interest in either not being affected or controlling this affection (i.e. controlling the scope of the externalities of power). This means that a public does not exist because of a pre-political identity, but coalesces through reactions to the negative consequences that affect it. What shapes a public is a common struggle against negative affection, i.e., domination or injustice, which the AAP helps diagnose (Dewey, 1954, p. 16–17; Koenig-Archibugi, 2017, p. 184). A public arises from the reflexive control of what affects it.

This constructivist interpretation of interests should be understood in conjunction with the constructivist approach to representation I describe above. As Richard Bellamy and Dario Castiglione argue in the context of representation in the EU:

'Representatives neither appeal to the passive assent of the unreflective, naked preferences of citizens, nor merely reproduce their particular sectional interests, or the alleged prepolitical interests of a collective body. Rather, the incentives are such that they need to employ public reasons that can be avowed and shared by a broad cross-section of the citizenry. Such public reasoning leads citizens to reflect upon their interests in ways that help construct shared interests' (Bellamy and Castiglione, 2013, p. 212).

The constructivist account of political representation departs from the conception of an already existing agent (e.g. an individual, the people, the working class) that representation makes present where or when absent (Pitkin, 1967, pp. 8–9). Representation is a practice happening when a would-be representative publicly makes a representative claim towards an agent who is then constituted as a would-be represented agent by this very claim (Saward, 2010). In a nutshell, representation is performative. The discourses and actions of claiming representation coalesce the interests, identity and unity of an agent. However, they do not construct them out of nothing. Building on my earlier point regarding the construction of interests, I am employing a *moderate* constructionism. I assume, paraphrasing Andrew Abbott (1995, p. 863), that any practice of representation ‘begins with what is in part a soup of pre-existing actors and actions.’ This metaphysical prudence does not preclude the constructivist characterisation of both the representative (e.g. as a ‘good’ representative) and the represented (e.g. as having specific interests). However, the extent to which these characterisations are based on already existing material is beyond my point. What matters is that the representatives, in speaking and acting for others, coalesce a public into being rather than directly constructing it and represent and shape its interests, self-image or political goals through their representative claim.

The performative approach to representation has at least two consequences. As a performance, representation may fail if, for instance, it is contested by the represented, and this contestation is unsuccessfully adjusted to by the representative. The relation between represented and representative is dynamic and involves power: the power of the claim maker to shape an agent and gain legitimacy by speaking in its name, and the power of the agent to contest or reject the claim or call for another kind of representation or other representatives. As Fossen (2019, p. 826) argues, ‘a relation of representation is never a *fait accompli*, but at best a fragile achievement that remains subject to potential contestation’. Hence,

representative claims participate actively in the construction, conscientisation and publicisation of the interests of the represented and allow for the participation of the represented to exercise their political agency to debate, negotiate, reject or accept the claims made in their name.<sup>6</sup> Representation is *democratic* precisely when the represented ‘gain...some agency in the process, otherwise representative democracy would only be a “second best” or a “defective substitute” for direct democracy’ (Hayat, 2019, p. 131).

The second implication of a constructivist approach to representation is that representation becomes more multifaceted. It describes more generally ‘the activities of actors like civil society advocates, stakeholders, spokespeople, media commentators and a host of other “representers” in a wide variety of political contexts,’ based on the premise that ‘there can be no legitimate authority without channels for popular representation,’ argues Bray (2011, p. 39). As I will explore in the next section, considering representation as a performative claim reveals many more instances of representation besides the dyadic perception of electoral representation between a constituency and its representative.

These features of a constructivist conception of interests and representation are particularly relevant when the ‘constituency’ or ‘audience’ of the representative claim has no right to vote. Representing the interests of non-citizens can happen below or beyond electoral forms of political representation. When the represented are excluded, contesting representative claims poses specific challenges to exercising agency. If someone starts speaking in the name of the ‘undocumented’, it may become more difficult for actual undocumented immigrants to voice their opposition and suggest counterclaims as such actions might aggravate their precarious socio-legal situation. Hence, the need for the broader concept of ‘inclusive representation’, defined by Samuel Hayat (2019, p. 136) as ‘any form of representative claim or system of representative claims that has as its consequence the increase of direct participation and the proliferation of activities of testing claims by the

represented.’ Individuals whose interests are affected constitute ‘moral constituents’ (Thompson, 1999, p.120) whom, I argue, surrogate representatives ought to be accountable for. The process of representing externally affected interests is more open than typical electoral forms and more diverse than dyadic forms (between voters and representatives). It includes non-elective and collective forms of representation as well as advocacy and surrogate representation.

