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0521849845 - The Concept of Constituency: Political Representation, Democratic  
Legitimacy, and Institutional Design

Andrew Rehfeld

Excerpt

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PART I

CONCEPTUAL FOUNDATIONS

*On Constituency and Political Representation*

## I

## Introduction

[P]olitical philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational and developed over time as they did to attain their present, rational form.

– John Rawls<sup>1</sup>

Man is very much a creature of habit. A thing that rarely strikes his senses will generally have but little influence upon his mind.

– Alexander Hamilton<sup>2</sup>

All politics is local.

– Tip O’Neill<sup>3</sup>

## I.1 GENERAL INTRODUCTION

In almost every democracy in the world, citizens are represented by where they live.<sup>4</sup> In Canada, India, and France, political representatives are elected by groups of voters who live in the same place, whether that location is a province, state, district, or municipality. In Germany, India, and Russia, too, territorial representation is a central feature of legislative design. And every

<sup>1</sup> John Rawls, *Justice as Fairness*, ed. Erin Kelley (Cambridge, MA: Belknap Press, 2001), p. x.

<sup>2</sup> Alexander Hamilton, *The Federalist*, ed. Jacob E. Cooke, Essay 27 (hereafter *Federalist* 27) (Middletown, CT: Wesleyan University Press, 1961 [1787]).

<sup>3</sup> Thomas P. “Tip” O’Neill is reported to be the author of this maxim, though I have not been able to find that definitive source. The quip became the title of a book that he wrote that was published just before his death. Thomas P. O’Neill with Gary Hymel, *All Politics Is Local* (New York: Times Books, 1994).

<sup>4</sup> Israel and the Netherlands are two exceptions. In Israel, political representatives are elected by party lists nationally. The Netherlands is a slightly more complicated case in which some seats in parliament are linked to the geographical distribution of their votes, but constituencies are not formally territorial. I thank Eric Schliesser for clarification of this point.

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ten years in the United States, congressional districts are redrawn, physically constituting political representation in the House of Representatives by where its citizens live. Why *do* democratic governments define political representation by where people live? Are territorial electoral districts commensurate with basic principles of democratic legitimacy? And why might our commitments to these principles lead us to endorse a radical alternative to territorial or group representation: randomly assigning citizens to single-member, national electoral constituencies in which they remain for life? These are the basic questions of this book.

The answers to these questions are conceptual, historical, and normative, thus reflecting the organization of what follows. The answers are conceptual because they depend on divorcing the concept of constituency from other features of electoral systems, features such as voting rules and election procedures; the definition of constituency is independent of, and prior to, how votes get cast and counted. The answers are historical or explanatory because we are interested in knowing why territorial constituencies came to be used; in the particular case of the United States House of Representatives, the justification for territorial representation dramatically changed, not, as some have argued, with the emergence of modern technologies in the twentieth century, but two centuries earlier at the founding of the United States, when the size of electoral districts increased by an order of magnitude. And the answers are normative, because we want to know how any government's legitimacy – here understood as a government's *right* to make and enforce law – is affected by the institutional design of electoral constituencies. To give but one example, if representatives facing reelection should be held accountable to the people who elected them, we should have a strong preference for electoral constituencies whose membership does not change over time.

I will define what I mean by “constituency” in much greater detail later in Chapter 2, but at this point we can say that an electoral constituency is the group in which a citizen's vote is counted for the purpose of electing a political representative. Electoral constituencies do not need to be defined by territory. Historically, the state has defined them according to race,<sup>5</sup> class,<sup>6</sup> and political party.<sup>7</sup> But as an institution conceptually separate from the election of representatives, the electoral constituency is little studied. Its historical origins, at least in the United States, are incorrectly described. And as a normative subject of inquiry, the constituency is almost completely ignored. It is neither as symbolic as “the right to vote” nor as determinate as a “voting system.” Yet its exclusion from the central principles of normative and analytical democratic theory is

<sup>5</sup> In the United States, electoral constituencies defined by race have been permitted to varying degrees since the Voting Rights Act of 1965.

<sup>6</sup> The Estates-General of France was defined in part according to social class.

<sup>7</sup> Gerrymandered districts in the United States are often drawn to create districts defined by political party. For reasons I discuss in Chapter 2, most forms of proportional representation effectively define electoral constituencies by political party.

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a considerable oversight that, for reasons I will explain, has undermined the normative legitimacy of democratic governments.

