

Reconceiving the democratic boundary problem

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Abstract

The democratic boundary problem arises because it appears that the units within which democratic decision procedures will operate cannot themselves be constituted democratically. The study argues that setting the boundaries of democracy involves attending simultaneously to three variables: *domain* (where and to whom do decisions apply), *constituency* (who is entitled to be included in the deciding body) and *scope* (which issues should be on the decision agenda). Most of the existing literature has focussed narrowly on the constituency question, endorsing either the All-Affected Interests Principle or the All Subjected Principle, but neither is satisfactory as a general solution. In particular, the former fails to explain why having interests at stake in a decision necessarily gives you the right to participate in making it, and the latter, although more plausible on that count, assumes that the domain and scope issues have already been settled. To make progress, we need to bring democratic values to bear on the boundary problem. The units we favour should be those that are likely to promote political equality and solidarity among members of the demos. Although this approach will often justify existing territorial states as sites of democracy, it can also generate arguments for making boundary changes along one or other dimension.

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1 | THE BOUNDARY PROBLEM'S THREE DIMENSIONS

The democratic boundary problem has loomed large in recent political philosophy, no doubt fuelled by dissatisfaction with taking the nation-state in its current form as the privileged site of democratic politics. Yet, despite a fairly extensive literature addressed to the topic, there is no sign of agreement on a solution, or indeed on what exactly the boundary problem is. The source of the problem can be quickly explained, however: Before a democracy can begin to operate, it needs to have a (formal or informal) constitution—for example, there has to be some rule that specifies who is entitled to take part in its proceedings, by voting and so forth. But, it cannot self-constitute: In some way or other, the constitution has to be selected in advance. If that task is handed over to *another* democratic body, however, we immediately run the risk of an infinite regress. How are we to decide on the make-up of the second-order body that decides on the constitution of the first-order one (Abizadeh, 2008; Goodin, 2007; Whelan, 1983)? A bounded democracy, it seems, cannot be democratic all the way down.

Some philosophers regard the democratic boundary problem as essentially insoluble, at least philosophically (see e.g., Dahl, 1970, p. 59). We have to concede, they say, that the choice of the units within which democratic decision-making is going to occur is to a large extent arbitrary. But having made this concession, one can then move in two different directions. One is conservative: We should stay with the units that we already have, in particular existing nation-states, even while recognising that their boundaries are largely a matter of historical contingency. If we try to alter them, we are merely replacing one form of arbitrariness with another. The other is more radical. We must come to understand that the constitution of our democracies is always open to challenge, in particular the challenge that comes from the hitherto-excluded. For example, people outside of the state, but significantly impacted by its decisions, may have a strong claim to participate in making those decisions (Abizadeh, 2008). But, this does not point us towards a definitive answer to the boundary problem of the kind that might satisfy a philosopher.¹ Instead, it leaves boundary setting as a matter of political contestation between groups with opposing interests (Näsström, 2011).

Neither of these responses seems wholly satisfactory, however (for a general appraisal of the claim that the boundary problem is insoluble, see Maltais, Rosenberg and Beckman, 2019; for reflection on how an author's preferred philosophical style will determine what she sees as an appropriate response to it, see Donahue & Ochoa Espejo, 2016, pp. 150–152). The first is undermined by the fact that boundaries have in the past been redrawn in ways that are beneficial to democracy, and there is no reason to think that this process of revision has come to an end. Typically, these are cases in which previous boundaries have encircled populations that found it difficult to live together as one people, making collective decisions that applied to them all. By creating new boundaries—either between sub-units within a federal system, or by outright secession—well-functioning democracies can be brought into existence. Conversely, the radical view carries with it the danger that by making all existing boundaries into objects of ongoing contestation, the functioning of democracy itself is put in question, since democracy seems to require a relatively stable demos that can make coherent decisions over time.

These are preliminary observations, intended only to suggest that we have democratic reasons for wanting to find a solution to the boundary problem, if we can. Yet even among those who believe that a solution can be found, there is disagreement about how the problem is best characterised. For some, it is about the physical positioning of the boundaries within which a democracy is going to operate: Where should we draw the lines of political division on the map, so to speak (see, e.g., Simmons, 2013). For others, it is about who should or should not be included in the constituency of persons who are entitled to participate in making decisions, on the assumption that the boundaries within which those decisions will apply are already fixed. But on reflection, it seems that those two issues are deeply interconnected: One cannot (justifiably) set physical boundaries without knowing who is going to be included in the demos that will legislate inside them, and vice versa. I shall call the first issue the *domain* issue and the second the *constituency* issue. And there is yet a third dimension to be considered, namely that of *scope*: what is the range of issues that any given democratic body is entitled to make decisions about? The scope dimension tends to be neglected in discussions of the boundary problem, perhaps because the participants take states as the primary sites of democracy, while at the same time assuming that within their own domain states are

sovereign, and thus have unlimited scope to decide. But, as soon as we complicate the picture by thinking about multi-level forms of democracy, the scope question comes directly into play. Oxford City Council can make decisions about rubbish collection within the city boundaries, but not about health services, for instance. It is by no means obvious that this is undemocratic, that within its domain the Council (or the people of Oxford that it represents) must be entitled to decide single-handedly about *everything*.