### **3. Inclusive representation in practice**

I have made a case for the representation of the affected interests of non-citizens; in this section, I detail possible approaches to implementing such representation. However, I first want to consider whether such a case is at all necessary considering current institutions. Elizabeth Cohen has argued that ‘non-citizen interests in fact do receive representation’:

‘Their interests are not only being protected because businesses stand to profit or because they have family members in this country, both of which would constitute an indirect form of trusteeship. Governors, senators, and even the President have also spoken on behalf of the interests of the undocumented.’ (Cohen, 2014, p. 1065)

I agree with Cohen that representatives act as surrogate representatives when they advocate for the interests of people who did not vote for them, who did not vote at all or who do not belong to the demos. This surrogate representation does not mean, however, that all interests – for instance, those pertaining to concrete experiences of denizenship and exclusion for undocumented migrants or the illegitimate exclusion happening at or beyond the demos’ borders – are *adequately* represented. The fact that some non-citizens’ interests are intertwined with those of citizens and are therefore represented does not undermine the validity of institutionalising more inclusive forms of representation. Indeed, the fact that some forms of inclusive representation are already at work further demonstrate that such representation is feasible and needs to be systematically justified and empirically intensified.

The question then arises as to which institutional forms the representation of externally affected interests can take. Following my previous point, it is possible to first distinguish between practices that pool the interests of citizens and non-citizens and practices that focus exclusively on non-citizens. A second distinction concerns whether the representation takes place within or outside an already-established parliamentary system. Indeed, implementations of inclusive representation can act as a spur to deliberating new claims, encouraging contestation through representative ‘advocacy agencies or channels of dissent’ (Kuper, 2004, p. 107) that do not necessarily exist within parliaments. I will assess the following options:

	Representing the interests of citizens and non-citizens together	Representing the interests of non-citizens only
Parliamentary	Supranational parliament	Reciprocal representation
Non-parliamentary	Ombudsperson	Self-appointed representatives, advocacy groups

These proposals might already exist independently, but when taken together as a collection, they present a systemic approach to realising the AAP for non-citizens and supplementing existing forms of representation. Taken separately, each offers limited forms of inclusion or might fall short of the ideal of a fully transnational representative democracy; taken together, they constitute repertoires of representational inclusion.

A supranational parliament provides a framework – beyond borders – to foster democratic accountability, consideration of affected foreign interests, equal sharing of power and equal deliberation. Such representation happening beyond the state yet based on a statist structure captures the dual commitment to the consideration of externally affected interests and the circumstances of democracy (Lord, 2019). The European Parliament is the working example of supranational shared sovereignty, law-making power, deliberation and decision-making procedures. Such institutions embody the ideal of *demoi*-cracy, guaranteeing the



justification of impactful decisions, the equal consideration of interests and the equal status of concerned parties (Bellamy and Castiglione, 2019; Lord, 2013).

Reciprocal representation is a more embryonic form of transnational parliamentary representation focusing solely on the representation of non-citizens. As advocated by Philippe Schmitter, it would consist for states between which migratory movements happen in ‘accord[ing] each other seats in their respective national legislatures. The number of seats – perhaps two or three – could vary, depending on mutual perceptions of the degree of interdependence, as well as the total number of deputies in each legislature’ (Schmitter, 1997, p. 303). The nomination of one or several non-citizens’ representatives in national legislatures could strongly foster non-citizens’ interests. Joachim Blatter has recently revived this proposal at the European scale, calling for ‘transnationalising national elections, parties and parliaments’ through a ‘consociation of nation states’ that ‘grants the consociated citizens the right to elect a limited number of special representations in its national parliament’ (Blatter, 2019). Jeremy Bentham had already suggested a similar proposal to exchange members of parliament entrusted with agenda-setting competence. Granting a few seats to foreigners in national legislatures would have diplomatic and epistemic benefits through the building of mutual trust between nations as a guarantor of peace and by bringing new and impartial perspectives into parliament (Niesen, 2019). Frazer (2014) also argues for the impartiality of foreign members in solving ad hoc internal disputes or monitoring national representation. This kind of epistemic benefit also concerns citizens: reciprocal representation enhances citizens’ awareness of transnational issues and of the special responsibilities their country shares with others (Lacey, 2019).