*The Concept of Constituency* thus offers an approach to the central paradox of modern democratic government: Political representation excludes almost all of a nation from the institutions that “democratically” govern it. In any two-year period, the average U.S. citizen has a 25 percent greater chance of being struck by lightning than serving in either the U.S. Senate or the House of Representatives. Of course, lightning strikes some parts of the country more frequently than others, and office holding depends on, among other things, wealth, race, and gender. So if you are a poor, black woman living in rural Missouri, you are about a million times more likely to be struck by lightning than ever serving in either branch of your national legislature.<sup>8</sup>

The exclusion of political representation is a structural feature of democratic governments worldwide. In 2003, for example, .0000183 of the adult population of France served in either branch of its national legislature. The same year in India and Russia, the proportion of lawmakers to adult citizens was .000001117 and .000004349 respectively. Very small nations such as Iceland and Belize (with populations of less than three hundred thousand) emerge only slightly better with proportions of .000257 and .000262, respectively.<sup>9</sup>

To be sure, one can participate in politics without writing and voting on legislation. Citizens can give money to campaigns, if they have money to give. They can spend time advocating for legislation, if they have the time to give. They can attend deliberative sessions, voice their opinions, and participate in letter writing campaigns, if they have the skills, patience, and fortitude that such endeavors usually demand. But in terms of taking an official role in deliberating about and voting on the laws that bind us all, the nature of political representation necessarily leaves most (I am tempted to say all) of us out of the loop.

The fact that political representation excludes so many has long been viewed with ambivalence. On the one hand, representation weakens traditional, ancient notions of democracy that emphasize the close connection between people and the laws that govern them. Representation increases the distance between citizens and the concerns of their representatives and it also limits the number of

<sup>8</sup> The “million times” is a guess based on the fact that parts of Missouri are struck much more frequently by lightning than elsewhere, and there has yet to be a poor black woman serving in Congress. On average, the odds of being struck by lightning in a two-year period are about .000003334, roughly 25 percent greater than .000002725, the proportion of the adult U.S. population that serves in Congress. Lightning data come from “Interesting Facts, Myths, Trivia and General Information about Lightning,” 13 January 2004, <http://www.srh.noaa.gov/mlb/lgtcenter/lgt.facts.html> (accessed 13 January 2004). Population data come from Mary M. Kent and Mark Mather, “What Drives U.S. Population Growth?” *Population Bulletin* 57(4), December 2002: p. 27, [http://www.prb.org/Content/NavigationMenu/PRB/AboutPRB/Population.Bulletin2/57\\_4\\_USPopulationFINAL.pdf](http://www.prb.org/Content/NavigationMenu/PRB/AboutPRB/Population.Bulletin2/57_4_USPopulationFINAL.pdf) (accessed 12 January 2004).

<sup>9</sup> World Factbook: France 2003; World Factbook: Russia 2003; World Factbook: Iceland 2003; World Factbook: Belize 2003, all at <http://www.cia.gov/cia/publications/factbook>. By “adult population” I mean all people over fifteen or sixteen years old based on the population figures.

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perspectives and interests that can be represented in the legislature. This line of thought, began by Jean-Jacques Rousseau, can be traced through the U.S. Anti-Federalists down to many democratic theorists today such as Ben Barber, John Burnheim, and Iris Marion Young.<sup>10</sup>

On the other hand, political representation may temper democratic excesses because better than average individuals may be voted into the legislature, or because a small legislature is more conducive to deliberation, reflection, and compromise than is a large group. This second line of thought can be traced from James Harrington and James Madison, through Francois Guizot and John Stuart Mill, down to supporters of group representation who see representation as a means by which group rights are secured against the will of the majority.<sup>11</sup> More recently, Bernard Manin has argued that the exclusion of representative government – whether beneficial or not – makes it an elective aristocracy rather than a purely democratic form, a claim with which the aforementioned impoverished, black Missourian might well agree.<sup>12</sup>

If political representation is necessarily about exclusion, electoral constituencies define how the excluded are re-formed, how they are grouped, and how they are districted for the purpose of political representation. The concept of constituency, then, is part of a theory of democratic exclusion because electoral constituencies define the way that the excluded are legitimately constituted for the purposes of political representation. Working this out means turning our view from what goes on within the legislature, and asking instead what happens to those who remain outside of it. And we proceed by delineating the conceptual, historical, and normative components of this project.

**Conceptual Foundations.** The right of a government to make and enforce its laws depends in part on whether its political institutions and practices are justifiable to those who are governed by them. This in turn depends on the substantive

<sup>10</sup> Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley, CA: University of California Press, 1984), pp. 145–6. John Burnheim, *Is Democracy Possible?* (Los Angeles, CA: University of California Press, 1985); Jean-Jacques Rousseau, *On the Social Contract*, trans. Judith R. Masters, ed. Roger D. Masters (New York: St. Mary's, 1978 [1762]); Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), pp. 184–6.