The point, then, is that from a democratic point of view, the ideal case is one in which constituency, domain and scope are perfectly aligned: a given body of people make decisions that apply within the area that they, and only they, inhabit on issues that are legitimately theirs to decide. Conversely, where we find misalignment, as we often will, in principle it can be put right either by altering the constituency (including more or fewer people in decision-making), altering the domain (widening or narrowing the geographical range over which the decisions apply), or altering the scope (adding to or subtracting from the decision agenda). This is the point that appears to be missed by those who think that the boundary problem is only about the constituency, or only about the domain. My first proposal for reconceiving the problem, therefore, is that we should think of it as inherently multidimensional in the way just explained.

My second proposal is that to solve the boundary problem, we need to have a theory about the inner workings of democracy. We need to be able to anticipate what is going to happen when a given group of people meet to decide on an issue that concerns them all, though typically not everyone in the same way. To see why this is important, consider the case where a group not currently included in the decision-making constituency is likely to feel the impact of the decisions that are about to be taken. *Prima facie*, this is a case in which the constituency ought to be expanded to include that group. But, the unstated assumption here appears to be that their presence will alter the outcome in a way that is favourable to the excluded group, either promoting their interests or advancing their values. Their voices or their votes will count, in the right direction. But why assume this? If the group forms a minority, perhaps the previously enfranchised majority will continue just as before and vote accordingly. In the worst case, perhaps the inclusion of the group will backfire, as the majority, when challenged by new voices, hardens its position. The point, therefore, is that to justify expanding the constituency in such a case, we need to open up the black box and look at what is going on inside. Solving the boundary problem requires us to have a theory about how democratic systems of different kinds are likely to work, in the sense of translating the interests, opinions, judgements and so forth of their members into collective decisions.

2 | THE ALL-AFFECTED INTERESTS PRINCIPLE

With that framework in place, I now examine some principles that have been applied to solve the boundary problem. Perhaps, the most prominent is the All-Affected Interests Principle (AAIP). As classically formulated by Robert Dahl, this holds that 'everyone who is affected by the decisions of a government should have the right to participate in that government' (Dahl, 1970, p. 64).² Notice that this formulation, by referring to 'decisions of a government', implicitly assumes that the domain question has already been resolved, since by 'a government' Dahl clearly intends a body with a fixed territorial jurisdiction. However, it is also possible to formulate the principle more abstractly: According to Arrhenius, it is the principle that 'the people that are relevantly affected by a decision ought to have, in some sense, influence over it' (Arrhenius, 2005, p. 20). Fung explicitly extends the principle to bodies beyond the state: 'individuals ought to be able to influence the decisions of a large range of organisations, not just territorial states, whose actions regularly or deeply affect their interests' (Fung, 2013, p. 240). Nevertheless, the key idea behind AAIP is to solve the boundary problem by identifying the constituency that should be empowered to take decisions whose domain and scope are already known.

What can be said in favour of AAIP? It is usually defended by appeal to two kinds of case in which we find exclusion from democratic decision-making problematic. One is exemplified by the disenfranchisement of women prior to the 20th century: Parliaments were making laws on a wide range of issues that deeply affected women's interests, but women were given no say in the making of those laws. The other is exemplified by a state that takes decisions that

seriously affect people living in a neighbouring state: the decision to build a nuclear power station (or conduct nuclear tests) close to the border is a popular example (Arrhenius, 2018, pp. 100–101). However, although these examples appear to support AAIP, they do not entail it because they can also be accommodated by other principles. For example, the disenfranchisement of women is also condemned by the All-Subjected Principle (ASP), which I will discuss below. Besides accumulating supporting examples, we need to look more closely at the reasoning behind AAIP. Why should having your interests affected by decisions give you the right to participate in making those decisions?

There seem to be two possible answers. One justifies the right to participate instrumentally. By being allowed to take part in the process that leads up to a decision, a person makes it more likely that the outcome will promote her interests. But, as I noted above, there is a missing link in the argument here: For any given individual, or group of individuals short of a majority, their having a voice or a vote may fail to change the outcome in their favour, depending on the way in which the decision is reached—referring here both to the formal procedure, and the bargaining or deliberation that may take place alongside it.