An often-cited institution for including non-voting members and non-members (e.g. foreigners but also children or future generations) is the ombudsperson. The recent example of the French ‘*défenseur des droits*’ (rights defender) is instructive (Rivière, 2020). While in

office between 2014 and 2020, Jacques Toubon was particularly active, publicising various cases involving the violation of fundamental rights of migrants in parliament hearings and the media. Toubon made public statements in favour of letting the humanitarian boat *Aquarius* dock in France; testified against the contested bone examination of minor migrants to determine their age, deeming it ineffective and inhumane; and regularly alerted public authorities to the living conditions of migrants in unauthorised camps, calling on the government to protect the most vulnerable inhabitants. These types of interventions, shared by many non-governmental and local organisations, gain public, legal and political tractions when made by an authorised ombuds institution.

Non-parliamentary forms of representation of non-citizen interests might constitute necessary supplements to parliamentary options. ‘Inclusive representation’ is conceptualised precisely to encompass more participatory politics. As Hayat argues:

‘Inclusive representation is realized through the participation of the represented in the discussion of collective outcomes and of representative claims, but also in the pluralization of these claims. Indeed, some forms of inclusion can be internal to the existing means of representation (politicization, judgment on elected representatives), or external to them, through the formation of alternate representative claims, in social movements [...], NGOs, and so on, in order to equip the represented with other means of recognition and action.’ (Hayat, 2019, p. 136)

A flexible mode of representation of individuals whose interests are affected by foreign decisions rely on self-appointed representatives. As Laura Montanaro describes them: ‘they make claims to represent others outside of electoral institutions or offices and apart from state authority ... [They] may play an important role in democracy, particularly in a complex and globalizing world, where electoral constituencies fail to coincide with those affected by collective decisions’ (Montanaro, 2012, p. 1094). Decoupling representation from democratic territoriality and gradually voicing the interests of individuals excluded from normal parliamentary representation is a compelling way of institutionalising the AAP. While the institutional power and visibility of self-appointed representatives may be limited to the very

moment they make a claim, their capacity to create transnational publics (raising awareness of the interests of the affected people in question) and influence agenda-setting and public opinion gives them significant political clout.

Self-appointed representatives can organise further in advocacy and deliberative groups such as lobbies, committees, commissions, transnational meetings and NGOs. Furthermore, they can defend the interests of non-citizens by reviewing policy proposals and advocating for the consideration of non-citizens in national and international political agendas. Several theoretical proposals for such representative initiatives either within or between states have already been made: a ‘chamber of discourses’ (Dryzek and Niemeyer, 2008), a ‘tribune for non-citizens’ (Thompson, 1999, p. 121-122), transnational courts assessing externalities and claims of affected interests (Held, 1995, p. 237) and a global parliament or ‘People’s Assembly’ (Archibugi, Balduini, Donati, 2000). In practice, taking the situation in Europe as an example, the Migrant’s Forum (now the European Migration Forum), the European Council on Refugees and Exiles and coalitions such as the Starting Line Group are evidence of the possibility of gathering representatives (e.g. NGOs, activists, lobbyists, etc.) to influence migration-related international agendas. Institutional metaphors can help reclaim official political labels to legitimize activist advocacy groups. We can think of the Permanent Peoples’ Tribunal and its ‘sentence’ pronounced in January 2018 against the ‘violations of the rights of migrants and refugees;’<sup>7</sup> the Universal Embassy which occupied the former Somali embassy building in Brussels from 2000 to 2005 to defend undocumented migrants;<sup>8</sup> the Refugee and Migrant Parliament which gathered pro-migrant organisations at the European Parliament in 2018;<sup>9</sup> or even artistic productions such as the fresco *Embassy of the Refugee* by Caleb Duarte and Mari Martinez in Oakland (Schreiber, 2021). This last example points to the importance of artistic productions as advocacy. Art participates in the construction of affected publics. Pictorial, musical or theatrical performances are means of

mobilisation, participation, identity formation, diffusion of narratives and depictions of migrant life or public awareness campaigns that constitute the broad view of inclusive representation I am arguing for (Martiniello, 2019; Blomfield and Lenette, 2018; Wright, 2002). An ethics of representation – i.e. how one accurately characterises what or who is represented and the intentions behind and effects of such a characterisation – is inherent to political representation (Sager, 2019; Fossen, 2019).

