Towards a principle of most-deeply affected

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Abstract
This article argues that all-affected principle needs to be reconceptualized to account for the differences in the historical and current social position of those who are or who should be making legitimacy claims. Drawing on Butler’s theory of vulnerability, this article advances a new and more robust all-affected principle that affords a stronger claim to legitimacy to those most-deeply affected by both the current decision in question and the historical process and practices shaping the choices available. In particular, this article identifies three sets of exclusions of groups and claims that drive this reformulation: first, cases of historical injustice such as indigenous peoples; second, cases of current processes of minoritization which silence or render some groups and opinions as marginal such as women, ethnic minorities or even people in lower economic classes; and third, cases of state establishment of boundaries and ‘worthy’ citizenship such as refugees making claims for relocation and asylum.

Keywords
all-affected, democracy, historical injustice, minoritization, refugees, vulnerability

Introduction
Who has the legitimacy to affect decisions? Who should have a hand in making the laws and policies that can affect others? This article argues that all-affected principle needs to be reconceptualized to account for the differences in the historical and current social position of those who are or who should be making legitimacy claims. Drawing on Butler’s theory of vulnerability, this article advances a new and more robust all-affected principle that affords a stronger claim to legitimacy to those most-deeply affected by both the current decision in question and the historical process and practices shaping the
decisions available. In particular, this article identifies three sets of exclusions of groups and claims that drive this reformulation: first, cases of historical injustice such as indigenous peoples; second, cases of current processes of minoritization which silence or render some groups and opinions as marginal such as women, ethnic minorities or even people in lower economic classes; and third, cases of state establishment of boundaries and ‘worthy’ citizenship such as refugees making claims for relocation and asylum.

This article begins with an overview of the all-affected principle, its centrality to democratic theory as well as the criticisms and previous reformulations, including the all-subjected principle. Following this, I outline my critique of the all-affected principle, namely its insufficiency in taking seriously the background conditions and positions of individuals and groups using three examples. Drawing on the work done on the importance of vulnerability, this article posits that when background conditions are unjust and people are in unequal positions from the start, the principle of all-affected, whether conceived as a threshold principle (who has a seat at the table and gets counted) or a decision rule (how we make decisions together in the face of disagreements and diverging interests), will fall short of ensuring participation parity and legitimacy.

All-affected principle and its critics

This section establishes the all-affected principle as a consent-based precept of democratic legitimacy and explicates the shortcomings and problems associated with the concept.

The all-affected principle is an often-referenced democratic norm of inclusion and legitimacy. At its core, it is an argument to incorporate of the interests of all those with a stake in the outcomes of democratic decisions in the process of opinion and will formation as well as decision-making (Dahl 1990, 49, 64; also see Habermas 1996, 365; Whelan 1983, 16). It centres on the idea that if one’s opportunities and life choices are to be impacted as a consequence of a decision or a series of decisions, she or he should be able to influence the decisions (also see Beckman 2006; Miklosi 2012, 485). While a general principle of democratic theory, the all-affected principle is particularly important principle for those interested in deliberative, discursive or justificatory politics (Afsahi 2020; Chambers 1996; Dryzek 1994; Forst 2001, 2014; Habermas 1994, 2002; Manin 1987). As Habermas argues, ‘[d]eficits in democratic legitimation arise whenever the set of those involved in making democratic decisions fails to coincide with the set of those affected by them’ (Habermas 2006, 78, emphasis removed).

The principle of all-affected interests is radically democratic and normatively compelling. By granting legitimacy to the claims of all potentially affected interests and persons, this principle expands the space for legitimate claim-making and sets participation free from any legal, social and political restrictions which might limit access to the decision-making processes. Indeed, for some, the all-affected principle has ‘radically inclusionary implications’ (Song 2012, 49) since, for instance, it challenges the idea that democracy and democratic decision-making are bound-up with the existence of the State (Näsström 2011, 121–22). For some, the all-affected principle is a useful diagnostic tool as it ‘provides a yardstick for both absolute and comparative judgments of social arrangements’ (Koenig-Archibugi 2017, 3). In the context of this article, such an
expansive view of affectedness is particularly useful as it allows one to better account for the claims made by indigenous people who may not recognize the legitimacy, authority or even the existence of the State as well as future, potential members, of the State – migrants and refugees.

Additionally, the all-affected principle moves beyond simple inclusion to empowerment as it requires both the participation of all-affected and a robust justification of decisions that will likely affect them. Furthermore, ‘it sees all instituted processes and decisions as open to contestation by any excluded voices’ (Dahlberg 2014, 26). The all-affected principle also takes empathy as a democratic ideal more seriously because it necessitates that the decisions made (often times by majorities) consider the ways in which those decisions affect others (Morrell 2010, 169). Furthermore, it speaks to larger principles of fairness and justice by demanding a chance for one to influence a decision that will affect her life (Barnes 2002).