It is also unclear that giving a person some influence over a decision procedure is necessarily the correct way to cater to the interest she may have in the outcome. In some circumstances, it is clearly incorrect. Appointment decisions are an obvious example. Selection committees should take the interests of candidates into account by impartially considering each applicant on their merits, but we do not think that the candidates themselves should be co-opted on to the committee. Or suppose that a number of firms are bidding for a government contract: For the people employed by those firms, a great deal financially may be at stake. Yet we do not believe that the employees in question should play any part in the process by which the award of the contract is decided.³

What these counter-examples to AAIP reveal is that, in its instrumental form, the principle has a utilitarian foundation. Letting people take part in the decisions that affect them is often a good way of promoting overall welfare. But, when it is not—because the result would be to bias what should be an impartial decision too heavily in their personal favour—they have no claim to take part, no matter how great their interest in the outcome. Something similar applies to those with ‘sinister interests’—interests opposed to those of the bulk of the constituency they are seeking to join.

There is, however, a second, non-instrumental, way to interpret AAIP. This holds that collective decisions that affect their interests can only legitimately be imposed on people following a justificatory procedure in which they are allowed to participate. This avoids the problem of people who can claim the right to participate but are unsuccessful in getting what they want—at least they had an opportunity to put their demands forward. But on further reflection, it seems doubtful that having interests at stake is sufficient to trigger a demand for justificatory access of this kind. In general, if a decision is going to be made somewhere that significantly affects my interests, what I can rightfully demand is that the body taking that decision should give those interests due consideration (Beckman, 2009, pp. 45–46). But, as López-Guerra (2005, p. 223) puts it, ‘being entitled to just treatment by other groups whenever our interests are at stake is quite different from being entitled to participate in the decision-making processes of those groups’. There may be occasions on which my interests are such that I should be given the opportunity to express them directly to the decision-makers through a consultation procedure. In a still narrower range of cases, I may have the right to be included in the decision-making body itself. In general, though, there are other means besides political participation by which to ensure that affected interests are properly considered (Saunders, 2012, pp. 292–293; Owen, 2012, pp. 137–139).

3 | THE ALL-SUBJECTED PRINCIPLE

In the subset of cases in which the interests people have at stake are such that they ought to be included in the democratic constituency, the principle that seems to capture this best is not AAIP but its main rival (in the constituency stakes), the ASP. Again, we find an early formulation of this in Dahl: ‘the demos should include all adults subject to the binding collective decisions of the association’ (Dahl, 1989, p. 120). But what does it mean to

be 'subject' to a government, or other decision-making body, and why should being subjected create a right to inclusion? As Beckman points out, the term is ambiguous: It could mean being legally bound to follow the laws that the government issues; or it could mean being subject to institutions with the capacity to enforce the law, in other words being coerced to obey (Beckman, 2014, pp. 255–258; see also; Goodin, 2016, p. 370).⁴ This distinction will matter in instances where the two come apart. However, the standard case of subjection to a government is being required to conform to a battery of laws that will be enforced if necessary by the threat of coercion, and it is the life-shaping character of this subjection that distinguishes it from other cases in which a person's interests are merely affected in one way or another. The right to be included in the decision-making constituency can then be justified by appeal to personal autonomy. Subjection carries with it the risk of domination, and the ability to speak and vote, directly or indirectly, on the rules that will be applied provides some protection (though never, it should be noted, complete protection) against that risk.

Because 'being subjected' to decisions appears to be considerably narrower than 'being affected' by them, supporters of ASP argue that it provides a more determinate, and more plausible, solution to the constituency problem than AAIP. Critics claim that in practice this is not so because states now regularly take decisions and make laws that apply to people outside of their borders, thereby subjecting outsiders to those laws, so ASP too implies that almost anyone might potentially have a right to be included in their decision-making. According to Goodin, 'anticosmopolitans hoping to rely on the ASP to keep the franchise within broadly conventional bounds will be sorely disappointed' (Goodin, 2016, p. 368). He points out that, acting either to protect themselves against various harms or in defence of their citizens living abroad, states now make laws that criminalise activities such as engaging in terrorism or in drug-trafficking no matter where they occur—and sometimes take steps to enforce them. Yet, although in a formal sense this may make large numbers of people world-wide subject to the laws of various states other than their own, it is not clear that this is 'subjection' in the sense that motivates ASP. Prior to reading Goodin, few non-Americans will have realised that they would be liable to be criminally charged by the US government for various offences that they might hypothetically commit. The subjection that gives rise to a claim for political inclusion is subjection that actually shapes a person's life by opening up (and protecting) options that they might choose while shutting off others, thereby both enabling and potentially threatening their autonomy (for further reflection on why merely hypothetical threats of coercion do not amount to autonomy-threatening subjection, see Miller, 2010; Beckman, 2014).

