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

Andrew Rehfeld

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The Concept of Constituency

*Political Representation, Democratic Legitimacy,
and Institutional Design*

In virtually every democratic nation in the world, political representation is defined by where citizens live. In the United States, for example, congressional districts are drawn every ten years as lines on a map. Why do democratic governments define political representation this way? Are territorial electoral constituencies commensurate with basic principles of democratic legitimacy? And why might our commitments to these principles, including political equality, self-rule, and deliberative diversity, lead us to endorse a radical alternative: randomly assigning citizens to permanent, single-member electoral constituencies that each looks like the nation they collectively represent? Using the case of the founding period of the United States as an illustration and drawing from classic sources in Western political theory, this book describes the conceptual, historical, and normative features of the electoral constituency. As an institution conceptually separate from the casting of votes, the electoral constituency is little studied. Its historical origins are often incorrectly described. And as a normative matter, the constituency is almost completely ignored. Raising these conceptual, historical, and normative issues, the argument culminates with a novel thought experiment of imagining how politics might change under randomized, permanent, national electoral constituencies. By focusing on how citizens are formally defined for the purpose of political representation, *The Concept of Constituency* thus offers a novel approach to the central problems of political representation, democratic legitimacy, and institutional design.

Andrew Rehfeld is Assistant Professor of Political Science at Washington University in St. Louis, where he has been teaching since 2001. He is the recipient of the University of Chicago Century Fellowship and the Mellon Foundation Dissertation-Year Fellowship. The dissertation on which this book is based was nominated for the American Political Science Association's (APSA) William Anderson Award in 2002 and the APSA Leo Strauss Award in 2001. His previous articles have appeared in *Studies in American Political Development* and the *Dictionary of American History*. He is a member of the American Political Science Association and the Association for Political Theory, among other associations.

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The Concept of Constituency

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ANDREW REHFELD

Washington University in St. Louis



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To

the memory of

Ruth Wolf Rehfeld

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Preface

Democracy is the only form of government that allows people to rule themselves. Ironically, political representation enables modern democracies to exclude virtually everyone from the institutions that govern them. The concept of constituency defines how, in any particular nation, the excluded are legitimately reconstituted prior to, or simultaneously as, they select their representatives who will rule them. The electoral constituency, then, is the quintessential institution of official exclusion, for it defines how it is the excluded get reconstituted for their only formal roles as members of a modern democracy.

Democratic government in its direct or representative form has been around for thousands of years. Yet given the thousands of sovereign cities and states that have laid proper claim to its name, there has been a remarkably small set of institutions by which democracies have actually been governed. Thomas Pogge recently put it this way:

It cannot be said that experience and reflection have produced convergence upon this [set of institutions]. Most of the other possibilities have never been tried or discussed. Indeed, many could not have been tried or discussed because they are becoming feasible only now, in the dawning information age. It is not good reasons that keep practice and reflection within the narrow sector, but habit and entrenchment. We are deeply accustomed to the conventional forms of democracy.¹

It is likely that our limited exposure to these “conventional forms of democracy” has dulled our imagination of what could be. Even worse, these forms have become so familiar that we risk treating them as somehow natural and therefore “obviously” preferable to those we have yet to consider.

Among these familiar institutions of democracy stands the electoral constituency, the group in which a citizen’s vote is counted toward the election

¹ Pogge, Thomas, 2002, “Self-Constituting Constituencies to Enhance Freedom, Equality, and Participation in Democratic Procedures,” *Theoria*, June: 26–54.

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of a political representative. In most contemporary democracies, where you live defines your electoral constituency (at least in part). In the United States, for example, the fifth Congressional District of Illinois is defined by territorial boundaries found on a map. But the practice of using territory to define constituencies is widespread; almost every modern democratic government uses territory in some form to construct constituencies for their national legislature.

In this book, I trace the origins of the territorial constituency in the United States and describe how its justifications changed at the very start of the republic. I argue that justifying territorial representation because it allows “communities of interest” to receive political representation is remarkably weak, and this justification received little historical support, because territorial constituencies for national representation have always spanned multiple communities of interest. A much stronger argument thus rests on the inverse of this claim: Large territorial constituencies open the possibility of increasing the amount of diversity within an electoral constituency. This has multiple benefits, the first among them being the deliberative benefits that come from forcing representatives to justify themselves before a heterogeneous population.

