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Constituencies in Electoral Design

A Response to and an Extension of *The Concept of Constituency* by Rehfeld

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Foreword

In front of the Serbian National Assembly, a sculpture by Toma Rosandić depicts two muscular men who are crushed under the hooves of a horse. The sculpture is publicly understood as a powerful political symbol, representing common men who are naked in front of and being overridden by political power.¹ A Serbian friend gave me his own political interpretation. According to him, the man fighting the horse represents the difficulty of attaining power in the National Assembly, while the man being crushed by the horse represents the same difficulty of losing this power once gained. This interpretation was indicative of his opinion about the Serbian representative system, the development and history of which he could discuss with me for hours.

This friendship as well as other experiences during my internship at the Embassy of the Netherlands in Serbia and Montenegro further enhanced my already existing interest in democracy and representation, and led me to question the role of elections in the authorization of political power. If my Serbian friend was right that the authority to represent in the Serbian National Assembly is so difficult to obtain and also so easy to maintain, what is the role of elections in this authorization of the Assembly's representatives? Can electoral design influence whether those in power act as democratic representatives? These questions have resulted in this dissertation on the minimum conditions that electoral design must satisfy if elections are to authorize democratic representatives.

The internship at the Dutch Embassy in Serbia marked the start of my Master's degree in Philosophy at Leiden University and this dissertation marks the end of the degree program but definitely not of my academic and social engagement with politics and democracy. I am grateful to the Master's program for providing me the opportunity to develop different perspectives on politics that will be valuable in my life and future career. I would especially like to express my wholehearted gratitude to my supervisor Thomas Fossen for his valuable feedback, not only on different versions of this dissertation but also on other papers, and for his encouraging support at the start of my academic career.

Furthermore, I am very grateful to my parents for always standing by my side. Mom, I would especially like to express my utmost gratitude to you for always carefully reading my papers and engaging with my ideas. This dissertation was more complex than any paper or dissertation that I have written before (and I have already written quite some by now) due to the high level of abstractness of the topic, the large number of technical notions involved, and the conceptual confusion and disagreement existing in the literature. Our conversations, in which I could explain my ideas to you, proved essential to disentangle the complex topic and develop the argument of this dissertation. Because of this complexity, I have decided to add an Appendix with key notions and concepts that form the building blocks of this dissertation's argument.

¹ See also Atlas Obscura, 'Igrali Se Konji Vrani (Black Horses at Play)' <<https://www.atlasobscura.com/places/konji-vrani>> Visited 7 July 2020.

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1. Introduction

In representative democracies, elected officials in parliamentary or presidential assemblies mediate between the law and the people's preferences. These elected officials must (legitimately) represent the people in order to have legitimate laws, understood as laws that closely correspond to the preferences of the people.² Elections provide the primary mechanism through which the people can express their preferences and can exercise power over the legislators by authorizing them and holding them to account for their representative behaviour.

Elections are surrounded by electoral regulations that determine their significance and legitimacy. Such regulations include, inter alia, the right to vote, the eligibility to run for elections, the sorting of political financing and the set of rules concerned with the aggregation of votes. The latter are described by the *electoral system*, which can be defined as 'the set of rules that structure how votes are cast at elections for a representative assembly and how these votes are then converted into seats in that assembly.'³

Over the past five decades, the study of the design of electoral systems (hereafter: electoral design) has developed into a mature research area, called the *comparative study of electoral systems*.⁴ This research area analyzes the effects of electoral design on, for example, the party system, the representation of minorities, and the voter choice and voter turnout. Descriptive theoretical contributions have attempted to posit systematic relations between electoral design and presumed effects, and empirical contributions have advanced these arguments by case-studies of electoral reforms in one country or comparisons of electoral systems in multiple countries.⁵ Moreover, normative contributions have advocated a particular electoral design as the best or most preferable towards achieving certain effects.⁶

The effects studied in comparative electoral systems research concern the role of elections in the expression of the people's preferences. While this certainly influences whether and to what extent elected officials can legitimately represent the people, it is remarkable that the authorizing function of elections has garnered not nearly as much attention. The authorization of legislators through elections forms the foundation of and creates the institutional context for their *activity* of (legitimate) representation: Legislators cannot *be* legitimate representatives without authorization. This dissertation asks which conditions the authorization must satisfy in order to have legitimate representatives that legitimately represent the people. The research question can be formulated as:

Which design of electoral systems is most justifiable for the purpose of authorizing legitimate representatives?

The dissertation intends to provide a normative contribution to the comparative study of electoral systems by determining which electoral design best satisfies minimum conditions for authorizing legitimate representatives. Although the dissertation takes a normative approach, it is not about the advocacy of a certain electoral design, as deviations from the institutional default design may be justified by particular aims or effects. The dissertation hopes to create transparency of fact and of reason about electoral design by raising awareness that deviations from the minimum conditions for

² See also Rehfeld (2009), p. 214; Rehfeld (2015), pp. 5-6, 14.

³ Gallagher and Mitchell (2005), p. 3.

⁴ Shugart (2005), pp. 25-52. See also Lijphart in Gallagher and Mitchell (2005), Foreword. The attention to electoral design is further encouraged by the recognition of its importance by international agencies promoting democracy. These agencies consider electoral systems to provide the most basic democratic structures (the minimum conditions) for establishing democratic legitimacy. See Norris (2004), pp. 3-4.

⁵ Shugart (2005), pp. 26-28. In particular, the relation between electoral design and the party system is extensively discussed and the correctness of Duverger's (1954) law is now commonly accepted, which states that plurality-rule elections with single-seat districts favor two-party systems, while proportional representation favors multi-party systems. See for an example of a contribution on the effects of electoral systems on the behavior of citizens and political actors, Norris (2004).

⁶ See, for example, Amy (2002), Barber (2000), Thompson (2002).

authorizing legitimate representatives compromises the authorization and, hence, the legitimacy of representatives.

The dissertation will analyze the justifiability of electoral design by reference to the authorization of legitimate representatives. To make such an analysis, first of all, the relation between authorization and legitimate representation should be clarified. Drawing on Andrew Rehfeld and Hanna Pitkin,⁷ an account of legitimate representation will be given that specifies conditions to identify whether an elected official is or can be a legitimate representative (Chapter 2). These conditions will be called *limiting conditions for legitimate representation*. The attraction of Rehfeld's account is that it highlights the authorization involved in being or becoming a representative and describes the institutional context that this authorization invokes – such as, who authorizes, when do they authorize and which particular function do they authorize to perform? Rehfeld's account will be compared to and contrasted with Pitkin's concept of representation, as her homonymous book has become the standard work in the debate on political representation in democratic theory.

Second, the relation between authorization and electoral design should be established, detailing out how the authorizing function of elections is reflected in electoral design. With his path-breaking book *The Concept of Constituency*, Rehfeld (2005) is the first author to show that electoral design defines and shapes the authorizing function of elections. He does so by concentrating entirely on the *electoral constituency*, that group of people who authorize and hold accountable an elected official.⁸ Two types of electoral constituency should be distinguished: the *objective electoral constituency* (short: objective constituency) and the *subjective electoral constituency* (short: subjective constituency).⁹ The former describes the group of voters who are *eligible* to vote for a particular representative, those who *recognize* the authorization to act for some or all of them. The latter describes the group of voters who *actually* voted for a particular representative, those who *cause* by their vote the authorization to act for some or all of them. Electoral design defines the objective constituencies (also called electoral districts). For example, it may define them by territory or ethnicity, thereby determining the particular interests that elected officials are authorized to represent. Electoral design also shapes the *success* of subjective constituencies, i.e., whether the vote on a particular representative results in their authorization. For example, when voters have a single choice on their ballot (categorical vote), they may experience less or a different success than with a ballot that allows to express lower preferences (ordinal vote). By shaping success, electoral design determines, in particular, whether a voter is actually (legitimately) represented by an elected official of their choice and, in general, whether the legislature as a body is descriptively representative, i.e., the extent to which the composition of the legislature corresponds to that of the whole nation.¹⁰

Given the relation between authorization and legitimate representation on the one hand and authorization and electoral design on the other, the most justifiable form(s) of electoral design can be determined. This will be done as follows: the limiting conditions for legitimate representation (identified in Chapter 2) are used to formulate normative starting points or *institutional default positions (IDPs)* for the way in which electoral design defines objective constituencies (Chapter 3) and shapes the success of subjective constituencies (Chapter 4). The form(s) of electoral design that best satisfy these IDPs will be considered the most justifiable for the purpose of authorizing legitimate representatives.

⁷ Rehfeld (2005;2006; 2009; 2011; 2017; 2018); Pitkin (1967; 2004).

⁸ Note that the concept of constituency outside the electoral context is used to refer to the represented. This can be called the *non-electoral constituency*: 'The group of people whose interests a representative (or party) looks after and pursues' (Rehfeld, 2005, p. 35).

⁹ These terms have been coined by James (2004; 2015a).

¹⁰ See also Pitkin (1967), pp. 60-91.

The answer to the research question will be both a response to and an extension of *The Concept of Constituency* by Rehfeld. The normative goal (the purpose of authorizing legitimate representatives) and the normative assumptions (the limiting conditions for legitimate representation) are the same as those used by Rehfeld. This allows Chapter 3 to directly respond to Rehfeld's argument that the purpose of authorizing legitimate representatives requires a *random* and *permanent* assignment of voters to objective constituencies. My response will reveal that Rehfeld assumes a division of voters over different objective constituencies and, thereby, fails to notice that the nation-wide objective constituency, i.e., no division of voters into different electoral rolls, is more justifiable for the purpose of electing legitimate representatives.

Chapter 4 extends Rehfeld's work by analyzing how three key components of electoral design – the electoral formula (plurality/majority/proportional), the ballot structure (categorical/ordinal vote) and the district magnitude (number of seats per objective constituency) – shape the formation of successful subjective constituencies. This extension is inspired by Michael Rabinder James, who has argued that Rehfeld did not utilize the concept of subjective constituency for electoral design. James has proposed to embed random and permanent objective constituencies in five-seat districts with a proportional electoral formula, instead of a U.S.-like system with single-seat plurality/majority districts as Rehfeld proposed.¹¹ My analysis will show that James' proposal improves on Rehfeld's but that the Dutch system of proportional representation with a nation-wide objective constituency is more justifiable for the purpose of authorizing legitimate representatives.

¹¹ See James (2015a).

2. Normative Framework

In representative democracies, the laws emerge from the activities of officials elected to the legislature and can, presumably, only be legitimate if these elected officials are legitimate representatives. This dissertation aims at justifying electoral design on the basis of its ability to authorize legitimate representatives.

In order to operationalize such a justification, an account of legitimate representation should be given that specifies under which conditions an elected official is or can be a legitimate representative. This dissertation will use Rehfeld's account of legitimate representation. The attraction of Rehfeld's account is that it draws attention to the conveyance of institutional authority involved in becoming a legitimate representative. This allows us to determine not only substantive conditions for the activity of representing but also formal conditions for having the authority to legitimately represent, both of which an elected official has to satisfy in order to be a legitimate representative.

In Section 2.1, Rehfeld's account will be presented and situated in the current literature on political representation. The latter will be done by describing Rehfeld's account in comparison to and contrast with Hanna Pitkin's seminal concept of representation, which has formed the essential starting point for the discussion on political representation among democratic theorists in the past 50 years.¹²

In Section 2.2, limiting conditions will be formulated that have to be satisfied if an elected official is to be a legitimate representative according to Rehfeld's account of legitimate representation. These conditions are called limiting because they are necessary but not *per se* sufficient and, therefore, make it possible to determine whether an elected official fails to be a legitimate representative but not whether an elected official actually is a legitimate representative. They are conditions for legitimate representation by democratic norms, i.e., conditions for democratic representation. They are supposed to be non-controversial conditions that any representative democracy should endorse if it purports to have legitimate laws enacted by legitimate representatives, but they may be controversial outside of the democratic context.

2.1. Legitimate Representatives

The notion of "legitimate representative" assumes that a person can be a representative while not being legitimate. In other words, it assumes the existence of constitutive conditions that render a person a representative at all and normative conditions that render a representative legitimate.

A "formalistic" account of representation allows for conceptualizing the representative independent of its legitimate form. It relies on a distinction between the representative as entity in the world (the noun sense of representation) and representation as activity (the verb sense of representation): It provides constitutive conditions describing what it is to be or become a representative independent of normative conditions describing what the person qua representative is supposed to be doing, i.e., what the activity of representation is supposed to encompass.¹³ A formalistic account can take either an authorization or an accountability view of representation. The former view describes a representative as a person 'who has been authorized to act'¹⁴, while the latter describes a representative as a person 'who is to be held to account, who will have to answer to another for what he does.'¹⁵

Rehfeld holds an authorization view of representation. He defines the representative as 'individuals who possess the institutional authority or social power to "stand-in-for" the represented, in order to perform

¹² See Pitkin (1967).

¹³ Rehfeld (2011), pp. 635-636.

¹⁴ Pitkin (1967), p. 38.

¹⁵ *Ibid.*, p. 55.

a specific function.¹⁶ This definition has three features. First, it recognizes that the representative always stands in relation to the represented. The representative is conceptually distinct from the represented but cannot exist without the latter as a referent group, i.e., it always implicates the latter.¹⁷ Second, the definition recognizes that representatives are not just “stand-ins-for” the represented but must have a specific function. The representative possesses the institutional authority to execute some context-dependent activity. For example, the function may be advocating in court of law or voting on legislation in the legislature.¹⁸ Third, the definition recognizes that a representative does not only stand in relation to the represented but also to an audience. ‘[T]he Audience is the group of people whose recognition conveys the relevant social power to the individual in a particular case to render him or her able to perform the function for which they were created.’¹⁹ By this account, being a representative is simply a social fact that tracks the institutional authority and is constructed by audience recognition.²⁰ In the democratic institutional context, an individual usually acquires this social power after elections, whereas ‘in non-democratic or non-institutional contexts this can occur through informal audience recognition, often including the process of “claims-making”.’²¹

Rehfeld’s formalistic account explains that a person becomes a representative by the recognition of a relevant audience (authorization). His account also refers to the activity of representation by defining representatives as those who “stand-in-for” the represented. The question arises whether his account of representation by this definitional circularity fails to separate the *fact of being* a representative from the *activity* of representation: Is Rehfeld able to distinguish the constitutive conditions concerning *whether* a person is a representative from the normative conditions concerning *how well* that representative is doing her job? Rehfeld explains that the activity of representation arises when the representative performs the function that she has been authorized to perform. This function always involves a “standing-in-for” (or representing), for otherwise a political representative cannot be distinguished from a person holding a political office who merely executes orders.²² The function specifies the aim or goal of the activity of representation and, given this goal, the activity can be normatively assessed as a case of good or bad representing. In other words, ‘our judgements about the quality of representation are in fact judgements about the quality of a particular activity specified by the function given a particular context.’²³ For example, in the legislature of representative democracies, the representative is supposed to “stand-in-for” in order to democratically make laws. The quality of this representing then depends on democratic norms, such as autonomy, equality and respect.²⁴ This means that a representative in representative democracies is considered legitimate if her acts of representation are in accordance with democratic norms, i.e., the legitimate representative is equated with the democratic representative.