Despite its normative value, the all-affected principle has faced a number of criticisms. These criticisms are often interlaced but can be divided into two broad categories: criticisms over the expansiveness of the all-affected principle and concerns with its ineffectiveness.4

First, some have raised objections that the all-affected principle is too broad and unfeasible within political contexts. Tännsjö finds the all-affected principle to be ‘too vague’ to be useful (Tännsjö 2006, 284). Hayward, meanwhile, argues that insisting on the agreement or approval of all-affected is ‘unrealizable’ in political contexts when decisions need to be made (Hayward 2011, 481). Fraser expands this criticism by arguing that the all-affected principle ‘falls prey to the reductio ad absurdum of the butterfly effect which holds that everyone is affected by everything’ (Fraser 2008, 64). Since everyone is possibly affected by every single decision, we are left with no easily discernible way of distinguishing ‘those levels and kinds of effectivity’ with which we need to be concerned (Fraser 2008, 40). Even if we were able to know the correct constituency for each decision, the all-affected principle could, in effect, ‘[produce] shifting constituencies’ which ‘changes with specific decisions’ (Pavel 2018, 323; also see Whelan 1983, 19). Such shifting constituencies can undermine the ‘sincerity and trust’ that result from having a ‘stable’ demos (Miller 2009, 209). Even Robert Dahl who promoted the concept raised concerns about its expansiveness – seeing it as ‘[unlocking] Pandora’s box’ (Dahl 1990, 51).

Second, connected to the problem of broadness, scholars have also raised objections with the ensuing ineffectiveness of the all-affected principle as a precept to determine who the legitimate demos is. Carmen Pavel, for instance, points to the logical inconsistency of the all-affected principle: ‘we cannot know how basic interests are affected and whose interests are affected until we know something about the set of alternative decisions contemplated’ (Pavel 2018, 324). This means that we cannot rely on the all-affected principle to constitute a legitimate demos. Eva Erman, similarly, raises concerns with the seemingly unbounded nature of the demos of all-affected and argues that it is incompatible ‘with the basic conditions of democracy’ (Erman 2014, 538) which relies on a people to make decisions together democratically. There is also a concern that if we insist on the input of all-affected, the principle can fall short of
ensuring effective participation by all and fostering token participation, by which we would only be concerned with quantity rather than quality of contributions of the people.

With these concerns in mind, many scholars have suggested a move towards the all-subjected principle. In one formulation, the all-subjected principle holds that ‘all those who are subjected to the laws, i.e. those whose actions are governed by them, should have a say in their making’ (Erman 2014, 538; also see López-Guerra 2005). In another formulation, ‘subjection to the political authority of the state’ is replaced by ‘subjection to the coercive power of the state’ (Owen 2011, 642).

These scholars focus on the unequal relationship that exists in subjection which is missing in simple affectedness. As Miklosi argues, there is ‘nothing in itself morally wrong about situations in which different actors’ otherwise permissible decisions have an effect on other actors’ circumstances, as long as they are in an equal position to affect each others’ circumstances’ (Miklosi 2012, 484). Proponents of the all-subjected principle require that ‘everyone subjected to governance structure(s)’ be given ‘equal consideration’ (Fraser 2008, 65). In doing so, they attempt to establish ‘what should count as relevant affectedness’ (Siller 2012, 29).

The potential shortcoming of the all-subjected principle is that its normative power comes from the ‘existence of a political unit’ – it requires and ‘assumes the state as a primary boundary or threshold for inclusion and exclusion and then argues that all those subjected to political rule within its boundaries ought to have a say in its making’ (Näsström 2011, 117). As Carmen Pavel argues,

[b]eing a subject [. . . ] seems to require additional elements, such as an ongoing relationship with a community and its institutions, rights and obligations of citizenship, and a normative expectation of compliance with and support for the institutional system one is a subject of. (Pavel 2018, 327–28)

Therefore, the all-subjected principle can – and often does – exclude those who are not within specific boundaries of subjection. As Rainer Bauböck summarizes: “all subjected persons” is too conservative in presupposing the legitimacy of given boundaries’ (Bauböck 2009, 480). Both Pavel and Bauböck point to the possible ways in which all-subjected principle can be limited to state boundaries.

I refer to this as a potential shortcoming of the all-subjected principle since some scholars challenge the notion that the scope of this principle is limited to a particular political unit (see, e.g. Goodin 2016; Song 2012, 51). Most notably, Arash Abizadeh relying on the all-subjected principle broadens the scope to include ‘both members and nonmembers to the state’s coercive exercise of power’ when discussing border control and coercion (Abizadeh 2008, 45; also see Abizadeh 2012). However, by drawing, often arbitrary lines, between those who are subjected and those who are affected, the all-subjected principle limits its own scope (see Song 2012, for a discussion of ways of limiting this scope).

For instance, consider the example of Residential Schools in Canada. Nearly all scholarship is in agreement in regard to the detrimental effect of this system on indigenous communities (see Fontaine 2010; Furniss 1995; Hookimaw-Witt 1998; Llewellyn 2002; Miller 2003, for a few examples). With the last school closing in 1996, it is
incongruent to claim that indigenous children today are *subjected* to the system even though they are undoubtedly *affected* and will continue to be as such by the legacy of these schools. This one example demonstrates the limitations of focusing on *subjection* which often fails to capture the continued *affectedness* of prior *subjections*.

**Vulnerability and all-affected**

With this in mind, I argue that we need to retain the all-affected principle and its normative claims but refine it further to ensure sensitivity, the background conditions and the subsequent (degrees of) vulnerability of individuals and groups. In doing so, I argue that all-affected principle is best viewed as a comparative tool to help us “[diagnose, generate, and justify] the boundaries of the people” (Nässtro¨m 2011, 117–118). Where the all-affected principle falls short is in its ability to help us assess those who might be particularly or deeply affected by a decision. As such, we are not best equipped with the necessary tools to ensure non-domination and participation parity within the decision-making apparatuses. I argue that this shortcoming rests in a simple assumption: while not explicitly stated, the all-affected principle presumes a basic level of equality between *affected* individuals in their ability to influence decisions or demand justifications. We know this not to be the case.