#### **4. Ad hoc arrangements: The politics of inclusive representation**

In the following section, I discuss the limits of these representative institutions and practices to delineate the political dimension of inclusive representation and the ad hoc arrangements it might require.

Viewed separately, each practice has weaknesses. In the European Union, the large scale of a transnational parliament does not by itself solve the lack of representation of non-citizens. Affected non-European interests are still neglected, and the various criticisms of undemocratic governance (also echoed regarding United Nations institutions) tarnish the Union's accomplishments. As reciprocal representation works on a bilateral basis, it remains highly selective in its interest consideration and merely ratifies pre-existing political ties occurring through usual diplomatic channels. An ombudsperson is a top-down form of rights protection that might be too dependent on the executive power and hence too politicised and remote from local demands. Furthermore, as Sofia Näsström (2019) wrote, these institutional innovations could rightfully be seen as 'a democratic decoy, a step towards more technocracy rather than more democracy'. Advocacy groups and self-appointed representatives raise challenging issues related to accountability, the democratic legitimacy of individuals speaking in the name of others and the personalisation of collective and complex causes. More

generally, advocacy and deliberative activities might simply lack political leverage. However, this eventual weakness is a part of my point. Devising ways to institutionalise the AAP through representation aims at empowering inclusion, i.e. going further than mere consultation. I am arguing for representation as a first step, which may need supplementing with more concrete forms of participatory politics, such as local voting, unionisation, demonstrations, civil disobedience and so forth.<sup>10</sup>

In fact, these possible forms of representation operate at different levels, from transnational parliamentary bodies to local artistic practices, and allow claims of different intensities. They complement each other through ad hoc arrangements. Inclusive representation encompasses a collection of representative practices and forums and, as Kuyper (2016, p. 308-309) argues, they ‘can be internally undemocratic, or act in nondeliberative ways, yet still fulfil democratic functions within the broader system.’

Following Mark Warren’s systemic approach to democratic functioning, representation fills three different functions: ‘empowered inclusion’ (‘expands inclusion over time and space’), ‘collective agenda and will formation’ (‘enables perspective-taking, enables small-group deliberation’), and ‘collective-decision-making’ (‘representative bodies can function as accountable decision-making bodies’) (Warren, 2017, p. 46; Kuyper, 2016). The different practices and institutions I have assessed are coherent with this functionalist perspective, the first two functions being filled by non-parliamentary representation, the third one by parliamentary representation. They also expand the perspective by taking the specific interests of non-citizens into consideration or by giving equal consideration to the interests of citizens and non-citizens. While artistic productions can appear anywhere – an artist making a statement in the name of migrants, for instance – they can grow into more institutionalised claims when they raise civil and political awareness. Self-appointed representatives can move from local activism to national representation, climbing the political ladder through their

demands for better inclusion. Reciprocal representation between countries sharing a migration agenda can entrench compacts or large decisions made at the transnational parliamentary level.

There is often a suspicion that non-electoral representation lacks authorisation and accountability (Chandler, 2012, pp. 106–107), which might lead to mere formal awareness. For the representative, not risking any electoral sanctions or rewards from a non-voting constituency might trivialise and marginalise the represented interests. John Stuart Mill (1977, p. 470) put it well:

‘Rulers and ruling classes are under a necessity of considering the interests and wishes of those who have the suffrage; but of those who are excluded, it is in their option whether they will do so or not; and however honestly disposed, they are in general too fully occupied with things which they must attend to, to have much room in their thoughts for anything which they can with impunity disregard.’

However, inclusive representation aims precisely at replacing this dyadic view of accountability and representation with a collective one. Practices of virtual, collective or surrogate representation already occur in classically defined nation-states since representatives also represent the minority of people who did not vote for them (Weissberg, 1978, p. 537; Mansbridge, 2003, p. 522–524). In those cases, accountability can be detached from representation. The representative does not respond directly to their moral or virtual constituency, but that does not prevent accountability assessments through independent ‘channels of scrutiny’ and ‘monitoring bodies’ (Maia, 2012, p. 432). The role of journalists or migrants’ advocates can involve close examination of the quality (i.e. legitimacy and efficacy) of the claim to representation.