Formalistic accounts of representation have been criticized for providing a ‘partial view of representation, a true view of a part of the concept’s meaning, and therefore false if taken to define the

¹⁶ Rehfeld (2017), p. 52. Observe that Rehfeld defines the representative as a set of individuals. For example, in the European Parliament, he would consider the Dutch members to be the representative of the Dutch electoral district. For the conditions of legitimate representation, it does not make a difference whether the representative is considered to be a set of elected officials or an individual. Therefore, I will simply refer to the representative as an individual.

¹⁷ Rehfeld (2011), p. 637.

¹⁸ Rehfeld (2017), p. 62.

¹⁹ Ibid., pp. 52, 63.

²⁰ Ibid., p. 64.

²¹ Rehfeld (2018), p. 217. With claims-making, Rehfeld refers to Saward’s (2010) influential theory of representation as claim-making. Rehfeld (2017, p. 53) considers the activity of “claiming” ‘sometimes a causal pre-cursor to the establishment of the social power that creates a representative’ but still ‘a non-necessary, incidental feature of becoming a representative.’

²² Rehfeld (2006), p. 17.

²³ Ibid., p. 18.

²⁴ Ibid., p. 18.

whole meaning.²⁵ For example, in her classic treatment of representation, Pitkin has argued that a formalistic authorization view mistakenly considers the sovereign in Hobbes' *Leviathan*²⁶ to be a representative, while he is authorized to act but is not subject to any procedures of accountability and lacks any substantive limits on its activity of representation.²⁷ Instead, Pitkin defines the representative, formally, as a person authorized and being held to account, and adds substantive conditions concerning the activity of representation that a representative must also satisfy. The activity of representation must, substantively, be an 'acting in the *interest* of the represented, in a manner *responsive* to them.'²⁸ Pitkin deems the formal condition of accountability to be necessary for ensuring a systematic responsiveness.²⁹ Responsiveness entails that the substance of the activity of representation consists in promoting the interests of the represented, but the way in which the representative does this is independent of and need not actually and literally be in response to the wishes of the represented.³⁰ As neither the representative nor the represented are considered to have a sovereign standpoint on the interpretation of the interests, the answer to the question of whether the representative ought to do what he or she thinks best or what the represented wants in case of conflict between the two, depends on why there is a conflict and whether the representative or the represented is right.³¹

While Pitkin's formal and substantive conditions have been accepted as a standard account of representation, Pitkin has acknowledged herself that the conditions fail to allow for quasi-democratic and non-democratic forms of representation but rather equate representation with democracy.³² By defining representatives in terms of their acts of representation, Pitkin weds constitutive and normative conditions of representation and ties the representative to the institutions of democratic representation.³³ The substantive conditions of interest-seeking and responsive acting as well as the formal condition of accountability are normative conditions to assess the quality of representing in a democratic context, as they limit the scope of the activity of *democratic* representation. They do not render a person a representative at all but render a representative legitimate. To see that a person can be a representative without satisfying these conditions, consider the *gyroscopic representative* identified by Mansbridge in recent empirical work. This representative acts for "internal" reasons: She is not responsive to the wishes of the represented and only acts in the interests of the represented if these happen to align with her own interests. She is also not accountable in the traditional sense but is only accountable to her own beliefs and principle. An example of a gyroscopic representative is an elected official who is chosen for her commitment to a particular cause, such as the legalization of abortion. She acts in the interests of the people who are committed to the same cause, but she holds herself only accountable to her own principles.³⁴

²⁵ Pitkin (1967), pp. 37, 225-232.

²⁶ Hobbes (1996).

²⁷ Pitkin (1967), pp. 14-37. See Vieira (2017, pp. 25-49) for an analysis of the disagreement between Pitkin and Hobbes.

²⁸ Pitkin (1967), p. 209, italics added.

²⁹ Ibid., p. 234.

³⁰ Ibid., p. 155.

³¹ Ibid., p. 165. The acting in the interests of the represented could be interpreted as assuming that the represented and their interests are exogenous to representation: They exist prior to and as a condition to the possibility of being represented. By contrast, constructivists consider the represented and their interests to be endogenous to representation: They are formed in the interaction with the representative. Then, the act of representation is not an act of duplicating a prior existing original but an act of repetition that produces and reproduces the represented and their interests (see Derrida (1973), pp. 51-52; Lindahl (2000), pp. 235-239). The literature is divided on whether and to what extent Pitkin's substantive conditions of interest-seeking and responsive acting can and should be interpreted in constructivist terms (see, for example, Vieira (2017) as opposed to Disch (2011; 2012)).

³² See Pitkin (2004).

³³ See Rehfeld (2005), pp. 183-185; Rehfeld (2017), p. 55.

³⁴ Mansbridge (2003), pp. 520-522. See also Rehfeld (2018).

Thus, a person is rendered a representative when she is authorized to represent in order to perform a specific function. She is rendered a legitimate representative by democratic norms, i.e., a democratic representative, when her activity of representation is, formally, delimited by accountability and is, substantively, an interest-seeking and responsive acting.

2.2. Limiting Conditions for Legitimate Representation

This Section provides four limiting conditions for legitimate representation. The conditions are supposed to be non-controversial necessary conditions for democratic representation by legislators in representative democracies.³⁵ In a nutshell, the conditions posit that a representative must be (*properly*) *authorized* by and (*properly*) *accountable* to some or all of those whom she represents (discussed in Subsection 2.2.1), must act in accordance with the *appropriate substantive aim* of ultimately pursuing the public good (discussed in Subsection 2.2.2) and must be selected by an *appropriate Decision Rule* that equalizes and maximizes voting power (discussed in Subsection 2.2.3).

The limiting conditions follow from the account of democratic representation specified in the previous Section. As a person must be authorized and accountable in order to be a legitimate representative, the first two conditions describe when this authorization and accountability is deemed proper. The other conditions follow from the focus on authorization provided by Rehfeld's account of legitimate representation. The appropriateness of the substantive aims is derived from the function that the representative is authorized to perform. The appropriateness of the Decision Rule is derived from rules of recognition that occasion the conferral of institutional authority upon the representative.³⁶

Table 1 in the Appendix provides a brief description and some explanatory notes for each limiting condition.

2.2.1. Authorization and Accountability

In order to substantively represent, an individual legislator must have the authority to represent by delivering a vote on legislation. This authorization is often a result of elections but may also follow from non-institutionalized forms of audience recognition.³⁷ When authorization results from elections, it is considered proper if a representative is elected by some or all of those whom she has the institutional authority to stand-in-for (i.e., represent).³⁸ For example, a representative in the Dutch House of Representatives has the social power to “stand-in-for” Dutch citizens and, therefore, should not be elected by German citizens.

While authorization is a pre-condition for performing a function (e.g., voting), accountability is necessary to ensure that this performance is an act of substantive representing. As substantive representing requires systematic responsiveness to the wishes of the represented, there must be institutional machinery for the expression of those wishes and for creating a readiness among representatives to respond to those wishes. Elections are generally considered a necessary machinery to ensure such systematic responsiveness by accountability.³⁹

³⁵ My focus is democratic representation. Outside the democratic context, there may be forms of (legitimate) representation that do not require the limiting conditions identified in this Section. See, for example, Saward (2010) for representation outside the democratic context.

³⁶ Note that the limiting conditions are similar to the conditions specified by Rehfeld (2005). Rehfeld, however, does not explicate the link between his limiting conditions for legitimate representation on the one hand and the representative's function and audience recognition in his account of legitimate representation on the other. His account of legitimate representation appeared in later work (2006; 2017; 2018).

³⁷ See Pitkin (1967), pp. 228-232; Rehfeld (2006).

³⁸ Rehfeld (2005), pp. 181-183.

³⁹ Pitkin (1967), p. 234.

In elections, accountability is considered proper if a representative is held to account by some or all of those whom authorized her to act. As Rehfeld exemplifies, a Member of the U.S. Congress from the Fifth District of Illinois should not be held to account by members of the Seventh District of New York.⁴⁰ This follows from the fact that accountability is procedurally and substantively derivative of authorization in elections with term limits. Procedurally, ‘the reason a representative is accountable to this group (rather than that one) is that she was authorized by this group (and not that one) to act.’⁴¹ Substantively, standards of accountability often include the terms upon which a representative is authorized to act. These terms of authorization vary in their specificity. At a minimum, authorization may specify that the representative has the right and the obligation to participate in the process of legislation, and the representative is accountable for fulfilling this obligation. At the other extreme, authorization may exact specific standards about how a representative should vote on a particular measure, and the representative is accountable for doing so.⁴²

Thus, the first and second limiting conditions of legitimate representation in representative democracies require that a representative is properly authorized and properly held to account by elections, meaning that a representative is elected and potentially re-elected by some or all of those whom she has the institutional authority to stand-in-for (i.e., represent).

2.2.2. Substantive Aims

Representatives in the legislature of representative democracies are supposed to democratically make laws. Whether this activity is a substantive act of representing can be analyzed on the basis of two dimensions. The first dimension concerns the *source of judgement* underlying the activity: Are representatives self-reliant or are they dependent on the views of the represented about how to act (or both)?⁴³ The second dimension concerns the representatives’ *responsiveness to sanctions*: Are representatives responsive to the prospect of re-election or other sanctions?⁴⁴ These dimensions describe the extremes. The activity of a representative is often a matter of degree between these extremes. For

⁴⁰ See Rehfeld (2005, pp. 181-183) for this example and other examples.

⁴¹ Ibid., p. 188.

⁴² Ibid., p. 187.

⁴³ This dimension concerning the *source of judgement* of representatives’ activity is reflected in the familiar delegate/trustee dichotomy. A representative who acts as delegate is bound to the opinions and dictates of his or her constituents, whereas a representative who acts as trustee is independent from his or her constituents’ opinions and dictates. Rehfeld (2009, p. 215) points out that the debate on the delegate/trustee dichotomy often mistakenly collapses this dimension into one definition with dimensions concerning the responsiveness and aims of representatives: “trustees” are generally described as (1) looking out for the good of the whole (the nation’s interests), (2) based on their own judgement about the good (rather than the judgement of their constituents) and (3) less responsive to sanctioning (acting instead according to civic virtue), whereas “delegates” are generally described as (1) looking out for the good of a part (the interests of their electoral constituents), (2) defined by a third party (their constituents’ rather than their own judgement) and (3) more responsive to sanctions (in particular, the hope of re-election).’

⁴⁴ Mansbridge (2011, p. 624) questions the usefulness of distinguishing this second dimension from the first dimension of representative activity, as the dimensions are empirically tied: ‘nonresponsiveness to sanction and self-reliant judgement occur together in practice because they are causally linked, and the relationship runs in both directions.’ Representatives who rely on the judgement of their constituents are unlikely to be non-responsive to sanctions and, conversely, responsive representatives are unlikely to rely on their own judgement, for the sanction is an expression of the constituents’ judgement. In response, Rehfeld (2011, p. 632) has argued that conceptualizations should not be limited ‘by their current or past utility in describing the empirical world, but rather by our theories about what might matter normatively or causally.’ Such a limitation could ‘unjustifiably reify existing normative relationships and practices.’ (2011, p. 633) He explains that, in 1850, a focus on the empirical rather than the normative could have led to building “male” into the concept of legislator, reflecting the empirical instances of legislators but making it impossible to question the role of gender in a legislator’s decision-making.

example, the representative might not be self-reliant *only* but might be *more* self-reliant than dependent on the views of the represented.

These two dimensions qualify the act of representing independent of the particular institutional context in which the representative is acting. A third dimension can be identified which allows to qualify the activity of representing by reference to the function of the representative body in which the representative is acting. This dimension concerns the *substantive aims* of the activity: Are representatives promoting the good of all or the partial interests of the represented?⁴⁵

Assuming that the aim or function of the national legislature is to make laws that promote the public good,⁴⁶ the substantive aims of representatives in the national legislature are deemed appropriate if they ultimately promote the public good. Here, it is important to appreciate the generality of this requirement. It does not make any assumptions about the substance of the public good and is equally compatible with the familiar republican and pluralist models of representation. Republican models claim that a representative must aim at the public good and act as a deliberator in the legislature.⁴⁷ By contrast, pluralist models claim that representatives must aim at the partial interests of those whom they represent and that the public good emerges from trade-offs made on behalf of these interests in the legislature.⁴⁸ This advocacy of partial interests by pluralism should not be mistaken for denying that the ultimate aim of a representative in the national legislature is to promote the public good, as this partial advocacy is based on the assumption that the legislature is more likely to succeed in attaining the public good if all representatives act towards promoting the partial interests of their constituents. As Rehfeld clarifies, ‘the partial advocacy of pluralism is a proximate one: pluralism itself is justifiable only by the argument that we all do better when each pursues his or her own partial good.’⁴⁹

Thus, the third limiting condition for legitimate representation requires that a representative pursues the appropriate substantive aim of ultimately promoting the public good.

2.2.3. Decision Rules

Without audience recognition (or authorization), a legislator cannot represent in order to democratically make laws. This audience recognition depends upon at least three rules of recognition identified by Rehfeld: (1) the representative must be a member of a Qualified Set – a set that the audience recognizes as qualified; (2) the representative must have been picked by the Decision Rule that the audience recognizes as valid; and (3) the Selection Agent who employs the Decision Rule must be one that the audience recognizes as valid.⁵⁰ The Decision Rule ‘specifies the process through which some particular person or object (and not some other person or object) is chosen to be a representative.’⁵¹ The Selection Agent is ‘a person or a set of people who use the specified Decision Rule to select a representative.’⁵² In democratic elections, the Qualified Set refers to the eligible candidates in an electoral district, the Decision Rule refers to the set of rules structuring how votes are cast and then converted into seats in

⁴⁵ This division into three dimensions of representative activity is based on Rehfeld (2009).

⁴⁶ This assumption is based on Rehfeld (2005). It seems to be reasonable given the limited substantive content that is ascribed to the notion of “public good” and seems to be in accordance with democratic norms of equality and self-rule.

⁴⁷ Rehfeld (2005), p.201.

⁴⁸ Ibid., p. 201.

⁴⁹ Rehfeld (2009), p. 222. This means that the aim of the public good is perfectly reconcilable with, for example, requiring deliberative diversity in the legislature, for such diversity might contribute to ultimately promoting the public good. In fact, in Chapter 4, I will show that a requirement of deliberative diversity can be derived from this limiting condition. James (2008, p. 235), however, does not seem to appreciate the generality of this requirement and argues that the sole goal of the public good should be supplanted with a deliberatively achieved balance between the public interest and publicly justifiable group interests.