If we take seriously the already existing vulnerabilities, we are pushed to rethink this basic presumption of the all-affected principle and focus instead on those most-deeply affected. Why vulnerability?

Vulnerability is an experience that we share in common by the virtue of being humans. This, however, does not mean that we are equal in our vulnerabilities. Some are more vulnerable than others: ‘certain social and political conditions’ can exacerbate this vulnerability (Butler 2004, 29). An unequal burden of vulnerabilities means that that we are not all equally capable of voicing our interests or persuading others to incorporate them in the decision-making process. Since ‘vulnerability is not a subjective disposition’, it is particular circumstances and contextual relations that can make some more or less vulnerable. It also means that we can amend these contexts in ways to reduce vulnerability.

I am far from the first to consider vulnerability and vulnerability reduction as a question of political theory. However, much of the literature has discussed the ways in which distributive justice or liberal rights can be added after-the-fact to reduce vulnerability. My aim is somewhat different. I argue that taking vulnerability seriously should lead us to reconsider core democratic precepts including the all-affected principle. Since we share this experience in common, vulnerability of others imposes on us an ethical duty to not further their vulnerability and thereby reducing the legitimacy of decisions made without the input of those most vulnerable before and after the decision. Furthermore, the choices we have made and continue to make leave some more
vulnerable and, therefore, our decisions, even when they take into account claims of vulnerable groups can make them more vulnerable because the structure under choices are made causes the vulnerability. Without considering the roots of endurance of vulnerability, no amount of rights or (re)distributive justice can tackle vulnerability.

The normative thrust of this article is to argue for the need to take the degrees of vulnerability into account in order for us to ‘evaluate and oppose the conditions under which certain human lives are more vulnerable than others’ (Butler 2004, 30). This requires of us to reformulate the all-affected principle so that it remains sensitive to the conditions and relations that shape our opportunities and life choices as well as our capacities to influence the decisions that will affect them. If historical and structural inequalities have left some disproportionately vulnerable to others, then the all-affected principle will not have the emancipatory effect with which it is associated.

**Most-deeply affected**

In this section, I propose that a new and more robust all-affected principle would afford a better claim to legitimacy to those most-deeply affected by both the current decision in question and historical practices leading up to the decision. The logic behind such a move is simple: we are not affected by decisions equally. While we may not be able to make judgements about the exact effects of a decision before it is made as well as the scope of affectedness, we can determine who will likely be most-deeply affected by a decision due to their already-existing vulnerabilities.

Three sets of common exclusions highlight the insufficiency of the all-affected principle to respond to instances where different facets of oppression create particular vulnerabilities and drive this reformulation: first, cases of historical injustice such as indigenous peoples; second, cases of current processes of minoritization which silence or render some groups and opinions as marginal such as women, ethnic minorities or people in lower economic classes; and third, cases of state establishment of boundaries and ‘worthy’ citizenship such as refugees making claims for relocation and asylum.

I should note, while cases of minoritization are subject to rapid changes – which may minoritize new groups and individuals, the same is not necessarily true for cases of historical injustice and state establishment of boundaries and ‘worthy’ citizenship.

In all three cases, individuals and groups are either excluded from participating in decision-making processes or lack the social and political capacities necessary to be able to influence decisions. This poses a challenge for the all-affected principle and its role in securing legitimacy. I am far from suggesting that we need to prioritize the claims of these groups over others in every single case. Rather, due to the vulnerability experienced by these groups, often as a result of prior decisions, or the potential for their increased vulnerability, as a result of current and future decisions, their claims cannot be sidestepped.

When these background conditions are unjust and people are in unequal positions from the start, the all-affected principle is unable to ensure the substantive participation of those most-deeply affected. In many cases, those who are not affected or least affected by the decision have are most empowered to influence the decisions; meanwhile, those most-deeply affected – and often harmed and or made more vulnerable – are the least to
do so. Indeed, such background inequalities often result in a tendency by those least vulnerable and affected to neglect or even reneg on the duty of justification owed to all those affected by decisions. Identifying these three sets of groups or cases addresses some of the criticisms lodged against the all-affected principle for its inability to determine relevant affectedness.

**Historical injustice**

The first set of exclusions that drive the reformulation of all-affected principle is that of historical injustice. The cases of historical injustice that this article is concerned with are those with an ‘enduring’ legacy to this day.\(^{14}\) This means that it is a type injustice ‘from the past [which] has not been remedied; it continues today in some form, and it seems that without a change in policies, it will continue into the future’ (Spinner-Halev 2007, 578–79).

Since cases of historical injustice ‘lie beyond the bounds of liberal theory’, ‘applying liberal justice’ will do little to solve the problem (Spinner-Halev 2007, 579).\(^{15}\) This also means that the all-affected principle which assumes a basic degree of liberal equality – an equal chance to influence decisions that you will be affected by – will be insufficient in these cases as well. Consider this example.