<sup>11</sup> Francois Guizot, *The History of the Origins of Representative Government in Europe*, trans. Andrew R. Scoble, ed. Aurelian Craiutu (Indianapolis, IN: Liberty Fund, 2002); James Harrington, “The Commonwealth of Oceana,” in *The Commonwealth of Oceana and a System of Politics*, ed. J. G. A. Pocock, Cambridge Texts in the History of Political Thought (New York: Cambridge University Press, 1992 [1656]); David Hume, “Idea of a Perfect Commonwealth,” in *David Hume, Essays: Moral Political and Literary*, ed. Eugene F. Miller (Indianapolis, IN: Liberty Fund, 1987), pp. 512–29; James Madison, *The Federalist*, 10; John Stuart Mill, *Considerations on Representative Government* (Amherst, NY: Prometheus, 1991 [1861]); Iris Marion Young, *Inclusion and Democracy* (Oxford, UK: Oxford University Press, 2000).

<sup>12</sup> Bernard Manin, *The Principles of Representative Government* (New York: Cambridge University Press, 1997).

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virtue of the proposed institution or practice, that it be publicly known, and that its justifications are at least accessible if not in fact known to all citizens.<sup>13</sup> When we ignore the dynamics and justifications for electoral constituencies, we ignore an institution that should be included among those more familiar institutions and practices that purportedly legitimize a government's rule – institutions such as “fair and free elections,” and practices such as deliberation, transparency, and accountability.

Why should electoral constituencies be counted among these other well-studied institutions and practices? As Melissa Williams has put it, constituency definitions “mediate” the relationship between voters and their representatives.<sup>14</sup> The definition of electoral constituencies shapes how citizens qua citizens interact with one another. And, they structure the incentives representatives face when they deliberate on and make law. For reasons I explore throughout this book, the definition of electoral constituencies helps a nation determine the way it comes to understand itself.

Electoral constituencies define how voters are grouped for the election of their representative and are conceptually different from the particular selection rule that they use to select their representatives. For example, if voters were grouped by professions – doctors forming one electoral constituency, janitors another, and so on – they would still need other rules to decide how each of these groups would select its representative or representatives. Maybe they would use majority rule or plurality rule. Maybe they would select a representative by lottery. Our concern here is not, then, with voting rules or the questions of single-member or multimember representation. It concerns the prior question of how constituent groupings themselves affect the legitimacy of a political regime.

Conceptually, electoral constituencies can vary on many dimensions. They may be more or less voluntary in the sense of allowing individuals (rather than the state) to choose how they are defined. They may be more or less stable, describing the extent to which their membership changes between elections. And they may be more or less heterogeneous, describing the extent to which the members of an electoral constituency share a certain feature, such as the same race or profession, territorial location, or political party membership. Each of these features will affect how citizens relate to each other as constituents, the choices they make as voters, and the incentives that representatives therefore face when campaigning and serving in office. Finally, a particular definition of an electoral constituency – more or less stable, more or less voluntary, and more or less homogeneous – may be justified for a host of reasons, including “to protect a group's rights,” “to represent local interests,” or “to foster citizenship skills among citizens.” We can only appreciate the normative implications of

<sup>13</sup> I will defend these claims in section 1.2.

<sup>14</sup> Melissa S. Williams, *Voice, Trust, and Memory* (Princeton, NJ: Princeton University Press, 1998), pp. 23–56. Williams' argument referred to political representation more broadly, including, but not limited to electoral constituencies. On Williams, see also section 2.1.

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electoral constituencies when we treat them as conceptually independent of other democratic institutions.

*Historical Origins: The Silence of the Land.* Why should we care about these particular features of democratic institutions? The conceptual argument helps us map the historical origins and normative justifications of our contemporary institutions and their alternatives. It thus provides a set of tools by which we can justify the institutions by which we govern ourselves (a role of political philosophy emphasized by Rawls's summary of Hegelian reconciliation quoted at the start of this chapter).