⁵⁰ Rehfeld (2006), pp. 6-7.

⁵¹ Ibid., p. 7.

⁵² Ibid., p. 7.

the legislature (i.e., the electoral system) and the Selection Agent includes the members of an electoral district who are eligible to vote and have actually voted.

By the democratic norms of political equality and self-rule, the Decision Rule is deemed valid or appropriate if it equalizes and maximizes voting power.⁵³ As Rehfeld explains, ‘[m]ost accounts of political equality start with the assumption (or fully stated argument) that the state should treat its citizens as if they were morally equal, either because they really are or for other reasons (such as efficiency, utility or stability). This leads to the claim that barring some other compelling reason, citizens should share equally in the state’s political power, the basic unity of which is the vote.’⁵⁴ Similarly, the democratic norm of self-rule requires giving citizens a maximal share in the state’s political power to which they are subject. As the basic unity of this power is the vote, it follows that each citizen’s voting power should be maximized.

Whether the Decision Rule equalizes voting power can be measured by looking at the vote weights. For example, if the Decision Rule applies an unequal vote weight to members of different electoral districts, it is considered inappropriate. Similarly, if the Decision Rule uses a voting rule with unequal vote weights, it is considered inappropriate. The unanimity and majority rules are plausible examples of appropriate voting rules applying an equal share of votes to each voter, while dictatorship is a plausible example of a voting rule applying a highly differentiated share of votes by giving a single voter a decisive amount of vote weight.

Whether the Decision Rule maximizes voting power can be measured by looking at the number of wasted votes resulting from the election outcome. Wasted votes are ‘votes cast that do not contribute to a candidate’s success’⁵⁵, either because the votes are not cast for winners or because the votes are cast in excess of what the winner needed to win (surplus votes). The Decision Rule maximizes voting power if it reduces the number of wasted votes.

This leads to the fourth limiting condition for legitimate representation: The representative must be chosen by an appropriate Decision Rule. In democratic elections, the Decision Rule is deemed appropriate if it equalizes and maximizes voting power. The former can be measured by the equality of vote weights and the latter can be measured by the number of wasted votes.⁵⁶

2.3. Conclusion

To conclude this Chapter, a representative holds the institutional authority to represent, in order to perform a specific function (e.g., democratic law-making). This institutional authority is constructed by audience recognition and often results from elections in the democratic context. A representative is legitimate by democratic norms (or, democratic) if she is substantively acting in the interests of the represented, in a manner responsive to them. In order to ensure systemic responsiveness, the representative must be held to account and elections provide the institutional machinery to do so.

From this account of legitimate or democratic representation follow four necessary but not per se sufficient conditions (called limiting conditions for legitimate representation) that an elected legislator has to satisfy if she is to be a legitimate (or, democratic) representative. The representative must be *authorized* by and *accountable* to some or all of those who she represents. Given the function of the national legislature in which she is authorized to act, the representative must ultimately pursue the

⁵³ Rehfeld (2005), p.192.

⁵⁴ Ibid., pp. 193-194.

⁵⁵ Ibid., pp. 194-195.

⁵⁶ Note that Rehfeld (2005, pp. 181-183) seems to equate the Decision Rule with the voting rule and mentions the appropriateness of vote weights as an additional limiting condition. However, given the broader definition of the Decision Rule in his 2006 paper, the Decision rule should not be narrowly understood as the voting rule but encompasses the voting rule, the vote weights and other rules related to the way votes are cast and converted into seats.

appropriate *substantive aim of the public good*. And since the institutional authority is constructed by audience recognition, the representative must be chosen by an *appropriate Decision Rule* – a set of rules describing how votes are cast and then converted into seats in the legislature (i.e., the electoral system) – that equalizes and maximizes voting power.

3. Objective Electoral Constituencies

Legitimate representatives stand in relation to their audience, that group of people who recognize the institutional authority to represent some or all of them. When authorization results from elections, the audience is described by the *objective electoral constituency* (or, *electoral district*): ‘The group of people who are *eligible* to vote for a particular representative (or party).’⁵⁷ Not all members of the audience need to have voted for the elected official (or their political party) to recognize the institutional authority, but they need to accept the validity of the elections.

Objective electoral constituencies (short: objective constituencies) are defined by the designers of the electoral system. These designers form objective constituencies through *parametric* action, meaning that they treat voters ‘as nonagents whose future actions are predictable based upon their politically relevant characteristics (e.g., party affiliation, ideology, or racial identity).’⁵⁸ For example, with partisan districting in the US, the members of the American legislature drawing the borders of the electoral districts ‘treat the future behavior of voters as predictable and independent of the specific candidates or campaigns that those voters will encounter’⁵⁹ in order to create a safe seat for their future candidate. Since objective constituencies are institutionalized legal groupings of voters created by electoral designers, they are conceptually prior to voting: We can define an objective constituency without selecting a representative, but we cannot elect representatives without somehow defining an objective constituency.⁶⁰

A design choice is involved in picking out a characteristic of the voters as politically relevant for defining the objective constituency.⁶¹ Often, objective constituencies are formed on the basis of territory,⁶² but there are also nonterritorial ways to define objective constituencies, such as income class, religion or ethnicity, profession and avocation, race, gender or sexual orientation.⁶³ Rehfeld revealed in *The Concept of Constituency* that the design choice involved in the definition of objective constituencies is an often-overlooked component of electoral design. He proposed to randomly and permanently assign voters to objective constituencies rather than to define them by a politically relevant characteristic.

This Chapter responds to Rehfeld by analyzing which design of objective constituencies is the most justifiable for the purpose of authorizing legitimate representatives. First, four IDPs for objective constituencies are formulated: stability, heterogeneity, involuntariness and population-seat proportionality (Section 3.1). These IDPs are normative starting points, derived from the limiting conditions for legitimate representation (see Table 1 in the Appendix), that the design of objective constituencies in *any* nation must satisfy if it is to be justified for the purpose of legitimate representation. The derivation of the first three IDPs is based on Rehfeld. The fourth IDP of population-

⁵⁷ Rehfeld (2005), p. 35, emphasis added. Rehfeld refers to this group as the *Electoral Constituency 2 (EC2)*.

⁵⁸ James (2015a), p. 381.

⁵⁹ *Ibid.*, p. 386.

⁶⁰ See also Rehfeld (2005), p. 36.

⁶¹ This is highlighted by Rehfeld (2005) and James (2015a), p. 385.

⁶² Examples can be found in, inter alia, the United Kingdom, the United States and Spain.

⁶³ For example, the estate system of France between the thirteenth and eighteenth centuries used income or social class to define objective constituencies. Bosnia-Herzegovina currently uses religious or ethnic identity to define objective constituencies. And in some systems, like the Netherlands or Israel, there is only one objective constituency that spans the whole nation – i.e., a single nation-wide objective constituency. Some nations also mix two ways of defining objective constituencies. In *additional member systems* (also known as systems of *mixed-member proportional representation*), such as Germany and Russia, half of the representatives in the parliamentary assembly have a territorially-based objective constituency whereas the other half have a nation-wide objective constituency. See the variations of objective constituencies as described by Rehfeld (2005), pp. 37-38. Observe that Rehfeld seems to suggest that systems of proportional representation define objective constituencies by votes cast. As I will explain in more detail in Subsection 4.3.1, Rehfeld thereby conflates objective constituencies with subjective constituencies.

seat proportionality is new. In particular, it has not been identified by Rehfeld and fills the lacuna left by the other IDPs.

Second, the IDPs will be used to determine which design of objective constituencies is justifiable for the purpose of authorizing legitimate representatives (Section 3.2). Whereas Rehfeld suggests that the only way to design objective constituencies satisfying the IDPs is by randomly and permanently assigning voters to objective constituencies with a single seat, I will propose the nation-wide objective constituency as an alternative design satisfying the IDPs to an equal or even higher degree. I will argue that the latter should be taken as the default electoral design and that there is no justification for preferring a division into randomly and permanently assigned objective constituencies over the nation-wide objective constituency.

3.1. Institutional Default Positions

IDPs are the normative baseline or starting point for the design of electoral systems. They ‘operate as prima facie assumptions about how institutions should be designed given their normative aims, aims that will have to be justified on their own strengths.’⁶⁴ In this dissertation, the normative aim is legitimate representation. The IDPs are universally applicable, as they follow from limiting conditions for legitimate representation that *any* nation purporting to have legitimate laws enacted by legitimate representatives should endorse. Although universally applicable, deviation from a certain democratic IDP may prove to be justified for reasons related to the specific context in which electoral institutions are designed.⁶⁵

This Section introduces four IDPs for the design of objective constituencies: stability, heterogeneity, involuntariness and population-seat proportionality. These IDPs are derived from the limiting conditions for legitimate representation (see Table 1 in the Appendix). In short, objective constituencies must be *stable*, in the sense of having life-long membership, to ensure that those who *authorized* the representative can also hold her *accountable*. Objective constituencies must be *heterogeneous* around political ideology to ensure that representatives in the legislature ultimately pursue the public good (*appropriate substantive aims*) even when they pursue the particular interests of their constituents.⁶⁶ Objective constituencies must be *involuntary*, declining voters a choice in entering or exiting, in order to ensure heterogeneity. And the difference between each objective constituency’s ratio of the number of constituents per seat must be minimized (*population-seat proportionality*) in order to ensure that the voting power of constituents of different constituencies is equalized (*appropriate Decision Rule*).

The IDP of population-seat proportionality is new: It neither appears in Rehfeld’s analysis nor is identified as such by other authors.⁶⁷ It serves to equalize vote weights and maximize voting power by ensuring that no voter would be better off in another objective constituency. These are the positive effects that Rehfeld considers voluntariness to have and tried to undermine in order to be able to endorse the IDP of involuntariness. By introducing the IDP of population-seat proportionality, it is clarified that these positive effects are only created if voluntary or other constituencies lead to a proportional population-seat allocation and that these effects need not be renounced for the sake of endorsing the IDP of involuntariness that facilitates heterogeneity.

For a brief overview of the definitions and the aims of the IDPs, see Table 2 in the Appendix.

⁶⁴ Rehfeld (2005), p. 179.

⁶⁵ Ibid., pp. 178-180.

⁶⁶ See also James (2015a), p. 383.

⁶⁷ James (2015a) and Stone (2008) allude to the idea behind this IDP by arguing that constituencies must have equal (not proportional) population sizes.

3.1.1. Stability

The IDP of stability concerns the permanence of the membership of an objective constituency. Stability is a matter of degree: Any objective constituency will fall somewhere between the extremes of having no change in membership between elections (completely stable) and having membership completely changed between elections (completely unstable).⁶⁸ For example, territorial objective constituencies are somewhat unstable, because people move in and out. The IDP of stability requires objective constituencies to be as stable as possible. Objective constituencies can never be completely stable as people die, come of age, become citizens or lose their voting rights. The most stable objective constituencies are those with life-long membership: Once a citizen joins, he or she can *never* change to another.⁶⁹

The IDP of stability follows from the procedural and substantive complementarity of authorization and accountability in elections. As the representative must be held to account by those whom authorized her, it follows that the group of people who can authorize a representative in an election should be the same as the group of people who can hold her to account in the subsequent election. The close connection between authorization and accountability goes to the heart of self-government. As Rehfeld says, ‘if we chose representatives for other groups and others chose representatives for us, it is hard to imagine that would even count as self-government.’⁷⁰ Therefore, we can say that it is the very idea of self-government that creates the IDP of stability.

Thus, objective constituencies have to be stable – in the sense of life-long membership – in order to ensure that those who authorize a representative can also hold her to account, which is necessary for self-government.

3.1.2. Heterogeneity

The IDP of heterogeneity requires objective constituencies to be as heterogeneous as possible around political ideology or point of view such that they ‘look like the nation as a whole’⁷¹ rather than mirror only a particular part of the electorate. Heterogeneity is a matter of degree. For example, territorial objective constituencies are more or less heterogeneous, depending on whether political interests are primarily local interests and how the non-local political interests are distributed across the nation. When territorial objective constituencies are relatively large and residency patterns are not indicators of political points of view, they tend to be more politically heterogeneous.⁷²

The IDP of heterogeneity can be derived from the limiting condition that a representative must ultimately pursue the substantive aim of the public good. If objective constituencies are heterogeneous, they ‘provide the right kind of incentives or otherwise enhance a representative’s ability to act toward the public good, no matter which side of the republican/pluralist continuum emerges as the legitimate one.’⁷³ Republican representatives, who already aim at the public good, face the right kinds of incentives to deliberate freely about this public good, as they ‘get a greater benefit from acting as if they are really concerned with the public good, whether or not they really are.’⁷⁴ Pluralist representatives, who advocate the interests of their constituents, are automatically advocating the public good if their objective constituency is heterogeneous. This does not restrain the pluralist representative from advocating any particularity, for she might still hold that the public good emerges from a battle of interest groups. Rather, it forces pluralist representatives to justify why their advocacy for any

⁶⁸ Rehfeld (2005), pp. 40-41.

⁶⁹ *Ibid.*, p. 191.

⁷⁰ *Ibid.*, p. 188.

⁷¹ *Ibid.*, p. 205.

⁷² *Ibid.*, pp. 40, 207-208.

⁷³ *Ibid.*, p. 204.

⁷⁴ *Ibid.*, pp. 204-205.

particularity would enhance the public welfare beyond the coincidental presences of this particularity in their objective constituency.⁷⁵

This derivation relies on the assumption that representatives are responsive to sanctions through electoral success or failure. This is a common assumption, for the ability of elections to ensure a systematic responsiveness to the interests of the represented depends on responsiveness to electoral sanctions.⁷⁶ It is worth noting that, in a highly heterogeneous constituency, this responsiveness incentivizes representatives to rely on their own judgement to pursue the public good. Representatives do not completely ignore their constituent's wishes as a source of judgement, for 'facing any constituency, whether or not heterogeneous, a representative would always be constrained by how deep (strength of feeling) and broad (numbers who hold the view) her constituents' view on a particular topic were.'⁷⁷ Rather, in a highly heterogeneous constituency with a 'great difficulty in having any one interest coalesce into a majority position'⁷⁸ and the prospect of electoral defeat when promising to follow any one particular group's judgement, the best response of a representative motivated by electoral success is to rely on her own judgement to pursue the public good.⁷⁹

Thus, objective constituencies have to be heterogeneous around political ideology in order to ensure that both republican and pluralist representatives ultimately pursue the public good.