The virtue of heterogeneous electoral constituencies emerges from a set of uncontroversial principles of democratic legitimacy (such as the notion that representatives should be accountable to those who elect them). Following this, I argue we should also favor constituencies in which citizens remain permanently. And, because the consequentialist formulation of political equality that supports cries to “make votes count” and avoid “wasted votes” as if they were a cancer on the body politic is a surprisingly trivial value, I argue that constituencies should be defined at the constitutional level and not voluntarily decided by citizens. To show what such a system of permanent, heterogeneous, and involuntary constituencies would look like, the book ends with a fanciful thought experiment in which citizens are randomly assigned to permanent, single-member, nonterritorial, electoral constituencies. If you are interested in a taste of the whole argument, you may skip ahead directly to the short, whimsical epilogue, which summarizes some of the main findings of the book.

I emphasize at the outset that I am arguing for a default position that, in the light of any particular case, may have to be modified because of other contingencies. Perhaps arguments in favor of group representation will be more compelling over the default position for which I argue here. The point of this book is thus not to argue *against* group and proportional representation per se. It is, however, to argue that supporters of group and proportional representation must do more than show that theirs is a good argument. If the argument here is right, they must justify the significant costs to democratic legitimacy that, I argue, a move away from this default position entails. I do not think this is an impossible task, but I do think it is much more difficult than has previously been acknowledged.

Substantively, I am sympathetic to the aims and political commitments that lead many writers to endorse group representation. Remedying historical oppression, addressing present group harms, and caring for future generations

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are all critically important ends, ends that appear in contemporary politics to be tragically fading into the background even as they are on the forefront of contemporary academic writing. At the same time, though, I worry that institutional fixes for these problems miss the very point of the problem and ignore the limitations of institutional changes to affect problems of justice. Indeed, institutional fixes for problems of substantive justice may amount to no more than (purportedly) enlightened despotism by another name. I will not defend this position much more in what follows. But what remains is essentially a defense of institutional design that presumes certain limits to what political representation can achieve without giving up hope that justice can be achieved by other means.

A NOTE ON “REPUBLICANISM”

Throughout this book, I refer to “republican” thought, contrasting it with pluralist political theory. By “republican” I mean a set of public regarding values toward which constituents *and* representatives should aim. At the center of these values are certain strains of deliberative democracy: Public deliberation should concern the common good, and advocacy should be introduced only to the extent that it fosters deliberation about the common good. By “pluralist,” I mean a theory in which individual interests are to be promoted and advocated by constituents and representatives alike. I argue, with many others, that pluralism can be plausibly justified only by reference to the role of advocacy of individual interests in the promotion of the common good. Republicanism, sometimes called “civic republicanism,” has historical linkages to Rome, the American founding, and the English Commonwealth, and has been developed in the late 1980s and through the 1990s most prominently by Cass Sunstein and later by Philip Pettit and Quentin Skinner among many others.²

Perhaps the most sustained book-length account of republicanism is Philip Pettit’s *Republicanism: A Theory of Freedom and Government*. Owing to my late engagement with this work, the book is mentioned only in passing in what follows, and had I done so earlier, many of the underlying issues in this book would have been framed differently. I cannot present Pettit’s views adequately here, nor can I flesh out in great detail the consequences of them for this book. But I can give a general sense of why I believe his account of republicanism would have changed the framing of two important parts of the following argument: first concerning my own presentation of republican institutional design, and second in terms of my presentation of why we should care about how

² For examples, see Philip Pettit, *Republicanism: A Theory of Freedom and Government* (London: Oxford University Press, 1997); Quentin Skinner, *Liberty before Liberalism* (Cambridge, UK: Cambridge University Press, 1998); Cass Sunstein, *The Partial Constitution* (Cambridge, MA: Harvard University Press, 1993).