When we ignore the dynamics of and justifications for our shared political practices and institutions, we let them lie silently in our midst, and risk making them appear natural or necessary for that apparent silence. In this way we may think of territorial constituencies as “the silence of the land”: Territorial constituencies have become such a habit of mind that it may seem “natural” for political representation to be defined by where people live. If, by nature, all politics *were* local, this naturalness might be a good justification for territorial representation. But the truth of Tip O’Neill’s aphorism, that all politics is local, depends not on the nature of politics per se but on the institutional incentives that lead politicians to serve *local* interests over *nonlocal* interests, incentives that arise only because electoral constituencies are defined territorially. The localness of politics is thus epiphenomenal, nothing more than a byproduct of territorial electoral constituencies. If electoral constituencies were defined by profession (and not by residency at all), all politics would be “vocational.” If constituencies were defined by political party (again, without regard to where members lived), all politics would be “ideological.” These facts are obscured by the silence of the land.

So why are territorial constituencies used for political representation? I take up the answer to this question in Chapters 3–6. Perhaps the most apparently obvious reason is that the communities in which we live seem to form “communities of interest” that should matter to national political representation. Indeed, territorial constituencies arose for this reason in medieval England.<sup>15</sup> But in the case of the United States – the case on which this book focuses – this justification was not a foundational one, having fallen away by the time the U.S. Congress was being created. This justification no longer could apply to national electoral constituencies because their size extended far beyond what anyone at the time thought was a coherent “community of interest.”

Territorial congressional districts would have been much too large to map onto existing towns, boroughs, and counties, and this fact generated the now familiar positions for and against political representation. For supporters of the proposed U.S. Constitution, the large size of the district was a virtue of the system – political representatives would be more independent within Congress, free from the factionalism that supporters thought controlled representatives in

<sup>15</sup> See Chapter 4.

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the smaller state legislatures. For opponents of the proposed federal plan, the fact that local communities could not be represented in the national councils of government illustrated one of the fundamental flaws of the system and political representation more generally. But all sides shared the expectation that the electoral district for Congress would be too large to represent coherently local communities of interest.<sup>16</sup>

Territorial constituencies, however, enabled other democratic aims to be achieved, such as “between-citizen” deliberation, and they made it possible for citizens to hold their representatives to account.<sup>17</sup> This is not to say that the “territoriality” of the electoral constituency itself was much noticed. But the American experience illustrates how deeply seated “territorial districts” were even for people who self-consciously created and re-created their institutional design. Even when the territorial district became too large to represent a “community of interest” coherently, no alternatives were offered for it.<sup>18</sup> The use of territory to define electoral constituencies persisted as a habit of mind, a historical remnant no longer serving its original purpose of representing communities of interest, but so ingrained that it was never seriously challenged.

*Normative Justifications.* The choice of the United States as the historical case should not obscure the broader theoretical implications of this study. Virtually all nations, no matter what voting systems they use, utilize some form of territorial districting without giving much thought to its alternatives. Half of the lower house of Russia’s legislature is defined by territorial districts, as is the lower house of India.<sup>19</sup> Even those who have called for group representation through proportional representation often rely on territorial boundaries to subdivide groups to select candidates, as is the case in Chile. In other cases, territorial lines are used to achieve group representation, as in the case of the U.S. gerrymanders of the last four decades in which district lines were drawn to facilitate minority representation. Thus, while the historical questions are of particular importance to citizens of the United States, they do not address the pressing contemporary ones. Are there good reasons to favor territorial representation in large nations today? In Chapters 7 through 9, I take up these issues.

There are many reasons we might think that where we live matters and should matter for national political representation today. Perhaps, as Nancy Schwartz has argued, territorial proximity helps foster citizenship because it allows individuals to deliberate face to face and otherwise act as citizens with each

<sup>16</sup> See Chapter 5.

<sup>17</sup> See Chapter 6.

<sup>18</sup> In Chapter 3, I address the concern that the question itself is anachronistic because there were no alternatives available in the eighteenth century. See section 3.1.

<sup>19</sup> Like the U.S. Senate, the upper houses of Russia and India are also territorially defined, but in both cases, territory is only incidental to a functioning subnational administrative unit. Thus it is more appropriate to call this constituency defined by “political community” than by territory per se. For more, see the discussion in Chapters 2 and 3.



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other, rather than from a distance.<sup>20</sup> The large size of territorial constituencies – in the United States, each constituency for the U.S. House of Representatives contains on average more than six hundred thousand individuals – also allows them to encompass many different interests, so that representatives may have to appeal to a wide range of interests in order to be reelected. This underlying diversity may help moderate a representative’s deliberations and votes, and may make it more likely that a policy commensurate with the national good emerges from the national legislature.<sup>21</sup> Other kinds of constituency definition in which voters are concentrated more homogeneously (by race, political party, nationality, ethnicity, and so on) may create bad incentives for particularistic legislation that are unlikely to encourage a representative to think about the welfare of the greater whole. If legitimate political institutions ought to pursue the interests of the collective they govern, then its institutions ought to be structured to provide incentives to act on behalf of the public good.<sup>22</sup> So, assuming nonbiased districting and residential integration of all kinds, territorial districts may have the potential to do that.