3.1.3. Involuntariness

The IDP of involuntariness concerns the degree to which an objective constituency permits individual voters the choice to enter or exit.⁸⁰ For example, territorial objective constituencies are relatively voluntary because voters can choose to live in a particular district, whereas ethnic or racial objective constituencies are involuntary because voters cannot change their ethnic or racial origins.

The IDP of involuntariness requires that voters cannot change to another objective constituency. This is necessary to ensure heterogeneity, for the freedom to switch between objective constituencies (voluntariness) often leads to homogeneity. For example, consider the relatively voluntary objective constituencies that are defined by territory or vocation. The voluntariness involved in choosing a place of residence or profession leads to homogeneity, because people tend to move to places with politically like-minded people and tend to choose a profession with politically like-minded people.⁸¹

Endorsing *involuntariness* comes at the cost of the positive effects that voluntary objective constituencies have on the maximization and equalization of voting power. Rehfeld argues that 'more voluntary electoral choices give individuals a greater (and thus more equal) voice in the political process.'⁸² Voluntariness indeed gives voters a greater voice in the political process by introducing an additional point of consent into the system and by enabling voters to change to an objective constituency in which their vote weight would be higher. It is not immediately clear why this maximization of voter power also leads to an equal voice. An explanation for such a causal connection could be: When each

⁷⁵ Ibid., p. 204.

⁷⁶ See Subsection 2.2.1 stating that elections are generally considered the necessary institutional mechanism to ensure a systematic responsiveness to the interests of the represented, which is required for a substantive representing by the legitimate representative.

⁷⁷ Rehfeld (2005), p. 205.

⁷⁸ Rehfeld (2011), p. 634.

⁷⁹ Ibid., p. 634.

⁸⁰ Rehfeld (2005), p. 41.

⁸¹ While voluntariness leads to homogeneity, it is not necessarily true that *involuntariness* leads to heterogeneity. Consider objective constituencies defined by race or ethnicity, which are involuntary but often also homogeneous around political views.

⁸² Rehfeld (2005), p. 195.

voter maximizes his or her voting power, voters will distribute themselves over objective constituencies such that vote weights are equalized.⁸³

In order to defend the IDP of *involuntariness*, Rehfeld has tried to undermine this positive effect of voluntariness by arguing that the effect is insignificant because the likelihood that a voter's vote will affect the election outcome is infinitesimally small, especially in large parliamentary elections.⁸⁴ He suggests to shift attention from individual voting power to collective voting power, i.e., to making "groups" and "political parties" count. Then, the questions to be asked are who gets to determine the objective constituency definition and, correspondingly, what groups will benefit from this definition? Rehfeld proposes to ensure the maximization and equalization of collective voting power by introducing consent *to* the system rather than consent *within* the system. He suggests that consent to the system can be created, for example, by placing the constituency definition in a publicly ratified constitution.⁸⁵

However, Rehfeld's argument against consent *within* the system (by voluntariness) and for consent *to* the system (by public agreement) is unconvincing for several reasons. First, Rehfeld conflates consent with majority rule by understanding consent to the system as a collective decision. James points out that a collective decision is unlikely to achieve the form of unanimity required for consent.⁸⁶ This conflation is problematic, because a majority decision cannot ensure the maximization and equalization of the voting power of all groups, even the smallest minorities. Second, the dichotomy between individual and collective voting power is not as sharp as Rehfeld suggests. After all, the vote of the collective is the sum of the votes of its individuals. While the effects of maximizing voting power of one individual may be infinitesimally small, the effects of maximizing voting power of all group members on the voting power of the collective is significant, especially in large parliamentary elections in which the interest groups are usually large as well. Third, the focus on consent *to* the system is unhelpful for understanding which requirements electoral design has to satisfy. It shifts attention away from the question *why* voters would consent to a constituency definition. The reason why can be found in the maximization and equalization of individual and collective voting power *within* the system.

Thus, objective constituencies have to be *involuntary* in order to maintain heterogeneity. As involuntariness comes at the cost of the maximization and equalization of individual and collective voting power that consent within the system might create, the next Subsection proposes an alternative way to ensure the maximization and equalization of voting power.

3.1.4. Population-Seat Proportionality

In contrast to the three discussed IDPs, the IDP of population-seat proportionality does not appear in Rehfeld's analysis. I will define it as requiring that the number of seats must be proportional to the number of members of an objective constituency. It is a matter of degree: The most proportional

⁸³ Rehfeld (2005, p. 192, footnote 37) refers to Pogge's (2002) self-constituting constituencies for an explanation why opportunities for consent *within* the system would maximize voter power. Pogge's proposal allows voters to consent *within* the electoral system by enabling them to change constituencies and to form an objective constituency on the basis of their own particular political interests. This maximizes voter power, as voters may change constituencies if they expect their vote to be wasted and as any group (however minor) may exert effective political influence by forming an electoral district of their own. Note that the mere fact of self-defining in Pogge's proposal does not mean that there is consent *to* this system.

⁸⁴ See Rehfeld (2005), p. 196. Rehfeld (2005, p. 150) assumes that in large nations, objective constituencies are enormous, as in consisting of at least one hundred thousand people.

⁸⁵ Rehfeld (2005), p. 42.

⁸⁶ James (2015a, p.384) rightfully points out that consent understood as a collective decision conflates consent with majority rule. Consent-based legitimacy is often taken to require more than a mere majority decision: It requires either ratification through unanimity or, as Manin (1987) argues because unanimity is seldom achievable, an inclusive deliberative process plus an iterative voting process in which minorities have a chance to become the majority in time.

electoral design ensures that the difference between each objective constituency's ratio of the number of constituents per seat is as small as possible.

The implications for electoral design depend on whether seats are assigned to the objective constituency before or after voters are selected. When the number of seats is fixed before the selection of voters, the IDP requires that the number of voters selected for the objective constituency is proportional to the number of seats (e.g., an equal number of seats means selecting an equal number of voters). Conversely, when the number of seats is determined after the selection of voters, the IDP requires that the seat allocation is proportional to the population sizes of the objective constituencies (e.g., equal-sized constituencies leads to an equal seat allocation).

The IDP can be derived from the limiting condition that an appropriate Decision Rule must equalize and maximize voting power. The IDP equalizes voting power by equalizing the vote weights of voters in different objective constituencies. It does not only equalize individual voting power but also collective voting power – namely, of all members of an objective constituency. As a result of this equalization, the IDP maximizes voting power in the sense that no voter could increase their voting power by becoming a member of another objective constituency.

The IDP more straightforwardly serves to equalize and maximize voting power than creating consent within the system by voluntariness.⁸⁷ In fact, the effect of voluntariness on the equalization and maximization of voting power depends on population-seat proportionality. It occurs under the assumption that objective constituencies become populated proportional to their seats as voters choose an objective constituency in which their vote exercises more influence over a seat, i.e., in which the ratio of members per seat is lower. However, without this assumption that voluntariness leads to population-seat proportionality, voluntariness might hinder voting equality. Suppose an electoral system uses Pogge's "self-constituting constituencies"⁸⁸ in which voters can create their objective constituencies themselves and can choose whether to group themselves by, for example, territory, gender or race. It is likely that the female gender constituency is much larger than the black racial constituency and, if there is no population-seat proportionality, the system allows for consent to and within the system but violates voting equality.⁸⁹

Thus, objective constituencies must have population sizes proportional to their allocated seats in order to equalize voting power by equalizing vote weights and maximize voting power by ensuring that no voter would have more voting power as a member of another objective constituency.

3.2. Justified Design of Objective Constituencies

An electoral design is the most justifiable for the purpose of authorizing legitimate representatives if its objective constituency definition satisfies the IDPs of stability, heterogeneity, involuntariness and

⁸⁷ See also James and Stone, who argue not for proportional sized but for equal sized constituencies as they assume that each constituency has an equal share of seats. James (2015a, p. 384) points out that 'the IDP of voting equality grounds a constituency IDP not of voluntariness but of equal population.' He refers for the original idea to Stone (2008, p.247), who derives a defense of equal-sized constituencies from Rehfeld's IDP of heterogeneity (and, thereby, indirectly from the limiting condition of substantive aims rather than the limiting condition of a Decision Rule equalizing voting power): As statistical properties of random sampling imply that the larger the constituency, the more accurately the distribution of interests reflects that of the nation (the more heterogeneous the constituency is), 'one could argue for the use of a maximin principle in designing constituencies. According to this principle, one ought to select constituency sizes so as to maximize the size of the smallest constituency (which would be the constituency with the least accurate distribution). Such a principle would obviously imply that all constituencies should be of equal size.'

⁸⁸ Pogge (2002).

⁸⁹ James (2002, p. 384) presents a similar example but assumes a single-seat district system in which each objective constituency is allocated one seat.

population-seat proportionality to the highest degree. Rehfeld as well as some of his annotators⁹⁰ seem to assume that the objective constituency definition uses a method of selection, which divides voters over several objective constituencies. This Section argues that no selection, i.e., the nation-wide objective constituency, is more justifiable for the purpose of authorizing legitimate representatives and that there are no obvious reasons to prefer the most justifiable selection method over the nation-wide objective constituency.

Subsection 3.2.1 analyzes which method of selection is the most justifiable given the IDPs. I will argue that a random and permanent assignment to objective constituencies with an equal number of seats (rather than a single seat as Rehfeld argues) is the most justifiable selection method.

Subsection 3.2.2 argues that the nation-wide objective constituency is more justifiable than any selection method and analyzes whether Rehfeld has identified other reasons that could justify deviating from the nation-wide objective constituency by randomly and permanently assigning voters to equal-seat objective constituencies.

3.2.1. The Method of Selecting

Rehfeld proposes to randomly and permanently assign voters to objective constituencies with one seat each. This method of selection satisfies the IDPs for objective constituencies. The selection by assignment makes the design *involuntary*. The permanence of this assignment makes the objective constituencies *stable*, in the sense of life-long membership.⁹¹ The randomness of this assignment creates *heterogeneity*. As each constituency is allocated exactly one seat, the randomness also causes the design to satisfy *population-seat proportionality*, for random sampling creates constituencies of almost equal sizes.

The question arises whether there is another way of selecting voters for different objective constituencies such that objective constituencies satisfy stability, heterogeneity, involuntariness and population-seat proportionality? An answer to this question depends on the connection between random and permanent selection on the one hand and the IDPs on the other. Stone distinguishes an *essential* from an *incidental* connection between a property and an IDP. If a property is *essentially* tied to the IDP (or goal), ‘the property must be there or else the goal cannot be accomplished.’⁹² If a property is *incidentally* tied to the IDP (or goal), ‘it can facilitate accomplishment of the goal, but there may be other means available that could serve as well or better under the right circumstances.’⁹³

It is easy to see that permanent assignment is essentially tied to involuntariness and stability, for involuntariness implies that the selection of an objective constituency for each voter is determined by the design (each voter is assigned) and stability is defined in terms of the permanence of the membership.

Random selection is essentially tied to heterogeneity given that there is no comprehensive account linking a finite list of personal characteristics to political interests. Lacking such an account, only randomness can ensure that each constituency mirrors the nation with regard to each and every characteristic that might be relevant.⁹⁴ By contrast, if there was a comprehensive account providing a finite number of personal characteristics that determine an individual’s political interests, random selection would be incidentally tied to heterogeneity. For example, suppose heterogeneity depends only on the race-gender composition, then a non-random method that enumerates ‘all possible race-gender combinations (white men, Latino women, Native American met, etc.)’ and then stipulates ‘that the total

⁹⁰ See James (2008; 2015a) and Stone (2008).

⁹¹ Recall that there is always some sort of instability due to deaths, coming of age, and newly acquired or lost citizenship.

⁹² Stone (2008), p. 249.

⁹³ *Ibid.*, p. 249.

⁹⁴ *Ibid.*, p. 250.

number of citizens in each of these groups be equally divided among the constituencies'⁹⁵ could do the same job. Intuitively, no such comprehensive account can be given as the list of personal characteristics that influence individual interests seems to be infinite – besides race and gender, one can think of religion, sexual orientation, age, socio-economic status and so on.

Random selection is not essentially but incidentally tied to population-seat proportionality. Given an allocation of an equal number of seats to each objective constituency, any assignment of an equal number of voters to each constituency would satisfy population-seat proportionality. For example, suppose the population could be divided into three equal-sized groups on the basis of a personal characteristic – say, income class. Assigning voters on the basis of this characteristic creates three objective constituencies satisfying population-seat proportionality while the assignment is anything but random. Moreover, without an allocation of an equal number of seats to each objective constituency, random selection no longer facilitates but causes violation of population-seat proportionality. For example, suppose that there are two objective constituencies with one and three seats respectively. Since random selection creates equal-sized constituencies, the objective constituency with one seat has a three times higher ratio of constituents per seat than the objective constituency with three seats, violating population-seat proportionality.

Thus, a permanent assignment is necessary for satisfying the IDPs of stability and involuntariness. Lacking an account that links a finite list of personal characteristics to political interests, random selection is the only way to assign voters to objective constituencies satisfying heterogeneity. Hence, Rehfeld's random and permanent assignment is the best way of selecting voters for different objective constituencies satisfying stability, involuntariness and heterogeneity. In order to ensure population-seat proportionality, these randomly assigned objective constituencies need not have a single seat but need to have an equal number of seats.

3.2.2. The Rationale Behind Selecting

Rehfeld as well as some of his annotators⁹⁶ seem to assume the use of a selection method to divide voters over different objective constituencies. Rehfeld even claims that the selection method of random and permanent assignment should be taken as 'a default position, one that we should assume when designing or altering democratic institutions, much as we assume "one person, one vote" when assigning political shares.'⁹⁷ However, no selection (i.e., the nation-wide objective constituency) should be taken as an institutional default design, as any selection method can only approximate the degree to which the whole nation satisfies the IDPs for objective constituencies. For example, the most justifiable selection method of random and permanent assignment to equal-seat objective constituencies creates "mini-nations" – each objective constituency is a miniature of the nation as a whole. These mini-nations can never be more stable than the whole nation, as its members are only a subset of the nation's electorate. They can never be more heterogeneous than the whole nation as they approximate the nation's heterogeneity. And the division into mini-nations introduces the need to satisfy IDPs of involuntariness and population-seat proportionality in order to approximate the heterogeneity and equality in voting power in the nation-wide objective constituency.⁹⁸

⁹⁵ Ibid., p. 249.

⁹⁶ See James (2008; 2015a) and Stone (2008).

⁹⁷ Rehfeld (2005), p. 12. Note that Rehfeld, literally, claims that the "random constituency" should be taken as a default position. Rehfeld often uses this notion to refer to the random and permanent objective constituency.