Inclusive representation also runs the risk of appropriating rather than making audible the voices of others. Any instances of speaking for or in the name of others should always be scrutinised (Spivak, 1990, p. 64). It is the usual bargaining nature of political action to devise ways to balance the questions of who will most accurately represent a group’s interests and

who will have the highest likelihood of dismantling the domination that excludes that group. Descriptive representation may partially alleviate the kind of paternalism Spivak discusses: migrants may demand to be represented by migrants. As Mansbridge (1999) has shown, descriptive representation has positive effects such as improving the epistemic quality of deliberation, and hence the legitimacy of decisions; easing communication and trust between representatives and represented; and giving marginalised groups a sense of being able to rule.

Proponents of group representation have also pointed to the dilemma of the necessity and the impossibility of representing minority groups without essentialising and altering the group itself (Phillips, 1998; Young, 2000). Phillips (1998, p. 188) suggested introducing ‘mechanisms of accountability’ within groups, which provide internal deliberative processes for autonomous groups but are unlikely to work for a group as diverse as non-citizens. Young’s approach may be more useful, arguing that a group does not have to be defined through a collective identity. Individuals form groups when they share *perspectives*. A perspective is ‘a way of looking at social processes without determining what one sees. ... Sharing a perspective ... gives each an affinity with the other’s way of describing what he experiences, an affinity that those differently situated do not experience’ (Young, 2000, p. 137). While migrants occupy different social positions, they might share perspectives on certain problems (e.g. access to public services, freedom of movement, discrimination, etc.). They form a shared interest in being represented in order to voice an experience unknown to non-migrants. If women or racialised individuals can act as – or legitimately claim to be represented as – a group, non-citizens can too; they are not inherently more diverse. Politically speaking, the pooling of perspectives and interests can rely on ‘a *strategic* use of positivist essentialism in a scrupulously visible political interest’ (Spivak, 1988, p. 205). In other words, while non-citizens groups surely possess conflicting interests and values, they might band together, based on their common status or social position, for the sake of political

gain. Essentialism legitimises the commonality and authenticity of their claim; strategy prevents long-term ascription to the group.

On a more practical level, this dilemma has been the main problem for the European Migrants' Forum in the 1990s. As Guiraudon (2001, 170) explains, 'all studies of the Migrants' Forum point out numerous difficulties in finding common ground among the migrant lobby groups and in defining an agenda. ... The Migrants' Forum was very divided, as different ethnic groups publicly expressed antagonism'. However, the quandary does not invalidate the need for inclusive representation but instead points to the conflicts which can result from institutionalising inclusive representation. Only a naïve understanding of collective action, interests and democracy, in general, would discard a principle solely because power-laden practices make it difficult to realise.

In sum, the representation of non-citizens plays a vital democratic role and serves different functions not limited to elective practices, such as including externally affected perspectives and interests in deliberating and decision-making bodies; crystallising interests to build common political claims; informing the general public about the conditions of vulnerable migrants due to their legal status (or absence thereof); regaining control of images and narratives from populist misrepresentation; and advocating the cause of migration policy reform. While, in most cases, some form of imperfect representation is a necessary but insufficient step towards future inclusion, combining imperfect forms of representation (and accumulating them over time) might gradually adjust the ideal of inclusion and the practices of nation-states.

## **Conclusion**

I have argued for the representation of non-citizens as a practical form of due consideration of their interests and a second-best alternative to their inclusion in the demos.



Starting from the intuitively moral principle underpinning the AAP but remaining constrained by realist premises of democratic functioning, electoral and non-electoral forms of representation of non-citizens' affected interests could solve the tension between this norm of inclusion and a bounded demos. If the existence of both borders and externalities impacting non-citizens is inevitable, representation offers a desirable method for including their interests in deliberative, agenda-setting and decision-making processes through parliamentary and non-parliamentary mechanisms.

The different forms of inclusive representation each have associated problems, but – taken together as performing different functions – they realise the due consideration owed to non-citizens and give weight to non-citizens' claims. The AAP and its institutionalisation through representation suggest an alternative route to the all-or-nothing defence of inclusion, which suggests the radical enfranchisement of people affected beyond borders. Inclusive representation offers more modest but feasible avenues of providing non-citizens with wider moral consideration, formal inclusion in deliberation, and even a voice in decision-making procedures while acknowledging the realist circumstances of democracy.