Because the allocation of territorially specific goods such as highways, medical centers, and schools is important for the good of any nation, it may even be possible to justify territorial constituencies because they create what would purportedly be the right kind of incentives for representatives to secure territorially defined goods for their constituents. In this account, the process of logrolling – “if you vote for my project, I’ll vote for yours” – purportedly produces the national good through a series of trade-offs between representatives within the legislature. The problem, though, is that the incentives to allocate goods territorially must be justified against the other kinds of incentives that would be created if constituencies were defined along nonterritorially based dimensions such as race, gender, or profession. So we need a prior argument that logrolling between advocates of *this* particularity – whether territory, race, profession, or so on – is what will most likely produce good outcomes that aim at the national interest. We cannot simply say that logrolling ensures the national good without considering what kinds of logs are being rolled.

Territorial constituencies are more justifiable than some people might suppose, because they can potentially capture a good deal of heterogeneity among constituents. But territorial constituencies may be less justifiable because they introduce a set of incentives that arguably skew legislative decision making away from the public good. All of which raises the evaluative questions: What makes greater heterogeneity among constituencies better than less; and how should we structure the incentives of legislators if not by locally deliverable goods? In sum, if not territory, what else?

<sup>20</sup> Nancy L. Schwartz, *The Blue Guitar: Political Representation and Community* (Chicago: University of Chicago Press, 1988). See section 2.1 for a discussion of Schwartz’s argument.

<sup>21</sup> This is, arguably, the central logic behind James Madison’s *Federalist* 10. For more, see the discussion in Chapter 5.

<sup>22</sup> This claim is defended in Chapters 7 and 8.

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The answer to these questions will vary depending on the particular case – a nation that has historically oppressed groups, systematically denying its members “voice” in the legislature, for example, might have a stronger case for group representation than in other cases.<sup>23</sup> Or will it? Following the work of David Lublin, sometimes the best way to achieve good legislative outcomes for groups is to spread their voice – and thus their influence – throughout many different electoral constituencies, denying them the ability to elect “one of their own” in exchange for having their voices as constituents heard.<sup>24</sup> Still, the point here is that we need to be sensitive to the particular context in deciding how to draw electoral constituencies or the structure of most political institutions.

Sensitivity to “context” may sometimes provide an easy excuse for not following through the implications of a theory, especially when these implications cut against the grain of popular (or academically popular) opinion. I think we can say much more about how constituencies should be defined for *any* nation that purports to have a legitimate government, given *any* plausible account of normative legitimacy, an argument I develop in Chapter 8.<sup>25</sup> I simply assume that citizens ought to authorize and hold to account their own representatives; that diversity of perspectives is important to political deliberation; and that representatives should not act in “improper” ways. Such a minimalist account (in which we do not even say what it means to act in “proper” let alone improper ways) leads me to the default position that electoral constituencies should look like the nation they collectively represent and be permanently assigned.

Controversially, the argument here depends on rejecting a familiar consequentialist formulation of political equality, the call to avoid wasted votes and “make votes count.” Put differently, it rejects as trivial the claim that each citizen should have an equal chance to affect the outcome of an election. Despite its democratic-sounding framing, this “equal chance” claim in fact reflects one of the least democratic values we could imagine, as if everyone should have an equal chance of individually deciding an election, each of us standing an equal chance of being our own petty tyrant for a day. The concern with wasted votes is a surprisingly trivial one because we properly should not worry about unequal distributions of inconsequential goods, and an individual vote in a large election is as inconsequential a good as any. The fact that an individual vote is (and ought to be) inconsequential to the outcome of an election does not mean

<sup>23</sup> For a particularly thoughtful argument about how to determine when groups should be given rights or representation, see Williams, *Voice, Trust, and Memory*. For a persuasive account, see Jane J. Mansbridge, “Should Blacks Represent Blacks and Women Represent Women? A Contingent ‘Yes,’” *Journal of Politics*, 61, no. 3, August 1999: 628–57.

<sup>24</sup> David Lublin, *The Paradox of Representation* (Princeton, NJ: Princeton University Press, 1997).

<sup>25</sup> I thus concur with the arguments of Charles Beitz about the practical application of theory to institutional design, though I think that normative theory – whether of justice or legitimacy – is more determinate when forming a default position than Beitz allows. See Charles R. Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton, NJ: Princeton University Press, 1989), p. xiv and passim. See also Chapter 8.