⁹⁸ Observe that James (2015a, p. 382) mistakenly considers the nation-wide objective constituency to be more individually involuntary than an electoral district, whether a territorial electoral district or a mini-nation, as it requires a greater effort to move out of, for example, Israel. However, as an electoral district is always a subset of the nation-wide objective constituency, moving out of an electoral district often still entails staying in the nation-wide objective constituency. This implies that a division into electoral districts creates an additional restriction on

The question arises whether there are other reasons to prefer selecting voters for different objective constituencies over no selection, i.e., the nation-wide objective constituency? Rehfeld has identified rights-based and consequentialist justification in familiar debates about politics and legitimate political representation. These justifications are not mutually exclusive and may provide more compelling reasons for deviating from the IDPs in one polity than in another.⁹⁹ Let me analyze whether any of these justifications provides a reason to deviate from the default of a nation-wide objective constituency to the most justifiable selection method of random and permanent assignment to equal-seat objective constituencies (i.e., equal-seat mini-nations).

Rights-based justifications provide moral arguments in favor of giving certain groups the right to form an objective constituency without necessarily considering other electoral implications.¹⁰⁰ This right is based on an apparently politically relevant characteristics of the group – for example, the pre-existence of the group as an indigenous population or the territorial or religious interests of the group.¹⁰¹ This means that rights-based justifications are concerned with homogeneous groups and, therefore, it is impossible to justify the highly heterogeneous mini-nations with a rights-based justification.¹⁰²

Consequentialist justifications justify objective constituency design ‘as a *means* to some broader or functional end of politics – for example, as a means to elect a representative of a certain race or political party.’¹⁰³ A consequentialist justification can be concerned with homogeneous groups – for example, when the formation of an objective constituency is justified by the consequentialist aim of providing protection to a particular group¹⁰⁴ – but there are also consequentialist justifications that do not assume homogeneity. Two such consequentialist justifications are the *electoral effects* and *incentive effects* justifications, which justify objective constituency definitions, respectively, by the aim of promoting the election of particular candidates and by the way they shape the incentives that representatives face at election time. Rehfeld has identified the desirable effect that heterogeneous objective constituencies incentivize representatives to ultimately pursue the public good by promoting their re-election (see also Section 3.1.2). If this is the desired effect, mini-nations can only approximate the electoral and incentive effects that exist in the nation-wide objective constituency by approximating heterogeneity.

Another consequentialist justifications that may provide a reason for favoring the division into mini-nations over the nation-wide objective constituency is the *democratic values* justification, which considers objective constituency design justified if it enhances the legitimacy of the representative government by introducing a ‘tangible if symbolic moment of consent’ into the electoral system and by enabling deliberation between the representatives and their constituents as well as among their constituents.¹⁰⁵ However, satisfying the IDP of involuntariness, the mini-nations are not supposed to

the voter’s movement. Voluntariness would allow a moment of consent to this restriction, that does not exist without a division of the nation-wide objective constituency.

⁹⁹ Rehfeld (2005), pp. 44-52.

¹⁰⁰ Ibid., p. 45.

¹⁰¹ Rehfeld (2005, pp. 47-49) identifies four rights-based justifications. First, when a nation is created through a joining of several groups, this *social contract between groups* may introduce a claim for each group to form a separate objective constituency. Second, the *assimilation into a nation* of an indigenous population may provide the group a right to form a separate objective constituency. Third, when separate *communities of interest* are present within a nation, such as territorial, religious or ethnic communities of interest, each community may claim a right to defining themselves as an objective constituency if they believe their interests to be politically relevant. Fourth, if a group has been excluded from the political process, they may claim a right to form a separate objective constituency as *reparation* for their political exclusion.

¹⁰² Rehfeld (2005, p. 146) considers rights-based justifications to be problematic. As he writes: ‘One problem is that whenever *electoral* constituencies are defined by a certain quality – be it territory, race, religion, gender, ideology, party ID, or so on – the defining quality introduces a de facto interest into the legislature even as it defines the nature of political representation within the polis.’ (Rehfeld’s emphasis)

¹⁰³ Rehfeld (2005), p. 45.

¹⁰⁴ This is Rehfeld’s *group protection* justification. See Rehfeld (2005), p. 50.

¹⁰⁵ Rehfeld (2005), p. 170.

provide an additional moment of consent within the system. And with a lack of geographical proximity, the mini-nations neither provide additional benefits for political campaigns and other political organizations nor support deliberation. In fact, the creation of mini-nations hinders deliberation between constituents, as they are no longer in physical proximity to fellow constituents. By contrast, in a nation-wide objective constituency, each neighbour within the same nation can vote on the same candidates.¹⁰⁶ Furthermore, the *citizen development* and *community development* consequentialist justifications can be identified. The former justifies objective constituency design by the aim of promoting the development of citizens. This development can be, for example, increasing patriotism or the development of political skills. The latter justifies objective constituency design by the aim of strengthening national political life in general – i.e., not for its effects on the individual but for its effects on the broader community as a whole. An objective constituency definition can advance individual and community development either by promoting democratic participation or by creating attachment. In the first case, the justifications are derivative of the democratic values justification. As just discussed, lacking geographical proximity between constituents, the mini-nations cannot promote a democratic value such as citizen participation any better than the nation-wide objective constituency. In the second case, the justifications are derivative of an attachment justification. This justification is based on the observation that the organization of citizens into smaller objective constituencies could help them to form “chords of sympathy” toward their national legislature.¹⁰⁷ Rehfeld suggests that such chords may be created as representatives continue to provide constituent service and as the mini-nations could form transnational communities in which constituents identify with being part of an explicitly national group that could, for example, assemble every few years.¹⁰⁸ Even if these suggestions were supported by empirical data, they have little normative weight, for Rehfeld himself already rejects the normative underpinnings of the attachment justification:

‘Why do we think fostering attachment is good itself, except because it fosters compliance with the law and generates patriotism more generally? (...) the object deserving our obedience is not a particular person or system, but the just (or good) laws that the system produces. We should not promote something as a means to attachment itself, unless it is, independently a good, just thing.’¹⁰⁹

Thus, the nation-wide objective constituency should be taken as a default position as it satisfies the IDPs for objective constituencies to the highest degree. Whether there is any justification for deviating from this default position by selecting voters for equal-seat mini-nations (randomly and permanently assigned equal-seat objective constituencies) remains an open question. While Rehfeld has rejected territorially-defined objective constituencies for lacking any justification, the common justifications that he has identified can neither provide a justification for his proposal to divide voters into mini-nations. As the mini-nations remain subsets of the nation-wide objective constituency, it is not very likely that a particularly strong justification will arise.

3.3. Conclusion

To conclude this Chapter, the limiting conditions for legitimate representation imply several IDPs for objective constituencies concerning stability, heterogeneity, involuntariness and population-seat proportionality. Objective constituencies have to be *stable*, in the sense of life-long membership, in

¹⁰⁶ Rehfeld (2005, pp. 216-219; 170- 176) recognizes that the lack of geographical proximity creates problems and he envisions voters and politicians to rely on the internet and other technology to organize politics in the mini-nations. While technology may provide a solution, this cannot alter the fact that the mini-nations provide a deliberative disadvantage over the nation-wide objective constituency.

¹⁰⁷ Rehfeld (2005), p. 160.

¹⁰⁸ Ibid., p. 165.

¹⁰⁹ Ibid., p. 165, 121-222.

order to ensure proper authorization by and proper accountability to the same group of people. They have to be *heterogeneous* around political interests in order to ensure that representatives pursue the proper substantive aim of ultimately promoting the public good. They have to be *involuntary*, meaning that voters are not given a choice in entering or exiting an objective constituency, in order to ensure heterogeneity. And objective constituencies must have a number of seats that is proportional to their population size (*population-seat proportionality*) in order to ensure equality in voting power among members of different objective constituencies.

Given these IDPs, the most justifiable method of selecting voters for different objective constituencies is by permanent and random assignment, creating “mini-nations”. While Rehfeld has proposed this selection method for objective constituencies with a single seat, the selection method satisfies the IDPs to the same degree when the objective constituencies have any equal number of seats.

Whereas random and permanent assignment to equal-seat objective constituencies may be the most justifiable selection method, no selection – i.e., the nation-wide objective constituency – satisfies the IDPs to a higher degree. As the different objective constituencies (such as the mini-nations) are always subsets of the nation-wide objective constituency, any selection method can only approximate the degree to which the nation-wide objective constituency satisfies the IDPs. Therefore, the nation-wide objective constituency should be taken as the institutional default design.

Deviations from the institutional default of the nation-wide objective constituency may be justified for reasons related to the specific institutional context in which objective constituencies are designed. Looking at familiar rights-based and consequentialist justifications, there seems to be no reason to justify the division of voters into equal-seat mini-nations as a deviation from the nation-wide objective constituency. Other justifications may arise when considering the design of objective constituencies in relation to the formation of (*successful*) *subjective constituencies*, as will be done in the next Chapter.

4. Subjective Electoral Constituencies

Legitimate representatives have the institutional authority to represent. In representative democracies, this institutional authority is usually acquired after elections. The audience (or objective constituency) recognizes that the elections authorize the elected official to represent some or all of them. Besides recognizing the authorization, some or all of the members of the audience also *caused* the authorization by their vote.¹¹⁰ This group of people is called the *subjective electoral constituency*: ‘The group of people who voted for a particular representative (or party).’¹¹¹

Subjective electoral constituencies (short: subjective constituencies) are not defined by electoral design but are a result of the voting process.¹¹² They reflect the *strategic* and *communicative* ‘interaction between constituents and candidates that leads to the formation of cohesive voting blocs seeking to elect a representative (or otherwise win an election).’¹¹³ This strategic and communicative interaction involves at least two intentional agents engaging with each other to pursue their own ends, making it a more dynamic form of interactive agency that is more indeterminate than the parametric action of the electoral designer.¹¹⁴

Rather than defining subjective constituencies, electoral design affects whether a subjective constituency is *successful* in winning an election and securing a representative of their choice.¹¹⁵ Electoral design has three key components: the electoral formula (plurality/majority/proportional), the ballot structure (categorical/ordinal vote) and the district magnitude (number of seats per objective constituency). The design of these components determines the success of subjective constituencies by shaping the percentage of votes needed to win a seat. For example, with an allocation of seats proportional to the vote share and a higher district magnitude, a candidate needs a lower percentage of votes to win a seat and, thus, smaller subjective constituencies have a greater chance of becoming successful.

This Chapter analyzes which design of the three key components is the most justifiable for the purpose of electing legitimate representatives given its effects on the success of subjective constituencies. In order to determine the possible forms of design, Section 4.1 describes the most common design choices involved in each key component. In order to determine whether and when a design is justifiable, Section 4.2 formulates three IDPs for successful subjective constituencies, concerning the degree to which electoral design diversifies, maximizes and equalizes success. These IDPs are normative starting points for the way in which electoral design should facilitate and shape the success of subjective constituencies. They are derived from the limiting conditions for legitimate representation (see Table 1 in the Appendix). To my knowledge, this will be the first time that *any* IDPs for subjective constituencies are identified. James has made some suggestions about norms concerning the success of subjective constituencies underlying electoral design choices but has not proposed to identify or identified any IDPs for subjective constituencies as such.¹¹⁶

Having described the possible design choices and the normative aims, Section 4.3 determines the most justifiable design by analyzing three design proposals. The focus on specific design proposals is necessitated by the fact that the design components are interdependent and, thus, a design choice involved in one component has to be discussed in combination with a design choice involved in another

¹¹⁰ The audience also includes the people who are eligible to vote for the representative (or party) but have not actually voted for them.

¹¹¹ James (2015a; 2004, p. 151). Rehfeld (2005, p. 35) refers to this group as the *Electoral Constituency 1 (EC1)*.

¹¹² Rehfeld (2005, pp. 35-39) seems to consider subjective constituencies to be conceptually prior to voting, but this only holds for objective constituencies.

¹¹³ James (2015a), p. 386.

¹¹⁴ *Ibid.*, pp. 386-387.

¹¹⁵ *Ibid.*, p. 387.

¹¹⁶ *Ibid.*, p. 391.

component. The three discussed designs include Rehfeld's proposal for single-seat mini-nations and James' counterproposal for five-seat mini-nations with a proportional electoral formula. The third proposal of a nation-wide objective constituency with a proportional electoral formula is my counterproposal to Rehfeld's and James' designs.

Each electoral design discussed in this Chapter satisfies the IDPs for objective constituencies (or, electoral districts) – i.e., the design either constructs mini-nations with an equal number of seats or a nation-wide objective constituency, thereby satisfying stability, heterogeneity, involuntariness and population-seat proportionality. Consequently, the design that is argued to be the most justifiable with respect to the IDPs for subjective constituencies, also turns out to be the most justifiable for the purpose of authorizing legitimate representatives in general. Hence, the conclusion of this Chapter answers the research question of this dissertation: Which design of electoral systems is the most justifiable for the purpose of authorizing legitimate representatives?

4.1. Electoral Design Components

Electoral design has three key components: (1) the electoral formula, (2) the district magnitude and (3) the ballot structure.¹¹⁷ In order to analyze how the design of these components affects the success of subjective constituencies, this Section outlines the most common design choices involved in each key component.

Electoral formulas describe the way in which votes are converted into seats in the legislature. Three electoral formulas can be distinguished: plurality, majority and proportional formulas.¹¹⁸

A *plurality* formula elects the candidate who beats all other candidates in pairwise majority elections (i.e., who wins the plurality of votes). If there are more than two competing candidates, the winning candidate may receive less than half of the votes.

A *majority* formula ensures that an elected candidate is a majority winner. The run-off systems are the most common systems to determine the winner if there is no majority winner in the first vote. In the two-round run-off system, the majority winner is determined in a second round between the two top candidates or the candidates whose vote share exceed a certain proportion of the votes. In the instant run-off system, voters have expressed their preferences on an ordinal ballot. The candidate with the least first-preference votes is eliminated and the votes for this candidate are transferred to the lower-preference candidates of those voters. This process continues until there is a majority winner.

A *proportional* formula allocates a seat to a candidate in proportion to her vote share – i.e., a candidate is elected if her vote share exceeds a certain minimum proportion of the votes.

There are also mixed electoral systems that combine a proportional electoral formula with a plurality or majority electoral formula. A well-known example is the electoral system for the German Bundestag, in which half of the seats are allocated by plurality and the other half is allocated by proportionality.¹¹⁹

The district magnitude describes the number of seats in the legislature allocated to an electoral district (or objective constituency). If the number of electoral districts is fixed, increasing the district magnitude implies increasing the number of seats in the legislature. Conversely, if the number of seats in the legislature is fixed, increasing the district magnitude implies decreasing the number of districts.

¹¹⁷ See, e.g., Gallagher and Mitchell (2005); James (2004), p. 152; Norris (2004), p. 39.

¹¹⁸ The formulas are described with respect to the election of candidates but could similarly be described in terms of the allocation of a seat to a party.

¹¹⁹ Saalfeld (2005), p. 213.