In Spring of 2016, protests began in reaction to the proposed Energy Transfer Partners’ Dakota Access Pipeline. The key concern framing the protest is that the pipeline can have severe environmental repercussions by threatening the water supply of the nearby Standing Rock Sioux tribe (Montagne 2016). While this is an important consideration, the protests are also fuelled by the recognition that the land is a historic trading ground – a sacred site for ‘not only by the Sioux Nations, but also the Arikara, the Mandan, and the Northern Cheyenne’(Allard 2016). Their claims for legitimate voice in the decision-making process rest not only on their historical connection to the land but also the potential to be (environmentally, and, therefore, physically) affected by the pipeline. Supporters of the pipeline, meanwhile, argue that the project promises to result in thousands of jobs, increased energy independence, reduced energy prices and millions of dollars in revenue benefitting the economy as a whole (Blakeman 2016). Their claims for legitimate voice in the decision-making process rest on their insistence that they, too, are affected by the pipeline’s potential to improve the economy as well as their belief that their original plans for the pipeline were authorized by governmental and, therefore, democratic institutions.

How should we determine who has the most relevant claim to affectedness in this case? Both sides can claim affectedness and be legitimate in those claims. Relying on all-affected principle, in such cases, does not help us adjudicate the most relevant affectedness or those whose vulnerabilities will be worsened as a result of a decision in this case.

Why should we think about reformulating the all-affected principle when considering cases of historical injustice? In cases of historical injustice, both unjust *historical* process and practices and current unjust conditions create systematic and structural inequalities, exclusions and vulnerabilities that are not taken into account by the all-affected
principle. In the particular case of historical injustice, individuals and groups face a number of formal, informal and self-exclusions.

Formal exclusions have included explicit and oftentimes coercive measures such as lack of universal suffrage, literacy test, poll taxes, residency and property requirements, strict ID laws, multistage voter registration measures, as well as racial redistricting. Moreover, they have been subjected to historically situated and materialized informal exclusions in the form of structural barriers such as lower social mobility, unequal language and education skills and lack of access to career networks – all of which have resulted in diminished political voice and limited social power as well as inadequate if not non-existent political representation and deliberative and democratic influence. Finally, in cases of historical injustice, we often witness a decision on the part of individuals and groups not to participate in political processes. This self-exclusion can result from concerns with mistreatment, co-option and token participation – reducing the incentive for participation. But it can also be product of a desire not to conform to norms or styles of participation deemed acceptable or legitimate.

The structural inequalities and exclusions mean that these groups are in unequal positions from the start and have lowered capacity to effectively participate and affect the decisions that will, in turn, affect their lives. This points to particular vulnerabilities that are in place. An insistence on the participation of the all-affected, even if in its most robust and expansive mode, will be unable to reduce these vulnerabilities and ensure true participation parity.

Why does this matter? The more readily given response ties (in)justice to responsibility. We can argue that since we share ‘benefits of the common institutions and practices [we] have inherited’, we also have a ‘responsibility for past injustices committed by those same institutions’ (Song 2007, 55). Even if we argue that we should not be held responsible for past injustices – after all, we did not personally and directly cause the injustice – scholars have argued that we are responsible for the fact that the injustice endures. Our failure to ‘rectify’ injustices now makes us complicit in sustaining the injustices and inequalities (Song 2007, 54; Spinner-Halev 2007; see also Thompson 2006). While this line of argument is undoubtedly important, it is not one with which I am concerned.

Instead, I argue that we need to care about systematic inequalities and vulnerabilities such as those that result from historical injustice because they are detrimental to legitimacy. Cases of historical injustice patently demonstrate the truth that simple inclusion on par with others will not be able to ensure the participation parity of all. In cases where the interests and needs of individuals and groups who have been subject to historical injustices are at stake, such as the example noted above, failing to influence the decision in a particular way will have much more serious repercussions for one side than the other. This unequal affectedness coupled with systematic inequalities that reduce the discursive power of one side establishes the insufficiency of the all-affected principle in assuring legitimacy – the side that is most affected is least able to make a difference. This means that even if we want to rid ourselves of the responsibilities of rectifying past and enduring injustice, we should retain our responsibility to rectify vulnerabilities that undermine democratic legitimacy. When we come to see that reducing vulnerabilities is necessary for democratic legitimacy, much like universal suffrage or accessible voting booths, our
assessment of its importance and the costs associated will be radically different that if we conceive it merely an issue of justice.

Furthermore, cases of historical injustice constitute a particular form of vulnerability. Historical injustices unlike historical harms or ills have a continuous character. This means that while the particular practices and institutions have changed (i.e. closing down of Residential Schools), their effects are deeply embedded in the institutions in society. Indeed, these injustices were often legitimized by the same institutions and norms that still exist in society (Lu 2011, 267). Therefore, it becomes impossible ‘to tell [the] story of the production and reproduction of structures [of injustice] without reference to the past’ (Young 2011, 185). For this reason, it is difficult to treat vulnerabilities arising from historical injustice the same way as those that are more temporally fixed.