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electoral constituencies are defined at all. In doing so, I hope to give a clearer sense of my own motivations for this project.³

Pettit's theory of republican freedom as nondomination emerges as a third way between Isaiah Berlin's negative and positive liberties, between liberty as noninterference and liberty as self-mastery. Freedom as nondomination means valuing increases in nondominated choices, not simply increases in noninterference, where domination is distinguished by real or potential arbitrary interference. Thus, although laws represent a reduction of freedom for someone (and will thus always be viewed with suspicion by negative libertarians no matter how much overall freedom the laws wind up allowing), when properly constructed, they are not arbitrary interference. Law and government are essential to the achievement of a maximally free society (in Pettit's republican sense of the word "free") because government stands as the most effective eliminator of social and economic domination. The society that emerges is at once more activist than the libertarian view would allow but also far less instructive and programmatic than the communitarian position would hold, using these terms somewhat simplistically (as Pettit argues, some liberals such as Charles Larmore would qualify as this kind of a republican).

The random constituency that I describe in what follows would promote these republican values because, I argue, it is more likely to create the kinds of institutional incentives that would allow representatives to so deliberate and seek the good of all without giving up their roles as protectors and advocates of their constituents' interests. Since each constituency looks like the nation the constituencies together collectively represent, constituents and representatives both have self-regarding incentives to act *as if* they cared about the common good. Of course, such a plan of representation also works well with individuals who actually do care about the common good, as should any such arrangement.

When individual voters and representatives *are* motivated by deliberating and seeking the common good, it conforms very well with the spirit of Pettit's argument because it reduces the arbitrary power of individual representatives (their skills and talents, their seniority, their interests in pursuing their own constituents' interests, and so on) that emerges from the pluralist system or advocacy representation. To frame it in terms used by Pettit, the random constituency is intended to promote "debate-based" rather than "bargain-based" deliberation within the legislature.⁴ In doing so, the random constituency would enhance the "psychological feasibility" of republicanism as Pettit has outlined it, because it structures the institutional incentives of representatives and constituents to encourage such "debate-based" behaviors.⁵ Moving to a system of electoral constituencies that looked like the nation they collectively represent would increase the level of nondomination that is built into the electoral system.

³ I thank Frank Lovett for a discussion of this section.

⁴ Pettit, *Republicanism*, pp. 187–8.

⁵ *Ibid.*, pp. 206–9.

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Second, part of the argument against territorial constituencies presented here, and part of the rationale for offering an historical account of their origins, is that the use of territory for representation has never been explained or justified to (let alone by) the individuals whom it helps govern. In having never been contested, and remaining uncontested in any meaningful sense, territorial constituencies qualify as an arbitrary institution by which the nation is governed. Given the limit of freedom that this entails (I cannot, for example, be represented as an academic, a citizen of the United States, or simply as a bald white guy), the arbitrary preference this gives to territorial interests over other kinds, and the relative importance of representative institutions in democratic governments, the project that follows might be considered a project of republican reconstruction (not that different from a project of Hegelian reconciliation that I describe in the introduction, although with very different purposes). Finally, and related to this second point, the preference I express in Chapter 8 for placing the decision about constituency formation at the constitutional level (rather than, for example, allowing citizens to choose regularly from a limited set of parties as they would under proportional representation) is, I believe, consistent with Pettit's argument.

Whether the argument that follows is in fact consistent with this theory of government, particularly given that I endorse greater majoritarianism within a nation's legislature, is again beyond what I can defend in any detail here. Nor does a judgment about its consistency with this republican view alter any of the conclusions that follow. But I do believe these brief remarks outline the general path that such a reformulation would take and importantly indicate to readers the intentions, if not necessarily the success, that lie behind the account that follows.

Some scholars work in the isolation of their closets, others with friends in a coffee shop. Although parts of this work were written quite literally in an apartment closet on the south side of Chicago, much of it emerged from conversations that I had with an extraordinary community of scholars. I am obliged to acknowledge the many debts I have accrued in writing this book.

This book is a substantive revision of my doctoral dissertation completed in the Department of Political Science at the University of Chicago under the supervision of Charles Larmore, Susan Stokes, and Cass Sunstein. I owe them each a tremendous debt for the foundation upon which this book was built.