Three types of ballot structures can be distinguished: the categorical, ordinal and dividual ballot.¹²⁰ On a *categorical* ballot, voters cast one vote for their most preferred candidate or party. When voting on a party in an open party-list system, voters express a preference for one or perhaps several candidates on a party's list.

On an *ordinal* ballot, voters rank the candidates on their ballot according to their preferences. This ballot structure is a central feature of the majority instant run-off electoral formula and the proportional Single Transferable Vote (STV, see Subsection 4.3.2).

On a *dividual* ballot, voters can split their vote between different parties. For example, voters may cast their district vote for a candidate of one party, while casting another vote for the party-list of another party.

4.2. Institutional Default Positions

IDPs are normative starting points for electoral design. This Section identifies three IDPs for the way in which electoral design should shape the success of subjective constituencies. The IDPs are new: They are inspired by some suggestions made by James (2015a) but, to my knowledge, there is no author who has proposed to identify or identified *any* IDPs for subjective constituencies.

The IDPs are derived from the limiting conditions for legitimate representation concerning appropriate substantive aims and an appropriate Decision Rule (see Table 1 in the Appendix). The limiting conditions of proper authorization and proper accountability are not used to derive IDPs.

The IDPs concern the diversity, equality and maximality of success. In a nutshell, the IDP of *diversifying success* requires electoral design to facilitate the formation of diverse successful subjective constituencies in order to ensure deliberative diversity in the legislature (Subsection 4.2.1). The IDPs of *equalizing* and *maximizing success* require electoral design to facilitate equalizing the sizes of successful subjective constituencies and maximizing the total number of voters in a successful subjective constituency (Subsection 4.2.2). Each IDP is a matter of the degree: Does electoral design diversify, maximize and equalize more or less?

For a brief description of the definitions and the aims of the IDPs, see Table 3 in the Appendix.

4.2.1. Diversifying Success

The IDP of diversifying success requires electoral design to facilitate the successfulness of diverse subjective constituencies. The IDP aims at ensuring the presence of a multiplicity of voices and perspectives in deliberation in the legislature.

This IDP can be derived from the limiting condition of appropriate substantive aims. Recall that this limiting condition requires a legitimate representative to pursue the public good. A substantive conception of the public good is formed by representatives through the interaction with the members of their constituents (the vertical dimension of deliberation) and through deliberation in the legislature (the horizontal dimension of deliberation among candidates).¹²¹ Most deliberative democrats accept the value of perspectival diversity for deliberation. If deliberation is aimed at forming a substantive conception of the public good, perspectival diversity is not just valuable but necessary, because a lack of minority perspectives on the public good hinders representatives in forming a substantive conception that goes beyond the interpretation of the nation's median voter.¹²²

¹²⁰ Gallagher and Mitchell (2005), pp. 7-10; James (2014), pp. 152-153.

¹²¹ See also James (2015b), who distinguishes these two dimensions of deliberation from the horizontal dimension of deliberation among voters.

¹²² James (2015a), p. 385. See also Rehfeld (2005), p. 235.

4.2.2. Maximizing and Equalizing Success

The IDP of maximizing success requires electoral design to facilitate that the number of voters in a successful subjective constituency is maximized. The IDP of equalizing success requires electoral design to facilitate the formation of successful subjective constituencies of equal sizes.

Both IDPs can be derived from the limiting conditions stating that an appropriate decision rule maximizes voting power, as measured by the number of wasted votes. Recall that there are two types of wasted votes: votes cast (1) for a candidate who does not win or (2) in excess of what the winner needed to win (surplus votes).¹²³ Reducing the number of wasted votes of the first type implies the IDP of maximizing success. At a minimum, the number of voters in a successful subjective constituency should be bigger than the number of voters in an unsuccessful subjective constituency, for otherwise an electoral design generates more wasted than decisive votes.¹²⁴ Reducing the number of wasted votes of the second type implies the IDP of equalizing success. After all, in a larger sized successful subjective constituency, some voters have cast a vote in excess of what was needed to become successful.

4.3. Justified Design for Subjective Constituencies

An electoral design is the most justifiable for the purpose of authorizing legitimate representatives if it satisfies the IDPs for objective constituencies and the IDPs for subjective constituencies to the highest degree. Chapter 3 showed that the IDPs for objective constituencies are best satisfied if the objective constituencies (or, electoral districts) are defined by either random and permanent assignment (mini-nations) or no assignment (nation-wide objective constituency). This Section analyzes which design of the other components of electoral design – electoral formula, ballot structure and district magnitude – best satisfies the IDPs for subjective constituencies (described in the previous Section). The design of these components is interdependent. For example, a proportional electoral formula requires a district magnitude bigger than one, while an ordinal ballot structure requires a relatively small district magnitude. As the design of the components cannot be discussed separately, three design proposals will be analyzed: (1) Rehfeld’s proposal for single-seat plurality/majority mini-nations with seat quota; (2) James’ proposal for five-seat mini-nations with proportional Single Transferable Vote (STV); (3) my counterproposal for a nation-wide objective constituency with party-list proportional representation (party-list PR). The objective constituency in each design proposal is either a mini-nation or nation-wide. Consequently, the design that best satisfies the IDPs for subjective constituencies will also be the one that is most justifiable for authorizing legitimate representatives in general.

The IDPs for subjective constituencies concern the way in which an electoral design shapes the success of subjective constituencies. The success chances of subjective constituencies can be mathematically expressed by the thresholds of representation and exclusion. The *threshold of representation* describes the minimum share of votes needed to secure a seat: It ‘reflects the minimal number of votes needed to elect a candidate under the best of circumstances (an opposition widely fractured among several candidates).’¹²⁵ The *threshold of exclusion* describes the maximum share of votes needed to secure a seat: It ‘reflects the minimum number of votes needed to gain election under the worst circumstances (an opposition unified around the minimum number of candidates).’¹²⁶ The threshold of exclusion is

¹²³ Rehfeld (2005), p. 194. See also Subsection 2.2.3.

¹²⁴ This IDP differs from the requirement that James (2015a, p. 391) derives from voting equality when he writes that ‘in order to ensure that each vote corresponds to the same number of representatives, this same norm [i.e., voting equality] requires that a losing constituency should contain fewer voters than a winning constituency’ (brackets added). Whereas James suggests a comparison of the sizes of particular successful and unsuccessful subjective constituencies, my requirement compares the sum of the sizes of the successful subjective constituencies to the sum of the sizes of the unsuccessful subjective constituencies.

¹²⁵ James (2015a, p.387) calls it the *threshold of inclusion*. See also Gallagher (1992), p. 485.

¹²⁶ James (2015a), p. 387; Gallagher (1992), p. 485.

always higher than the threshold of representation. Whereas the threshold of exclusion varies only with the three design components, the threshold of representation also varies greatly with the number of competing candidates (or parties) in the electoral district. If the number of competing candidates (or parties) increases, the threshold of representation decreases.

By calculating the thresholds, the degree to which the designs satisfy the IDPs for subjective constituencies can be compared. Let me give some intuitions about the relation between the height of the thresholds and the degree to which success is diversified, maximized and equalized. A design better *diversifies success* if its threshold of exclusion is low. After all, if the number of votes needed to win a seat is low even under the worst circumstances, minority candidates (or parties) have more chances of becoming successful. A design also better *maximizes success* if the threshold of exclusion is low. After all, the size of the groups of voters who have casted a wasted vote can never be bigger than the number of votes needed to win a seat.¹²⁷ A design better *equalizes success* if the difference between the threshold of exclusion and representation is low. After all, with a unified threshold of exclusion and representation, each subjective constituency needs the same number of votes to be successful under all circumstances.

The next Subsections discuss the three design proposals in their respective order by calculating the thresholds and using the thresholds to argue that each succeeding proposal better satisfies the IDPs for subjective constituencies than the previous proposal. In order to make a mathematically precise comparison between the thresholds in the different designs, the number of seats in the legislature will be fixed at 435, which is the house-size of the U.S. House of Representatives to which Rehfeld and James applied their design proposals. For an overview of the calculated thresholds for each design proposal, see Table 4 in the Appendix.

4.3.1. Rehfeld: Single-Seat Mini-Nations with Quotas

Rehfeld proposes to create single-seat electoral districts by random and permanent assignment (single-seat mini-nations). He does not specify which electoral formula and ballot structure should be used, but his design must use either a plurality or majority electoral formula and its accompanying ballot structure, as the single-seat nature of the districts makes a combination with a proportional or semi-proportional electoral formula impossible.¹²⁸

In order to determine to what extent Rehfeld's proposal diversifies, maximizes and equalizes the success of subjective constituencies, let me calculate the thresholds of representation and exclusion for both the plurality and the majority electoral formula.

Under a plurality formula, the *threshold of representation* varies radically according to the number of candidates competing in the electoral district. It is given by the following formula: $\frac{100\%}{\# \text{ candidates}}$. For example, if three candidates are competing and, under the best circumstances, votes on these candidates are equally split, then the threshold of representation is one-third of the votes. With each additional competing candidate, this threshold lowers: four candidates gives a threshold of one-fourth and five candidates gives a threshold of one-fifth. The *threshold of exclusion* is more than 50%, independent of

¹²⁷ Note that diversifying success goes hand in glove with maximizing success, for there are less wasted votes when success is maximized and '[w]asted votes also contribute to the problem of minority vote dilution, where members of disadvantaged racial or ethnic minorities (...) are unable to gain election due to their geographical dispersion and the persistence of discriminatory voting by numerically dominant groups' (James (2004), p. 143).

¹²⁸ Observe that Rehfeld (2005, p. 213) suggests that single transferable vote could be used, while such a proportional electoral formula requires a multi-member electoral district. Under a plurality formula, Rehfeld's proposal constructs a single-member district plurality (SMDP) system, as is currently used in the U.S. House of Representatives. James (2015a) seems to assume that Rehfeld proposes this system, while Rehfeld does not make any argument in favor of a plurality electoral formula.

the number of candidates. To see why, consider the worst circumstances in which there is a head-to-head race between two competing candidates. Under these circumstances, a candidate will only be sure to win a seat if she has the majority of votes.

Under a majority formula, the *threshold of exclusion* is also above 50% as, by definition, a candidate needs the majority of votes to win a seat. The *threshold of representation* is also more than 50% by definition. However, in an instant run-off system, the votes that a candidate secures to win a seat may not be first-preference votes. If only first preference votes are counted, the threshold of representation is 0% since a candidate can get elected due to vote transfers without themselves receiving any first preference votes.

The thresholds of exclusion and representation show that Rehfeld's proposal for single-seat plurality/majority mini-nations does little to diversify, maximize and equalize success. The design fails to diversify success, as the threshold of exclusion is above 50%, giving minority candidates no chance to get elected. The design also fails to maximize success, because of the high threshold of exclusion. After all, if the single seat is filled with around 50% of the votes, then almost 50% of the votes are wasted by being cast in excess of what was needed to win the seat or by being cast for a losing candidate. This means that the number of wasted votes is always close to 50%: Under better circumstances (e.g., when only the threshold of representation has to be passed in order to win a seat), the single seat might be filled with less first preference votes, leading to an even higher number of wasted votes. Lastly, whether the design equalizes success, which can be determined by the equality of the thresholds, depends on the electoral formula. Under a plurality formula, success is only equalized if there are two competing candidates. Under a majority formula, success is equalized if lower preference votes are counted but not if only first preference votes are counted.

The degree to which the single-seat plurality/majority system with mini-nations diversifies, maximizes and equalizes success can be significantly improved by increasing the district magnitude and introducing a proportional electoral formula (as the discussion of James' proposal in the next Subsection will show). However, Rehfeld explicitly rejects the use of proportionality. He argues that proportional representation (PR) leads to constituencies that fail to satisfy the IDPs for objective constituencies: They would be 'usually perfectly *homogeneous* around political ideology or point of view because the constituency is defined at the moment a vote is cast, and votes are a rough proxy for a political point of view'¹²⁹, *unstable* 'since voters can, for example, vote for Labour this election and the Greens in the next'¹³⁰ and *voluntary* 'in that they give voters a wider choice over which parties or candidates to vote for and what electoral constituency they wish to be in.'¹³¹ This argument is based on a conceptual confusion in which Rehfeld conflates the objective constituency with the subjective constituency: The constituencies defined by votes cast in PR systems are subjective constituencies formed through strategic and communicative interaction between voters and candidates and, therefore, the IDPs for the design of objective constituencies do not be apply to them.¹³²

The inability of the single-seat plurality/majority mini-nations to diversify success is intensified by the fact that the mini-nations are heterogeneous. As Rehfeld admits, his design 'magnifies the power of national majorities, translating a simple majority among the population into unanimity of party and perspective within the legislature.'¹³³ Rehfeld considers this a necessary side-effect. As he mistakenly infers from his conceptual confusion about objective and subjective constituencies that proportionality

¹²⁹ Rehfeld (2005), p. 40, italics added.

¹³⁰ Ibid., p. 41.

¹³¹ Ibid., p. 43.

¹³² See also James (2015a).

¹³³ Rehfeld (2005), p. 231.

leads to homogeneity, he holds that ‘the cost of getting a minority voice into the legislature [diversity] is thus to decrease the incentives of majority legislators to pay attention to that voice [heterogeneity].’¹³⁴ To counterbalance this effect, Rehfeld proposes to introduce seat quota. He suggests that, for example, in the U.S. in 40 percent of the districts a candidate would be required to be a woman and in 20 percent a candidate would be required to be African American to be eligible to run.¹³⁵ However, while seat quota may lead to descriptive representation in the legislature, they do not necessarily achieve the aim of deliberative diversity underlying the IDP of diversifying success. Deliberative diversity is about the presence of diverse interests in the legislature, which depends on “who elects” rather than on “who is elected”.¹³⁶ An African American woman is likely to act in the interests of white male voters if she is authorized by and accountable to a heterogeneous objective constituency, even if being an African American woman.¹³⁷

Thus, Rehfeld’s proposal for single-seat plurality/majority districts is unable to diversify, maximize and equalize success. The inability to diversify success is intensified by the heterogeneity of the randomly and permanently assigned districts (i.e., mini-nations). Seat quota cannot counter-balance this effect, as they create descriptive diversity but not deliberative diversity in the legislature. Instead, heterogeneous districts should be combined with multi-seat proportionality to, simultaneously, create incentives for majority legislators to pay attention to a minority voice and get that minority voice into the legislature.