**Processes of minoritization**

The second set of exclusions that drive the reformulation of all-affected principle is that of current processes of minoritization. I use the concept of minoritization in lieu simply using the word ‘minorities’ for two reasons. First, minoritization denotes an action taken by one party against another. It retains the agency and responsibility of those responsible for constituting the ‘other’ as a minority. The concept of ‘minorities’ is normatively neutral and can simply refer to being fewer than half a population. Second, and connected to the last point, one need not belong to a numerical minority to be treated as such. For example, women are in the numerical majority and yet are subjects to processes of minoritization. The same can be said for people in lower economic classes. In cases of minoritization, we see prejudice and discrimination that create and maintain inequalities between different groups in society. This discrimination is persistent and, often times, comprehensive affecting ‘different social spheres from education, work and housing to everyday interpersonal interactions’ (Song 2007, 52). These structural inequalities undermine the state of equality needed for all parties to be able to affect decisions as they are affected by them. Consider this example.

In September 2017, BBC News reported that Sweden was on the verge of ‘becoming a cashless economy’. With only 1% transactions taking place with cash, the rise in ‘We don’t accept cash’ signs is not surprising (Savage 2017). Similar patterns can be seen across Europe and the world. United Kingdom, France, Germany as well as the United States, Canada, Australia, China and Japan, rank in the top 10 cashless countries (Smith 2017) and similar pushes can be seen in India and some African countries (Forrest 2017). Proponents of a cashless society point to a number of important benefits. First, cashless transactions reduce robberies – after all, they have proven to do so on many public transportation platforms. Second, they speed up the transactions allowing stores to service their customers faster. Finally, cashless economies are better for the economy. By reducing the need for coins and cash, cashless economies lessen the need to mine metals or print currencies. Their claims for legitimate voice in the decision-making process rest on the fact that a cashless economy not only positively affects their livelihoods now (by reducing threat of larceny and increasing their productivity), but it has the potential to positively affect everyone’s life in the future (by reducing environmental costs).
Opponents of a cashless economy, meanwhile, argue that such a transition will further marginalize the already-marginalized from the economy. People from the lowest economic classes, the homeless and those without bank accounts will be unable to participate in an economy that excludes cash. Furthermore, the elderly, who are used to a cash economy, will also be alienated from the quick shifts to cashless transactions. They argue that by cutting off a portion of individuals from formal financial processes and services, a cashless economy makes it harder for them to earn and/or spend money. Their claims for legitimate voice in the decision-making process rest on the fact that increasing cashless transactions affects their ability to participate in the market and labour economies, reducing their chances of accessing accommodations, saving money or paying for bills. Both sides can claim affectedness and be legitimate in those claims.

Which case presents the most relevant affectedness? Whose vulnerabilities will be worsened as a result of a decision in this case? The all-affected principle is falls short of establishing the most relevant affectedness in the cases of systematic minoritization. Such cases create structural oppressions and vulnerabilities.

Minoritized individuals and groups, as demonstrated by the example above, are often left out or have limited access to the ‘system of labor’ and commerce (Young 2008, 63). The lack of economic and labour power has ripple effects in the political and social spheres. Minoritized individuals and groups are seen as less valuable and are subject to ‘patronizing, demeaning, and arbitrary treatment’ (p. 64). When such treatment is sustained over long periods of time, as usually experienced by minoritized individuals and groups, they become deprived of the ‘authority, status, and a sense of self’ (p. 65) which are necessary for a complete and effective participation in political decision-making. This means that even if the all-affected principle demands their inclusion, they will likely be less capable of affecting decisions.

The experiences, concerns and needs of minoritized individuals and groups are routinely trivialized or ignored in favour of the ‘dominant group’s experience’ which universalized and established ‘as the norm’(Young 2008, 66). Within deliberative and democratic decision-making process, such trivialization further complicates the ability of minoritized groups to participate effectively. Since their needs and experiences are made alien, their ability to persuade minds and affect decisions is lowered. In extreme cases, minoritized groups, much like those subjected to historical injustice, will live in the fear of ‘random, unprovoked attacks on their persons’ (p. 68). These experiences of oppression are systematic-they and reproduced throughout major economic, political and cultural institutions. They are also structural – as they are usually not the result of a few people’s choices but rather an effect of the basic fabric and machinations of societies.

As a result of these systematic and structural inequalities, individuals and groups subject to processes of minoritization face similar exclusions to those faced with historical injustice: formal, informal and self-exclusion. In cases of minoritization, we often witness fewer formal exclusions – although they certainly can exist especially for the poor and homeless. A key difference in the case of processes of minoritization is the diversity in the forms of exclusions faced. Since minoritization affects varied categories of individuals and groups (e.g. women, cultural and religious minorities, people with disabilities, the homeless, etc.), the particular forms and their degree of
effectiveness are similarly varied. However, despite this variance, individuals and groups subjected to processes of minoritization are similarly in unequal and more vulnerable positions from the start and will likely be most affected by decisions and have the least chance for influencing those decisions. This requires of us to take seriously our responsibility to not further, if not reduce, these vulnerabilities.

**State establishment of boundaries and worthy citizenship**

The final set of exclusions that drive the reformulation of all-affected principle is the cases of State establishment of boundaries and worthy citizenship. In such cases, we witness a particular disadvantage or vulnerability that results from States determining who counts and does not count as a worthy future citizen. Consider this example.