## Notes

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<sup>1</sup> My argument targets anyone affected by a law or decision, regardless of political status. Although they are not considered here, persons without voting rights in their country of citizenship (felons, persons under tutelage, future citizens, non-human animals) could also be considered for inclusion through representation for other global issues.

<sup>2</sup> This is a timely challenge, especially for countries that need to both respond to ongoing demands for stronger border controls and justify their policies according to liberal and democratic norms. Democracies are, by definition, responsive to public opinions. This often leads to harsher migration policies. But they are also more and more permeable to human rights norms. Remaining responsive only to citizens' interests can lead to illiberal forms of exclusion. On public opinion and its negative view of immigration, see Esipova et al. (2015); Freeman et al. (2013). For a comparison of the different surveys regarding the current state of the opinion in

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European countries, see <https://migrationdataportal.org/themes/public-opinion-migration> (accessed August 7, 2019). On the tension between democratic accountability towards critical public opinion and commitments to the rights of all, see Hidalgo (2019).

- <sup>3</sup> Such enfranchisement would be justified by stronger principles of inclusion, such as the All-Subjected Principle (ASP) or the Stakeholder Principle (SP), which I will briefly discuss later. Fundamentally, these principles require a right to vote for all those subject to laws and decisions, usually legitimating local and transnational voting rights for foreign residents (Arrighi and Bauböck, 2017).
- <sup>4</sup> This most extensive ‘possibilist’ interpretation of the AAP (Goodin, 2007) is one among several. See Hultin Rosenberg (2020) for a reappraisal of the problem and the reformulation of the AAP as ‘the principle that requires inclusion in the demos of all those and only those who are better or worse off as a foreseeable consequence of a decision that the state is in a position to take’ (Hultin Rosenberg, 2020, p. 866).
- <sup>5</sup> On this ‘constructivist turn’, see Brito Vieira (2017); Castiglione and Pollak (2018); Disch, van de Sande, Urbinati (2019).
- <sup>6</sup> As Laura Montanaro puts it (2017, p. 210): ‘One way we might get to know our interests is through the claims of representatives who tell us something about ourselves – though of course we might disagree, and should be empowered to voice disagreement, agreement, and make calls for revisions to claims, and offer our own claims. Representation is valuable not because it serves as a mechanism of inclusion, but because it renders “the people” politically present to decision-makers and even to themselves, forming the very demos necessary for democracy to operate.’ See also Knops and Severs (2019) for a case applied to refugees. To justify further the need to control the claim made by self-appointed representatives and advocates, see Rubenstein (2014).
- <sup>7</sup> See <http://permanentpeopletribunal.org/session-on-the-violation-of-human-rights-of-migrants-and-refugee-people-the-verdicts-of-palermo-and-paris/?lang=en> (accessed 16 April 2019).
- <sup>8</sup> See the statement online [http://www.ieb.be/IMG/pdf/declaration-de-l-ambassade-universelle\\_12-12-2001.pdf](http://www.ieb.be/IMG/pdf/declaration-de-l-ambassade-universelle_12-12-2001.pdf) (accessed 16 April 2019).
- <sup>9</sup> See the resolution it adopted: <http://www.migrantwomennetwork.org/wp-content/uploads/2019/01/FINAL-RESOLUTION-18-Oct-2018-Refugee-Migrant-Parliament.pdf> (accessed 5 May 2020)
- <sup>10</sup> I am not arguing that participation should be mandatory to be allowed a claim to inclusion or representation, but that inclusion necessitates access to channels of expression other than representation. Deciding to not get involved, to opt out, should always remain an option that does not detrimentally impact claims to protection, legal standing and moral and political consideration.

## Acknowledgements

This work was supported by the Max Planck Institute for the Study of Religious and Ethnic Diversity. I am grateful to the director of the department of Ethics, Law and Politics, Ayelet Shachar, for her trust in organizing the workshop “Inclusive Parliaments: Representation, Mobility, Disability” and pursuing with this special issue. For comments on an earlier versions of this paper, presented at the Max Planck Institute, the ECPR General Conference, and the University of Hamburg, I wish to thank to Svenja Ahlhaus, Ali Emre Benli, Tendayi Bloom, Marcus Carlsen Häggrot, Ran Hirschl, Simon Laumann Jørgensen, Peter Niesen, Dominic Roser, Regina Schidel, and Marta Wojciechowska.

## Disclosure Statement

No potential conflict of interest was reported by the author.

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