4.3.2. James: Five-Seat Mini-Nations with STV

James proposes to create 87 districts by random and permanent assignments (mini-nations). Each district is assigned five seats, giving a total of 435 seats in the legislature. The five representatives in each district are elected by the proportional *Single Transferable Vote* (STV). In STV, voters cast a vote by ranking the candidates on an ordinal ballot. The process of selecting the winning candidates proceeds as follows: Initially, the votes go to each voter’s first-choice candidate. The candidates with a total number of first-preference votes exceeding a specified quota is nominated for a seat. If some seats are left unfilled, the count proceeds with a redistribution of the “surplus” votes of elected candidates (the votes of those voters whose first-preference candidate wins with an excess number of votes, i.e., more than the quota) to the voter’s second-preference candidates. If this still leaves some seats unfilled, the lowest placed candidate is eliminated and the votes for this candidate are transferred to the candidates who is next most-preferred by each voter. This process continues until all seats are filled.¹³⁸

James proposes to use the Droop quota to describe the minimum number of votes that a candidate needs to be elected for a seat. The Droop quota is based on a division between the total number of valid ballots cast in a district and the number of representatives to be elected. It can be expressed as a percentage of the total number of votes: $\frac{100\%}{(\#Seats+1)} + 1$. In a 5-seat electoral district, a candidate needs at least one vote more than 16.7% (or, one-sixth) of the total number of votes in order to be elected.¹³⁹

In order to compare James’ proposal to Rehfeld’s proposal, let me calculate the thresholds. If lower-preference votes are included in the calculation, the thresholds of representation and exclusion are 16.7% +1 votes, since this is the number of votes that a candidate needs to be elected under all circumstances. However, when considering only first-preference votes, the threshold of representation

¹³⁴ Ibid., p. 236, brackets added.

¹³⁵ Ibid., p. 237.

¹³⁶ Ibid., p. 236.

¹³⁷ See also James (2008), p. 236.

¹³⁸ Gallagher (1992), p. 480. This is the complex transfer method. The simple transfer method does not transfer votes surplus votes but only transfers votes of eliminated candidates. See also James (2004), p.172.

¹³⁹ See also Horowitz (2003), p. 124.

is 0%, since a candidate can get elected due to vote transfers from other candidates without themselves receiving any first preference votes.¹⁴⁰

Comparing the thresholds to those of Rehfeld's design shows that James' design better diversifies success than Rehfeld's, as its threshold of exclusion is significantly lower (16.7% compared to 50%), giving minority candidates (or parties) a higher chance of getting elected under the worst circumstances.¹⁴¹

James' design also better maximizes success. With a threshold of exclusion of around 16.7% in a five-seat district, there are around $5 \times 16.7\% = 83.5\%$ decisive votes if all seats are filled with a number equivalent to the threshold of exclusion and, correspondingly, around 16.5% of the votes are wasted. This minimum number of wasted votes of 16.5% (it may be higher when less votes are needed to win a seat, i.e., under better circumstances) is smaller than Rehfeld's minimum number of around 50%.

Just like Rehfeld's design with a majority formula, James' design equalizes success only if lower preference votes are taken into account, for the thresholds of exclusion and representation can be considered unified only if lower preference votes are counted.

Thus, by introducing a proportional electoral formula and increasing the district magnitude, James' proposal increases the diversity and maximization of success. The heterogeneity of the districts in this multi-seat proportional system does not magnify the power of majorities but, rather, creates incentives for majority legislators to pay attention to a minority voice while that voice still has a chance of getting into the legislature.

4.3.3. Counterproposal: Nation-Wide Objective Constituency with Party-List PR

By introducing proportionality and increasing the district magnitude, a design becomes better able to diversify and maximize success. While James' proposal improved on Rehfeld's by introducing proportionality and increasing the district magnitude from one to five, I propose to combine proportionality with a further increase of the district magnitude to 435. This means switching from 87 mini-nations to a single nation-wide objective constituency. As the ordinal ballot needed for proportional STV would become too lengthy with this number of seats, I propose to use a party-list system of proportional representation (party-list PR).

In party-list PR, a categorical party-list ballot is used: A party provides a list of candidates and voters have a single vote for a party. In a closed list system, voters can vote for a party but cannot vote for an individual candidate on the list. The party's own ranking of the candidates determines which candidates are elected to the party's seats. In an open-list system, voters can indicate a preference for one or perhaps several candidates on a party's list. If the system is fully open, the preferences of the voters determine which candidates are elected for the party's seats. If the system is flexible, the party's initial ranking of the candidates is decisive unless a candidate receives a sufficient number of support votes.¹⁴²

Party-list PR assigns seats to parties (rather than to candidates) proportional to their vote share. The possible apportionment methods to allocate the seats can broadly be categorized as either largest remainder methods or highest average methods. The main difference between these methods lies in the method of awarding seats for fractional vote shares,¹⁴³ which causes some methods to slightly favor larger parties over smaller ones, hence being slightly less able to diversify success.¹⁴⁴ The *largest remainder methods* use a quota to calculate the number of seats that should be allocated to a party. A party receives as many seats as it has full quota. If this leaves some seats unfilled, the unallocated seats

¹⁴⁰ Gallagher (1992), p. 486.

¹⁴¹ See also James (2015a), p. 391.

¹⁴² Gallagher and Mitchell (2005), pp. 10-11.

¹⁴³ James (2014), p. 184.

¹⁴⁴ For an elaborate discussion on this, see Gallagher (1992).

are awarded to the parties with the largest remainders.¹⁴⁵ The *highest average methods* can also be described in terms of quotas, but ‘with the quota now depending to some extent on the distribution of votes between parties rather than being determined solely by the total number of votes and seats as is the case with largest remainder methods.’¹⁴⁶ The goal is to find a quota such that all seats are immediately allocated. For example, under the D’Hondt method where each party receives the upper bound of its share of seats (the number is rounded up to the closest integer), the goal is to find a quota such that all seats are allocated when rounding up.

The quota used by largest remainder methods are the same as the quota used for STV. Besides the Droop-quota defined in James’ STV proposal, other well-known quota are the Hare quota $\frac{100\%}{\# \text{ District Seats}} + 1$ and the Imperiali quota $\frac{100\%}{(\# \text{ District Seats}+2)} + 1$.¹⁴⁷ The three quota differ in whether they add zero, one or two to the denominator of the fraction. The Hare quota is the largest of the three. In general, the larger the quota, the better the smaller parties are likely to do and, thus, the more diversity in success there is likely to be. The quota of the highest average methods oscillate around the Droop and Hare quota. When the district magnitude increases, the quota converge towards the Hare quota.¹⁴⁸

In order to compare the 435-seat party-list PR system to James’ design, the thresholds of representation and exclusion should be calculated. I will assume that either a largest remainder method with Hare quota or a highest average method converging towards the Hare quota is used to allocate seats. This gives a threshold of exclusion that is equal to the Hare quota, which is given by 0.23% +1 votes in a 435-seat district.¹⁴⁹ The threshold of representation greatly varies with the number of competing parties.

It is given by the following formula: $\frac{100\%}{(\# \text{ Parties})(\# \text{ District Seats})} + 1$. Given Duverger’s law, which states that PR systems tend to lead to the formation of multiple parties, this threshold is likely to be close to 0%.¹⁵⁰

To determine whether the system better diversifies success, observe that the threshold of exclusion is significantly lower than in James’ design (0.23% compared to 16.7%). A lower threshold implies that minority groups have a higher chance of getting represented in the legislature and, thus, that there is more diversity of success. This is the case, even though the threshold of exclusion concerns a party’s share of votes in the party-list system, while it concerns a candidate’s share of votes in James’ system. One could even argue that ensuring the representation of minority interests by parties enhances

¹⁴⁵ Gallagher (1992), p. 471.

¹⁴⁶ Ibid., p. 478. The most well-known highest average methods are the Adams, the Danish, D’Hondt, the Equal Proportions, the Modified Saint-Laguë and the Pure Saint-Laguë. It is beyond the scope of this dissertation to discuss the mathematical details of each method. For a seminal introduction into the different methods, see Balinski and Young (1982).

¹⁴⁷ Note that James does not justify his choice for the Droop quota in STV. A potential justification relevant to the maximization of success concerns the number of wasted votes. As Gallagher (1992, p. 481) explains, no matter the quota, the Droop quota specifies the share of votes that a candidate actually needs to be elected. For example, in a five-seat district, it is impossible for five other candidates to exceed 16.7 % of the votes. Any votes over and above this quota are surplus votes and should be freed to be transferred to other candidates. However, Gallagher points out, while the Droop quota indeed ensures that no votes are cast in excess of what is needed, the other side of the coin is that the Droop quota ensures that 16.7% of the votes in a five-seat electoral district are always unused and ineffective. There seems to be no reason to prefer this way of wasting votes over wasting votes by keeping them unused in the possession of elected candidates, as would happen when using the Hare quota. In fact, since the Hare quota leaves some of a winner’s surplus votes wasted by failing to transfer them, smaller parties have a slightly better chance of getting elected under the Hare quota than under the Droop quota, meaning that the former is slightly more able to diversify success.

¹⁴⁸ See Gallagher (1997), pp. 181-185.

¹⁴⁹ Note that this percentage would be even lower when taking the Droop quota.

¹⁵⁰ See footnote 5 on Duverger’s law.

deliberative diversity in the legislature, as a party system leads to few ideologically, coherent groups rather than hundreds of individual candidates with individual interests.¹⁵¹

The system also better maximizes success, as its threshold of exclusion is lower. With a threshold of exclusion of around 0.23% in a 435-seat district, the minimum number of wasted votes is around 0%. This is significantly lower than the 16.5% in James' design. Here, it should be noted that this low threshold is due to the high district magnitude, which is possible with a categorical party-list ballot but not with an ordinal candidate-based ballot. The categorical party-list ballot is an improvement on the ordinal candidate-based ballot in STV with respect to maximizing success. First, both ballot structures allow voters to identify with multiple elected officials. James seems to suggest that the ordinal ballot does so by allowing voters to express a preference for multiple candidates.¹⁵² The party-list ballot does so by linking candidates to parties for which voters have expressed a preference. Second, while the ordinal ballot is prone to minimizing first-preference success, the party-list categorical ballot is not. This proneness to minimizing first-preference success follows from the *non-monotonicity* of ordinal ballots: Ranking a candidate higher on a ballot may hinder her chances of getting elected, 'because doing so may alter the transfer of lower preferences, thereby changing the order in which candidates are eliminated.'¹⁵³

Lastly, the system better equalizes success based on first preference votes (rather than lower preference votes), as the thresholds of exclusion and representation differ at most 0.23% and the allocation of seats to parties is based on their full Hare quota.

Thus, the nation-wide party-list PR system better diversifies, maximizes and equalizes success than James' design, given its relatively low threshold of exclusion. This low threshold of exclusion is a result of the high district magnitude, which is only possible with a categorical party-list ballot.

4.4. Conclusion

To conclude this Chapter, whether an electoral design is justifiable for the purpose of authorizing legitimate representatives depends on the way in which it facilitates the success of subjective constituencies. From the limiting conditions for legitimate representation, three IDPs for subjective constituencies can be derived. Electoral design should facilitate the success of diverse subjective constituencies (the IDP of diversifying success) in order to enhance deliberative diversity in the legislature, which in its turn incentivizes representatives to pursue the appropriate substantive aim of ultimately promoting the public good. Electoral design should maximize the number of voters in a successful subjective constituency (the IDP of maximizing success) in order to ensure that voting power is maximized, as measured by the reduction of wasted votes cast for a candidate who does not get elected. Electoral design should facilitate the formation of equal-sized successful subjective constituencies (the IDP of equalizing success) in order to ensure that voting power is maximized, as measured by the reduction of surplus votes (i.e., wasted votes that are cast in excess of what a candidate needs to win).

The degree to which success is diversified, maximized and equalized can be analyzed by looking at the percentage of votes needed to win a seat. The thresholds of representation and exclusion express this percentage under, respectively, the best and the worst circumstances for an electoral candidate (or party). The lower the threshold of exclusion, the more success is diversified and maximized. The smaller the difference between the thresholds of representation and exclusion, the more success is equalized.

¹⁵¹ See also the discussion by James (2004, pp.148-149) of Thomas Christiano's argument in favor of representation by parties as opposed to representation by individuals.

¹⁵² James (2015a), p. 392.

¹⁵³ James (2004), p. 168.

There are three key components of electoral design that shape these percentages and, thereby, determine the success of subjective constituencies: the electoral formula, the ballot structure and the district magnitude. As the design of each component is interdependent, three design proposals have been compared that differ on one or more of these components. The design proposals include: (1) Rehfeld's proposal for single-seat mini-nations with seat quota; (2) James' proposal for 5-seat mini-nations with proportional STV; (3) my proposal for a nation-wide objective constituency with party-list PR.

The comparison of the three design proposals shows that a proportional electoral formula in combination with a higher district magnitude significantly increases the degree to which an electoral design is capable of diversifying, maximizing and equalizing success. Rehfeld failed to appreciate the value of a proportional electoral formula as he mistakenly applied the IDPs for objective constituencies to the subjective constituencies formed in PR systems. While James' design significantly improves on Rehfeld's by introducing a proportional electoral formula and increasing the district magnitude from one to five, the nation-wide objective constituency with party-list PR is even more justifiable by the IDPs for successful subjective constituencies as it combines proportionality with a much bigger district magnitude. Since the nation-wide objective constituency with party-list PR does not only satisfy the IDPs for successful subjective constituencies to the highest degree but also satisfies the IDPs for objective constituencies (it uses the default nation-wide objective constituency), this electoral design can be considered the most justifiable for the purpose of authorizing legitimate representatives.

5. Concluding Remarks

Representative democracies face the challenge of ensuring a close correspondence between the laws and the preferences of the people, as the laws are enacted by elected officials who constitute a tiny subset of the people. Presumably, an enactment of legitimate laws corresponding to the preferences of the people requires that the elected officials act as legitimate representatives. Elected officials can only be legitimately representing the people if at least the following limiting conditions for legitimate representation are satisfied: Elected officials must be *properly authorized* and *properly held to account* by the same group of voters, must ultimately pursue the *appropriate substantive aim* of the public good, and must be elected by an *appropriate Decision Rule* that equalizes and maximizes the voting power of voters. These are minimum conditions that, presumably, *any* nation should endorse if it purports to have legitimate laws enacted by legitimate representatives.

The design of electoral systems – the set of rules structuring how votes are cast and converted into seats in the representative assembly (e.g., the legislature) – is highly consequential for ensuring that the authorized representatives satisfy the limiting conditions for legitimate representation. Electoral design, first of all, defines the group of people who are eligible to authorize and hold to account by voting, i.e., determines the representative's electoral audience, also called the *objective electoral constituency*. Only if electoral design defines these objective constituencies to be *stable*, representatives will be authorized and held to account by the same group of people. Only if it assigns a number of voters to each objective constituency proportional to its number of seats (*population-seat proportionality*) can voting power be equalized. And if the design constructs *heterogeneous* and *involuntary* objective constituencies, it can create incentives for representatives to ultimately pursue the public good. Second, electoral design shapes whether and which groups of people have a representative of their choice elected to a seat in the legislature, i.e., it shapes the successfulness of *subjective electoral constituencies*. Only if it maximizes the number of voters in successful subjective constituencies (*maximizing success*) and equalizes the sizes of successful subjective constituencies (*equalizing success*), is the voting power of voters maximized. Only if it diversifies the subjective constituencies that become successful (*diversifying success*), it enables representatives to pursue the public good.