In July 2015, at a town hall meeting in St. Cloud Minnesota, residents asked their local congressmen, Tom Emmer, about his views on assimilation of immigrants. In particular, they expressed worries about the large population of Somali immigrants who had legally settled in Minnesota – changing their community overtime – and expressed a desire for a moratorium of some kind on immigration, particularly by Somalis. The concern of the citizens was centred on the fact that as residents of St. Cloud – those who ‘work hard, [...] pay [their] taxes. And [...] have kids to raise and go to school’ (Glass and Chace 2016) – they had little to no control over who was entering and settling in their community. Their claims for legitimate voice in the decision-making process rest on their assumed territorial rights. They live and contribute to the society in a defined space. Therefore, they are affected by and should have a say in the decisions made about that territory/space.

For the Somalia-American Citizens, non-citizen residents and non-citizen non-residents, however, a similar claim of legitimacy exists. They, too, have fundamental interests that are affected by the state. They are significantly affected by the decisions that would close borders and limit access to exactly those communities in which they had settled. They would be subject to those rules and limitations and, therefore, should legitimately be included in the democratic processes making them.

How should we determine who has the most relevant claim to affectedness in this case? Both sides can claim affectedness and be legitimate in those claims. Relying on all-affected principle, in cases of state establishment of borders and worthy citizenship, does not help us adjudicate the most relevant affectedness or those whose vulnerabilities will be worsened as a result of a decision in this case. Migrants and refugees outside of state boundaries are most-deeply affected by immigration and resettlement policies and frequently face particular vulnerabilities. Their decision to seek a home elsewhere has political, environmental or economic reasons. They are displaced due to war, strife or personal violence, lack of labour and life opportunities or limited access to education, healthcare and political and social rights. While they are clearly and strongly affected by decisions of the States to include or exclude them, they have no way of effectively influencing those decisions. Indeed, ‘[e]nforced decisions about who is granted and who is denied membership and rights, and who controls such decisions, are clearly among the most important instances of the exercise of political power’ (Abizadeh 2012, 876).
In response, some scholars have argued that since refugees and migrants are governed by immigration policies and laws of a State which has decided to direct some of its laws at people who are not its citizens, they should be afforded the chance to have a say. Some have gone even further questioning whether States have the right to make decisions regarding who to include or exclude (Abizadeh 2008, 2012; Carens 1987, 2000, 2013; Cole 2000; Dummett 2002, 2004; Fine 2013). Such responses frame the problem as one of legitimate versus illegitimate bias whereby certain voices and viewpoints are seen as an illegitimate contribution and not afforded a place in the larger dialogue. While such responses are valuable, they do not answer the concern that I raise: even if we include such voices based on their affectedness, how do we determine which is the relevant affectedness?

My response is twofold. First, refugees and migrants for whom return is not really an option are in unequal and vulnerable positions from the start. This means that while they are likely to be most-deeply affected, they have the least chance for influencing those decisions – even if we insisted that the all-affected principle demanded their inclusion. It is this experience of the vulnerability of refugees and migrants that should push us to consider their affectedness particularly relevant. When their concerns and needs are deemed illegitimate and dismissed, not only are we turning a blind eye to their affectedness (this is the argument made by most scholars), but we have a direct and intentional hand in making them further vulnerable.

Second, laws and policies regarding State establishment of boundaries and worthy citizenship are not normatively neutral and work to create and further the disadvantage of one group. Such decisions are often times based on easily discernible patterns by which States seek to support some ethnic, racial or even religious groups over others. These patterns are not normatively neutral. When States decide to allow entrance to one category of refugees or migrants over another, they are in essence, affording material and symbolic affirmation or support to them (e.g. preferring Christian refugees from Syria). Such an action has a normalizing effect. It establishes, and, often, legally codifies that one group is valued more than others. Such actions, much like processes of historical injustices and minoritization, create systematic and structural inequalities and vulnerabilities – inequalities and vulnerabilities that we have furthered and worsened. Since refugees and migrants are in unequal and vulnerable positions from the start, we are required to ethically respond to their claims.

Operationalization

My focus so far has been to demonstrate how the most-deeply affected principle can be used to give legitimacy to people to make claims and to impose a duty on us to listen to those claims. Indeed, the most-deeply affected principle with its focus on rectifying (already or potentially) existing vulnerabilities highlights the importance for the most-deeply affected to not only speak but to be heard by us. It will be of little consequence of our institutional measures only provide the chance to speak for the sake of speaking without a real opportunity to be heard and to bring to bear some level of influence (see Spivak 1999, 247, for a discussion of failure of hearing the subaltern). Rather than determining who part of the demos or not, the most-deeply affected principle takes proportionality and vulnerability seriously to determine the most pertinent affectedness.
In doing so, it can build on and fit within whichever organizing principles or membership rules we already have.

This brings us to an important question: what kind of institutional measures do we require to address the claims of the most-deeply affected? While a careful examination of such measures in different political and social contexts is well beyond the scope of this article, in this section, I provide a preliminary blueprint of what this could look like. This question is twofold. First, how should individuals and groups make claims for deep affectedness or what kind of institutional measures are necessary for them being able to do so? Second, how should institutions respond to such claims?

To make claims, the most-deeply affected may utilize a number of democratic practices. These include more direct participation in democratic institutions – through organizing, resisting or deliberating (see Warren 2017, for an account of each practice) – but more indirect forms of participation, through representation by delegates or discourses, may also be warranted as well.