Cass Sunstein oversaw the project from its beginnings as a short research paper and the dissertation benefited from his insight and substantive attention to the founding period. As any reader of his work knows, Cass has a knack for creative and unexpected approaches to social science and the law, and I owe him a great debt for keeping this work focused and relevant. Indeed, it is not unlikely I would still be in James Harrington's *Oceana* but for his acute observation about the contributions of other scholars to that work. I am indebted to him for his quick response time, honest enthusiasm, and skepticism that occasioned the best kind of support a student could receive from a supervisor. In short, Cass

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made the project possible and kept the argument fresh in ways that probably were not always obvious to him.

Charles Larmore helped me clearly frame the problems with which this book deals, and particularly how the normative and conceptual arguments are presented throughout. Substantively, Charles introduced me to the work of Searle and helped me see the relationship between the structure of language and the structure of political representation, a project that is only hinted at in what follows but critical to what I think is necessary in a proper account of the concept of political representation. Charles' concern with precision also kept my writing as clear as possible; as you will see, I have much still to learn.

Sue Stokes was of extraordinary help to me at every phase of this project. She was an extremely close and critical reader and I am grateful for her availability even during a sabbatical year. She had a particularly strong hand in the structure and substance of the final section of the dissertation and this book. In the end, I doubt I have persuaded her of my positive argument, though she has convinced me of the importance of trying. The book would simply look and sound much different had she not been involved.

The University of Chicago provided a rare intellectual community in which to work and develop as a student. I owe the institution a tremendous debt. I am particularly grateful to a University Fellowship to study public policy, for the Century Fellowship program that sponsored my graduate education in political science, and to the Mellon Foundation, which provided a dissertation year fellowship in 1999–2000.

Among the faculty at Chicago, John Mark Hansen unknowingly gave rise to this project during a graduate course on American politics almost a decade ago. Along with him, Daniel Brudney, Michael Dawson, Ralph Lerner, and Gerry Rosenberg formed a “shadow” committee of sorts, for which I am grateful. Jim Fearon, Martha Nussbaum, Marion Smiley, and Nathan Tarcov also offered extremely helpful comments on an early proposal. I am also grateful to informal discussions with my graduate school cohort and in particular thank Fonna Forman Barzili, Michael Neblo, Eric MacGilvray, Chris Rohrbacher, Dante Scala, and Christina Tarnopolsky for conversations along the way.

In 2000–2001 I began turning the dissertation into a book manuscript. Charlie Glaser and Bob Michael at the Irving B. Harris School of Public Policy, and John Lucy at the college, arranged a teaching position and office at Chicago where I undertook my first revisions. I thank them for their efforts on my behalf and to Rachel Bindman, Howard Margolis, Patchen Markell, Jeff Milyo, Duncan Snidal, and Iris Marion Young for discussions during that year.

I arrived in St. Louis in 2001, where my colleagues at Washington University have provided a nurturing and supportive environment in which to teach and do my work. After receiving a contract for this book, I spent an extra year working through the arguments, displeased about some, overly content with others. During this time I am particularly grateful to Jack Knight for ongoing conversations about this project. Joel Anderson, Lisa Baldez, John Bowen,

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Randy Calvert, John Carey, Gary Miller, Andy Sobel, and Norman Schofield have similarly provided insights. Eric MacGilvray and Larry May commented on an earlier draft of the entire manuscript, and I have tried to respond to as much of their very helpful commentary in what follows.

Since each of the chapters of the book has been presented separately, I here acknowledge, in addition to Larmore, Stokes, and Sunstein, those who helped shape each one; I apologize to those who I have inadvertently left out. For Chapter 1, I thank Ethan Bueno de Mesquita, Jack Knight, Bill Lowry, Andrew Martin, Yordanka Nedyalkova, and Lester Spence. Early versions of Chapter 2 were presented to the Department of Political Science at Western Michigan University and at the Political Theory Workshop at the University of Chicago. I am grateful to the audiences for their responses and particularly to Jeff Hayes, Emily Hauptmann, Mike Neblo, William Ritchie, Frank Sposito, and Joel Westra. Chapters 3, 4, and 5 are revised versions of papers presented at American Political Science Association (APSA) annual meeting panels in 1997. I thank Anthony Peacock and Mark Rush, who commented on parts of these. Ralph Lerner, Steve Pincus, Ed Rehfeld, and Dante Scala provided other comments on this material. And I thank Stephen Skorownek and Karen Orren of *Studies in American Political Development* (and two anonymous reviewers for that journal) for their comments on material in Chapters 4 and 5 that first appeared there in 2001.