The electoral design that does this the best is the design with a *nation-wide objective constituency* and a system of *party-list proportional representation (party-list PR)*. The nation-wide objective constituency should be taken as the institutional default design of objective constituencies, as there is no objective constituency definition that can be both more stable and more heterogeneous. Furthermore, a proportional system is more capable of maximizing, equalizing and diversifying success than a majority or plurality system, and combined with a nation-wide objective constituency – i.e., proportionality in combination with a maximal district magnitude – there is no electoral design that maximizes, equalizes and diversifies success to a higher degree. Hence, the nation-wide PR system is more justifiable than any other electoral design for the purpose of authorizing legitimate representatives. As the party-list structure is often practically necessary for the ballot structure given the size of nation-wide objective constituencies and there are no strong reasons to prefer a candidate-focussed structure, it follows that the nation-wide party-list PR system is the most justifiable electoral design for the purpose of authorizing legitimate representatives.

In *The Concept of Constituency*, Rehfeld used the same goal (the purpose of authorizing legitimate representatives) and the same assumptions (the limiting conditions for legitimate representation) in his normative search for the most justifiable electoral design. However, the design that he concluded to be the most justifiable for the same purpose and given the same assumptions is completely different from the nation-wide (party-list) PR system. Rehfeld argued against a PR system and for the random and permanent assignment of voters to single-seat objective constituencies (that I have coined single-seat

“mini-nations”). His design proposal approximates the heterogeneity and stability of the nation (mini-nations) instead of taking the nation-wide objective constituency itself, minimizes rather than maximizes the number of seats per objective constituency (single-seat), and constitutes a majority or plurality system rather than a proportional system.

If there is neither a difference in the design goal nor a difference in the assumptions underlying the justification, the question arises: Which insights have led to a conclusion about the most justifiable design in this dissertation that is so different from Rehfeld’s? The answer to this question is twofold. First, Rehfeld seemed to assume that voters have to be divided over different objective constituencies. Questioning the validity of this assumption, I argued that no division – the nation-wide objective constituency – is equally or perhaps even more compatible with the limiting conditions for legitimate representation. Second, I made a clear conceptual distinction between the objective constituency and the subjective constituency, while Rehfeld seemed to conflate the two. This conflation led Rehfeld to mistakenly reject PR systems. Inspired by James,¹⁵⁴ I then extended the analysis of the most justifiable design beyond the definition of objective constituencies to the way electoral design shapes the success of subjective constituencies. This resulted in new normative starting points for electoral design (the IDPs of diversifying, equalizing and maximizing success) and a design that better satisfies these new IDPs as well as the IDPs formulated by Rehfeld and/or underlying Rehfeld’s argumentation (the IDPs of stability, heterogeneity, involuntariness and population-seat proportionality).

The upshot of the normative argument for nation-wide (party-list) PR systems is not that all representative democracies should use such a system but that any deviation from this electoral design should be justified. A justification for deviation could, for example, be a rights-based justification concerning the rights of certain groups to have a special status in the electoral process. This justification is used in Bosnia-Herzegovina in which voters are divided over two objective constituencies based on ethnicity – Serbs on the one hand and Bosniaks and Croats on the other – and each objective constituency elects representatives for approximately half of the House of Representatives. Another well-known justification for deviation is the stability and durability of the representative government. The representation of all shades of opinion may lead to a deeply fragmented legislature with great difficulty in forming a coalition.¹⁵⁵ To prevent this from happening, often legal thresholds are introduced that fix the minimum percentage of votes required to win a seat. In several post-communist countries (such as the Czech Republic, Latvia, Poland and Slovakia), political parties need at least five percent of the national votes to win a seat.¹⁵⁶ In Turkey, the legal threshold is even ten percent of the total number of national votes. In the Netherlands, there is no legal threshold and the non-legal threshold of exclusion is very low, lying below one percent: 0.67 percent. The electoral system uses a largest remainder method to allocate seats, and parties with less than 0.67 percent of the seats are not given a residual seat even if they have the largest remainder of votes.

Thus, deviations from the nation-wide (party-list) PR system may be justifiable for reasons related to the particular national context or a particular aim. With this dissertation, I hope to have created or raised awareness that such deviations are a deliberate choice compromising legitimate representation. This awareness could lead to more transparency of fact about electoral design choices and transparency of reason for making such choices, leading to more justifiable electoral design and, consequently, a more legitimate enactment of laws in representative democracies.

¹⁵⁴ James (2015a).

¹⁵⁵ Horowitz (2003), pp.117-118.

¹⁵⁶ Gallagher and Mitchell (2005), p. 13.

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7. Appendix

This Appendix presents tables describing normative conditions and mathematical expressions that form the building blocks of this dissertation's argument. The key concepts used in these tables are defined as follows:

- *Objective Electoral Constituency* (or *Electoral District*): the group of people who are *eligible* to vote for a particular representative (or party).
- *Subjective Electoral Constituency*: the group of people who voted for a particular representative (or party).
- *Limiting conditions for legitimate representation*: minimum conditions that a representative has to satisfy if he/she purports to be legitimate (or democratic).
- *Institutional Default Positions (IDPs)*: normative starting points for electoral design, from which deviations must be justified.
- *Threshold of representation*: the minimum share of votes needed to secure a seat, i.e., the number of votes needed under the best circumstances (an opposition widely fractured among several competing candidates).
- *Threshold of exclusion*: the maximum share of votes needed to secure a seat, i.e., the minimum number of votes needed under the worst circumstances (an opposition unified around the minimum number of candidates).

Table 1 is based on the discussion in Chapter 2 and presents the limiting conditions for legitimate representation.¹⁵⁷

Table 2 is based on the discussion in Chapter 3 and describes the IDPs for objective constituencies.

Table 3 is based on the discussion in Chapter 4 and describes the IDPs for (successful) subjective constituencies.

Table 4 is based on the discussion in Chapter 4 and presents the thresholds used to compare the degree to which different electoral designs satisfy the IDPs for subjective constituencies.

¹⁵⁷ Table 1 is partly based on Table 8.1 presented by Rehfeld (2005), p. 182.

Table 1: Limiting Conditions for Legitimate Representation

Condition	Description	Notes
Proper Authorization	The representative must be authorized by some or all of those whom he/she has the institutional authority to represent.	In elections, the representative must be authorized by some or all of the members of the objective constituency.
Proper Accountability	The representative must be accountable to some or all of those whom authorized him/her.	In elections, the representative must be accountable to some or all of the members of the objective constituency.
Appropriate Substantive Aims	The representative must act with appropriate substantive aims.	In the legislature, the representative must ultimately pursue the public good.
Appropriate Decision Rule	The Decision Rule used by the Selection Agent must be appropriate.	In elections, the Decision Rule encompasses the set of rules specified by the electoral system. An appropriate Decision Rule equalizes voting power by equalizing vote weights and maximizes voting power by reducing the number of wasted votes (surplus votes and/or votes that are not cast for winners).

Table 2: IDPs for Objective Constituencies

IDP	Description	Aim
Stability	Membership of objective constituencies must be permanent, in the sense of life-long membership.	Permanent membership ensures that the group of people who authorize a representative are also those whom can hold the same representative to account.
Heterogeneity	The composition of objective constituencies should mirror the distribution of political interests in the nation as a whole.	Heterogeneity around political ideology incentivizes or otherwise enhances the ability of representatives to ultimately pursue the public good.
Involuntariness	Voters should <i>not</i> have a choice in entering or exiting a particular objective constituency.	While voluntariness might enhance voting equality by equalizing vote weights, it also leads to homogeneity. Only involuntariness is compatible with heterogeneity.
Population-Seat Proportionality	The population size of an objective constituency should be proportional to the number of seats and <i>vice versa</i> .	Proportionality ensures equality in voting power across objective constituencies, as measured by equality in vote weights, and maximizes voting power in the sense that no voter would have more voting power as a member of another objective constituency.

Table 3: IDPs for Successful Subjective Constituencies

IDP	Description	Aim
Diversifying Success	Electoral design should facilitate the formation of diverse successful subjective constituencies.	Deliberative diversity in the legislature incentivizes or otherwise enhances the ability of representatives to ultimately pursue the public good.
Maximizing Success	Electoral design should maximize the number of voters in a successful subjective constituency.	The number of wasted votes cast for a losing candidate should be reduced in order to maximize voting power.
Equalizing Success	Electoral design should equalize the sizes of successful subjective constituencies.	The number of wasted votes cast in excess of what a candidate needs to win (i.e., surplus votes) should be reduced in order to maximize voting power.

Table 4: Thresholds of Representation and Exclusion

	Rehfeld's proposal		James' proposal	Counter-proposal
	Single-Seat Plurality Mini-Nations	Single-Seat Majority Mini-Nations	Five-Seat Proportional Mini-Nations	435-Seat Proportional Nation-wide
Threshold of Representation	$> \frac{100\%}{\# \text{ competing candidates}}$	$> 50\%$ including lower preference votes; $> 0\%$ excluding lower preference votes (in instant run-off system)	$> 16.7\%$ including lower preference votes; $> 0\%$ excluding lower preference votes (in STV)	$> \frac{0.23\%}{\# \text{ competing parties}}$
Threshold of Exclusion	$> 50\%$	$> 50\%$	$> 16.7\%$	$> 0.23\%$

8. Summary (Dutch)

Verkiezingen functioneren als autorisatie mechanismen voor democratische vertegenwoordigers in vertegenwoordigende lichamen. Gegeven deze functie rijst de vraag welk kiessysteem het best verdedigbaar is met het oog op het autoriseren van democratische vertegenwoordigers.¹⁵⁸ Wellicht vanwege het ambitieuze en interdisciplinaire karakter van deze onderzoeksvraag wordt deze in de politicologische literatuur over kiessystemen niet gesteld. In mijn masterscriptie ga ik de uitdaging aan om een normatief filosofische uitwerking van het begrip ‘democratische vertegenwoordiging’ te koppelen aan voorwaarden voor het ontwerp van kiessystemen. Daarmee hoop ik bij te dragen aan transparantie over ontwerpkeuzen: enige afwijkingen van het meest gerechtvaardigde kiessysteem gegeven haar autoriserende functie zouden met redenen onderbouwd moeten worden.

Om de onderzoeksvraag te beantwoorden moeten drie kernbegrippen gekoppeld worden: democratische vertegenwoordiging, autorisatie en het kiessysteem.

Allereerst wordt in mijn scriptie de relatie tussen democratische vertegenwoordiging en autorisatie uitgewerkt. Gebaseerd op de theorie van Rehfeld wordt een vertegenwoordiger gedefinieerd als iemand die de institutionele autoriteit bezit om namens de vertegenwoordigden te handelen ter uitvoering van een specifieke taak. Een geautoriseerde moet aan vier criteria voldoen om een *democratische* vertegenwoordiger te (kunnen) zijn: zij moet (1) geautoriseerd zijn door en (2) aansprakelijk zijn jegens de vertegenwoordigden, (3) uiteindelijk het algemeen belang nastreven, en (4) verkozen zijn op basis van een stemprocedure waarbij kiezers een gelijk en maximaal stemgewicht hebben.

Ten tweede wordt de relatie tussen autorisatie en het kiessysteem uitgewerkt. De invloed van een kiessysteem op de autorisatie is zowel bepalend als beïnvloedend. Door het indelen van kiezers in kiesdistricten (het definiëren van *objective constituencies*) bepaalt een kiessysteem welke kiezers een bepaalde vertegenwoordiger kunnen autoriseren en de autorisatie moeten erkennen. Daarnaast *beïnvloedt* een kiessysteem, met name door de keuze voor een stemregel, welke en hoeveel kiezers een vertegenwoordiger in het vertegenwoordigend lichaam krijgen aan wie zij door middel van hun stem autorisatie hebben verleend (het beïnvloedt het succes van *subjective constituencies*).

Op basis van de twee bovenstaande koppelingen kan het verband tussen democratische vertegenwoordiging en het kiessysteem gelegd worden. De vier criteria voor democratische vertegenwoordiging leiden tot criteria voor de wijze waarop een kiessysteem de autoriserende functie van verkiezingen zou moeten bepalen en beïnvloeden. Met betrekking tot de bepalende functie zou een kiessysteem kiezers (1) op onvrijwillige basis en (2) permanent moeten indelen in kiesdistricten waarbij (3) kiezers met verscheidene politieke ideologieën bij elkaar worden ingedeeld en (4) het aantal zetels per kiesdistrict evenredig is aan het aantal kiezers in het district. Met betrekking tot de beïnvloedende functie zou een kiessysteem ervoor moeten zorgen dat (5) verscheidene groepen kiezers een vertegenwoordiger naar keuze in het vertegenwoordigend lichaam hebben, (6) het aantal kiezers in deze groepen ongeveer gelijk is en (7) een maximaal aantal kiezers tot zo’n succesvolle groep behoort.

Het Nederlandse kiesstelsel voor de Tweede Kamerverkiezingen blijkt een kiesstelsel te zijn dat het beste aan de bovenstaande zeven voorwaarden voldoet en daarmee het best verdedigbaar is met het oog op het autoriseren van democratische vertegenwoordigers. Het Nederlandse kiesstelsel staat hiermee in sterk contrast met het Amerikaanse kiesstelsel, waarbij kiezers niet in één nationaal maar 435 regionale kiesdistricten worden ingedeeld en de stemregel zetels aan (kandidaten van) politieke partijen toekent op basis van de relatieve meerderheid en niet op basis van proportionele vertegenwoordiging.

¹⁵⁸ Een kiessysteem is een verzameling regels die bepalen hoe stemmen worden uitgebracht en worden omgezet in zetels.

Al is mijn scriptie gebaseerd op dezelfde aannames als Rehfeld maakt in zijn invloedrijke boek *The Concept of Constituency*, het komt tot een andere oordeel over het best verdedigbare kiessysteem. De reden hiervoor is tweeledig. Enerzijds verwerp ik Rehfeld's impliciete aanname dat er niet één nationaal kiesdistrict behoort te zijn. Anderzijds maak ik een helder onderscheid tussen de bepalende en de beïnvloedende functie van kiesstelsels en werk ik die laatste functie verder uit.

Concluderend vormt mijn scriptie zowel een reactie op als een uitbreiding van *The Concept of Constituency* van Rehfeld én zet het een stap in de richting van een betere rechtvaardiging van bestaande kiessystemen.