Representation is particularly important for two reasons. First, much like organizing and resisting, representation entails organization around a particular interest. This can bolster a group’s interests and makes it more likely that their claims are articulated in the relevant political and social arenas for effectiveness. Second, representation is absolutely necessary in instances where direct participation is not an option. One can think of the case of refugees in resettlement cases that have no access to more direct forms of participation and therefore require representation in legal, social and political sites.

To ensure that such claims are properly heard and taken into account, different institutional measure may be required. At the very least, conflicting claims of affectedness require a recursive form of deliberation. This means that different parties as well as legislators are required to listen to one another’s claims and to rethink, alter and respond by bringing in their own claims and experiences. However, the process does not end there. Recursive deliberation requires an ongoing conversation that includes listening to and responding to the responses of others. Through such looping and ongoing conversations, a better understanding of the most urgent vulnerabilities becomes clear. Moreover, the recursive and revisable nature of such deliberations ensures sensitivity and responsiveness to changing vulnerabilities and new claims.

In cases where we are convinced of the vulnerabilities and the status of being most-deeply affected – usually in cases of historical injustice – an institutional guarantee or right to reject a proposal may be required. Additionally, in cases of ambiguous levels of affectedness, we may be required to choose in favour of groups who have been historically vulnerable.

From this discussion, two things should now be clear. First, the process through which the most-deeply affected make claims and are heard requires both a bottom-up approach from civil society as well as a top-down approach through specific institutional arrangements. Second, in some contexts, identification of those most-deeply affected is easy and persistent. This is particularly the case for examples of historical injustice and state establishment of boundaries and ‘worthy’ citizenship. Individuals and groups who are survivors of historical injustice or those who are subjects of immigration and refugee policies are often most-deeply affected by decisions due to either their already-existing vulnerabilities or the potential and targeted future vulnerabilities. Recursive deliberation
allows a process through which new subjects of minoritization can make similar claims of being most-deeply affected which can and are often contingent and changing.

Much like its predecessor, the most-deeply affected principle ‘might not be possible to use as an everyday decision method’ (Arrhenius 2005, 21), but we can use it as a standard to help us distinguish between better and worse decisions and decision-making processes. When faced with myriad of politically feasible decisions, most-deeply affected principle can help us assess the degree to which each decision may increase or decrease certain established vulnerabilities and focus our attention when it is most needed.

Conclusion

Remaining perceptive towards the most-deeply affected interests in decision-making process has three practical benefits. First, unlike its more conservative alternative, all-subjected principle, it does not assume that your ability for self-development and pursuit of a life according your own goals and wishes is impacted solely by those interventions that subject you but also those that can continue to affect you long after the subjection is over. Second, unlike its more expansive alternative, all-affected principle, it is more attuned and able to differentiate between different forms and degrees of affectedness. It is better equipped to determine which affectedness is principally relevant in a particular circumstance. Third, since it takes background conditions and degrees of vulnerability as its baseline, it is more flexible in determining the relevant affectedness. This means two things. First, relevant affectedness will be tailored according to the particular issue concerned. Second, relevant affectedness will be tailored according to the particular time when a decision is taking place. Vulnerabilities do not remain the same across periods of time. There will be issues and times where those we may have considered particularly vulnerable may not be so anymore.

All three cases discussed in this article point to the fundamental insufficiency of the all-affected principle to take into account the background conditions and relative social positions of people making claims. Most-deeply affected principle allows us to sort out the relevant affectedness in each case by focusing on those who are already vulnerable, historically and in their current social position. Most-deeply affected principle remains sensitive not only to the complexities of democratic legitimacy but general principles of justice.

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Notes

1. I should emphasize that all three examples relate to liberal and constitutional democracies.
2. Most notably, Ian Shapiro extends the domain of the all-affected principle beyond governmental decision-making to ‘[any] domain of civil society’ that has an effect on an individual’s life (Shapiro 1999, 37).
3. The precepts of participation and justification are not peripheral but rather characteristic of what it means to engage in democratic politics. Participation and democracy are tied together: ‘participation is democratic when every individual potentially affected by a decision has an equal opportunity to affect the decision’ (Warren 2002, 693). This requires all individuals in a democracy to give reasons for their positions and attitudes to one another. We need to be able to interrogate the (ideological) positions of others as well as our own, respond to statements with which we agree or disagree and ‘challenge false legitimations’ (Forst 2013, 160). Democratic politics requires that we participate and sufficiently justify our positions and concerns to others – in other words, to be mutually accountable for our words and actions. Therefore, the all-affected principle’s insistence on the importance of participation and justification – as two sides of the same coin – is key for democratic politics.
4. There are further formulations and alternatives to the all-affected principle. The ‘all actually affected’ principle is proposed as an alternative to ‘all potentially affected’ (see Erman 2014; Goodin 2007; Owen 2011, 2012). However, as Bob Goodin argues, our ability to know and accommodate those ‘whose interests are “affected” by any actual decision depends upon what the decision actually turns out to be’ and similarly ‘what the decision actually turns out to be depends, in turn, upon who actually makes the decision’ (Goodin 2007, 52). A more restricted stakeholder principle has also been suggested (see Bauböck 2008; Bellamy and Lacey 2018). A thorough discussion of these is beyond the scope of this article (also see Schaffer 2012).
5. Subjection or coercion for these scholars ‘generate[s] a claim for inclusion that is far stronger than any claim that the affected interests principle is likely to generate’ (Miller 2009, 225).
6. The story of Residential Schools in Canada is complex. However, it is important to remember a few details. First, Residential schools were setup and operated by ‘the federal government and various churches in most provinces and territories across [Canada]’ (Regan 2010, 4). While the last school closed in 1996, there are thousands of direct living survivors and even more who are indirectly affected by the legacy of these schools. Second, the schools themselves embody the living violence experienced by indigenous peoples. Children were often forcibly removed from their parents and communities and sent to these schools. While there, ‘[t]hey were forbidden to speak their own languages or practise their own cultural and spiritual traditions, and were punished for doing so’ (p. 5). Stories of physical, verbal, emotional and sexual abuse in the hands of the school administration are beyond the scope of this article. But they speak to the ‘intergenerational history of dispossession, violence, abuse, and racism’ (p. 5) which permeates Canadian history.
7. An exception is Eva Erman. Drawing on Gould, MacDonald and Rawls, she argues that ‘the all affected principle allows for a proportional view of affectedness, according to which those whose interests are more affected by a decision should have more influence than those whose
interests are less affected’ (Erman 2014, 537; also see Gould 2004; Macdonald 2008; Rawls 1971). However, her view of the proportionality characteristic of all-affected is not universally shared. Indeed, this is the main reason scholars such as Nancy Fraser and Bob Goodin challenge the over-expansive nature of the all-affected principle. Moreover, individuals and groups are not equally subjected to the exercise of governmentality and political power. Therefore, her account of the ‘equal influence principle’ within the framework of all-subjected interests maintains the shortcoming I see with common formulations of the all-affected principle.