During the 2000–2001 academic year, I was invited to present Chapter 7 before a number of audiences. I acknowledge the faculties and students in the departments of political science at George Washington University, Middlebury College, University of Pittsburgh, University of Texas at Austin, and Washington University in St. Louis. I am particularly grateful to John Bowen, David Braybrooke, Howard Brick, Ingrid Creppell, Randy Calvert, Murray Dry, Jim Fishkin, Benjamin Gregg, Bob Luskin, Sunita Parikh, Lee Siegelman, Jeff Tullis, and Allison Wylie for their probing questions and helpful remarks on these occasions, and to Suzanne Dovi, Noah Schwartz, and Zach Sufrin for written comments on later versions of the chapter. Chapter 8 was presented at the 2003 meetings of the APSA, and at the Workshop on Politics, Ethics, and Society at Washington University in St. Louis. I thank Joel Anderson, Keith Topper, and those present for their comments. Suzanne Dovi, Bill Lowry, and Gary Miller were helpful in working out the details of Chapter 9. And for Chapter 10 I thank Ethan Bueno de Mesquita, Joe Lowenstein, Bill Lowry, Andrew Martin, and Gary Miller for their help.

Finally, I am grateful to Stephen Macedo and two anonymous reviewers for Cambridge University Press. Although I was eager to see it published quickly, they provided the impetus for sharpening the arguments and restructuring the original manuscript in unexpected ways. Lew Bateman has served as a terrific editor, shepherding the process along judiciously and providing a terrific sounding board. Andy Saff copyedited the manuscript, clearing up a number of striking infelicities. Finally, Yordanka Nedyalkova compiled an initial draft of the index, a daunting process for which I am grateful.

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The book would have been a better work had I followed all the suggestions of the preceding; they should of course be held blameless for what remains.

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I close with a number of personal debts that need to be acknowledged. First among these is to my mother Beverly Rehfeld for taking care of her grandchildren during critical moments when deadlines approached. Far beyond this, she laid the foundation that sustained me in long periods of silent writing; for this I am grateful beyond words. This book was also written with the often unexpressed patience of my children. Emma and Hoben learned the word “dissertation” at an age liable to corrupt their youth, but by forcing their father to confront bodily functions at the dinner table, they kept me sane in moments of despair. Miggie Greenberg has been an unfailing source of strength and support for more than a decade. She understood the deepest significance of this work, and why, despite appearances to the contrary, its completion was never simply foreordained. The dissertation on which this book was based was dedicated to her with love; this book is a tangible result of that relationship.

In 1927, Ruth Wolf Rehfeld was born in Aachen, Germany (“home to Charlemagne,” she would remind her stepson). At the age of twelve, Ruth was unexpectedly uprooted from her local town. Morning border crossings into Belgium to buy a dozen eggs (that were inexplicably cheaper to buy by the half dozen) were replaced many years later by morning walks around her neighborhood in Baltimore (where, inexplicably, a used car lot was violating clear zoning regulations that she had written). She spent her life as an advocate for African American, Jewish, and urban neighborhoods and understood the importance and possibilities of local community involvement. For these reasons, Ruth was skeptical of the arguments in this book and never hesitated to let me know. Yet without her commitment (and that of my father Rex) at a critical point in time, it is impossible to imagine I could be writing this now. Ruth died as I was completing the revisions on this manuscript, and indeed, knowing her, I suspect she hoped this would prevent its publication. Alas, it only delayed the result; but at least she is now saved from having to suffer through what follows. The book is dedicated to her memory.