8. As Butler argues, vulnerability ‘[seems] to follow from our being socially constituted bodies, attached to others, at risk of losing those attachments, exposed to others, at risk of violence by virtue of that exposure’ (Butler 2004, 20).

9. Vulnerability does not only concern the body: ‘we also undergo linguistic vulnerability, and in this sense who we are, even our ability to survive, depends on the language that sustains us’ (Butler 2016, 16).

10. See Anderson and Honneth 2005, Warren 2008, 391, Pilapil 2014 and Coyle 2016.

11. I should emphasize that a similar conceptualizing is taking place in the field of international law. In response to the crisis of legitimacy of many international institutions, the emphasis on the role of intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) in various fields of international policymaking and law are increasingly being exchanged for one on the participation of those ‘most affected’ in particular circumstances (See Sändig et al. 2018). This is a new field and very little scholarship has been published on the subject.

12. I am far from suggesting that a move towards most-deeply affected principle will present us with a series of zero-sum games whereby we consider and afford legitimacy to claims of some at the expense of (other) members of the society.

13. It is important to note that while group subjected to processes of minoritization or establishment of worthy citizenship shift over time, the same cannot be said about groups affected by historical injustice.

14. Berber Bevernage makes a similar argument: ‘That injustice has a clearly irreversible dimension can hardly be denied when the original victims and sometimes also the perpetrators are long dead. Still, it is precisely in the case of historical injustice that the problematic “presence” of the past becomes most apparent’ (Bevernage 2008, 164).

15. It should be noted, however, that Robert Nozick’s entitlement theory comes close to providing a liberal response to cases of historical injustice. As Nozick argues, stealing, defrauding or enslaving do not constitute ‘permissible modes of transition’ of holdings and require rectification (Nozick 2013, 152).

16. Young goes further to argue, ‘[i]n a political world with so many competing claims, the continuity of present structures with a history of policies and practices acknowledged as wrong should give added weight or urgency to such proposal’ (Young 2011, 186; also see Waligore 2018, for a helpful discussion).

17. Why are women included under minoritized groups and not those subjected to historical injustice? The experience of women is similar to cases of historical injustice in two ways: historical subjugation and enduring discrimination. However, much like Spinner-Halev and Thompson, I argue that women’s experiences differ in key ways from experiences of historical injustice. For Thompson, historical injustices are those that affect ‘family lines’ – ‘when the
perpetrators seek to wipe out family lines, keep them in perpetual slavery or submission, or attempt to prevent individuals of certain kinds from maintaining family relations, carrying out family obligations, or receiving entitlements as members of a family’ (Thompson 2001, 133). For Spinner-Halev, the reason is twofold. First, while women have experienced and continue to experience injustice, they do not have ‘collective narratives like African and Native Americans’. Second, ‘women have made more economic [and academic] progress since 1960s than have African Americans and Native Americans’ (Spinner-Halev 2012, 62–63).

18. Also see Haraway 1988 and Combahee River Collective 2019.

19. Our first instincts might lead us to readily dismiss the views of the residents of St. Cloud as racist and bigoted – and therefore, outside of bounds of civil discourse in a democratic society. However, the residents of St. Cloud are not alone in holding such positions. In addition to politicians, many within political theory have made a case for States and its citizens to retain their right to control their borders, establish their preferred associations and set limits on who they will accept as citizens (Meilaender 2001; Miller 2005, 2004; Walzer 1983, 1995; Wellman 2008).

20. For example, LGBTQ refugees (see Jordan 2009; Jordan and Morrissey 2013).

21. I draw on Jane Mansbridge’s new model of recursive representation in developing the concept of recursive deliberation (Mansbridge 2018).

22. Scholars have suggested or written about a veto right for indigenous communities (Anaya and Puig 2017; Shaw 2017; Te Aho 2015).

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