To be clear, there is certainly reason to be concerned about states exercising their legal powers extra-territorially when this is not essential for reasons of self-defence (such as warding off an imminent terrorist attack). This is where the broader framing of the boundary problem I am recommending is helpful, because these power exercises can be characterised as democratically unjustifiable extensions of the *domain* of decision-making: States should simply stop making laws with such a wide extension and rely instead on making reciprocal arrangements with other states to control cross-border criminal activity (a solution briefly considered by Goodin, 2016, p. 383).

Although I have presented ASP as in general a better answer to the constituency question than AAIP, I do not claim that taken alone it adequately solves the boundary problem. First, even as an answer to the constituency question, it may in some cases be too restrictive. Suppose the residents' association in the place where I live decides to embark on a campaign to improve the local environment, planting trees, repainting buildings and so forth. I should surely be allowed to participate and express my views, even though it would be more than a stretch to say that I am being 'subjected' to its decisions because no legal binding or coercion is involved. To explain my claim for inclusion, we appear to need to invoke AAIP. Second, and more important, ASP assumes that the domain and scope issues have already been settled. Once we have a decision-making body with the power to enforce its decisions over a particular area, we can ask who is and who is not subjected to those decisions and therefore has a right to be enfranchised. But in some cases, we might think that from a democratic perspective that is the wrong place to begin. Instead, we should be asking whether it is justifiable to have a decision-making body with that domain and/or scope in the first place. Perhaps, the political landscape should be divided up differently. We need, in other words, to take a multidimensional approach to the boundary problem.

4 | TACKLING THE PROBLEM BY APPEAL TO DEMOCRATIC VALUES: POLITICAL EQUALITY AND SOLIDARITY

Bringing these other dimensions of the boundary problem out into the open does not, however, tell us how they should be tackled. There are broadly two possibilities. One is to import elements from outside of democratic theory itself. Here, we would consider other desirable properties that we want our political systems to have, and then draw the boundaries so that units displaying these properties are created. For example, we might wish to have units that are capable of being economically self-sufficient; or units that bring together people who share a common identity of some kind, and therefore wish to be politically associated. I have argued elsewhere that a general theory of boundaries must include concerns such as these (Miller, 2016). However, critics will claim that this way of proceeding will leave solutions to the boundary problem too open to the contingencies of history, biasing the outcome in favour of the political units that currently exist. From a democratic perspective, they argue, it is unsatisfactory to have to conclude that the outer limits of democratic government will be determined by factors that do not themselves pass the test of democratic legitimacy (see Näsström, 2007; Yack, 2012, pp. 148–53; for a critique, see Maltais, Rosenberg and Beckman, 2019, pp. 441–444).

The second option, therefore, is to bring values that form part of democratic theory itself to bear on the boundary problem. What might these be? Elsewhere I have argued that this will depend on the conception of democracy that we favour, on a spectrum that runs between liberal and radical versions (Miller, 2009). Here, I focus on two values that both liberals and radicals should embrace: political equality and solidarity; I will finally suggest that they work most effectively in tandem.

Political equality is plainly a core component of democracy. To achieve it, it is necessary, but not sufficient, that the members of the demos should have equal political rights. Beyond this, they should have an equal opportunity to influence the decisions reached (see Erman, 2014, pp. 539–42; Song, 2012, pp. 45–46; for a longer discussion of the role that the idea of equal influence plays in justifying democracy, see; Kolodny, 2014). This is a demanding requirement, unlikely to be met fully for obvious sociological reasons (e.g., unequal access to some of the resources that can amplify a person's voice). Nevertheless, it can be applied to the boundary problem, requiring that decision-making bodies should be constituted in such a way that those who are included in them have as far as possible an equal opportunity to exert influence. This counts first of all in favour of bodies with a stable membership, taking decisions on a variety of issues over time. If we understand influence as the capacity to shift an outcome in the direction that you favour, equality of influence is unlikely to be achievable in the case of a single decision, where the majority view will typically prevail at the expense of the minority.⁵ But over the course of a series of decisions, each member of the demos can expect to be positively influential on a number of occasions, indeed statistically speaking more often than not. Contrast here, the approach suggested by AAIP, which, as critics have pointed out, seems to indicate that ideally the decision-making body should be constituted afresh for each new decision, since a different set of interests will be at stake (Song, 2012, pp. 56–58; Whelan, 1983, pp. 18–19).

The argument above would fail in the case where the same majority wins on each occasion that a decision is taken. So, still in the name of political equality, political boundaries should as far as possible be set so that they enclose a group with overlapping and interconnected interests. Christiano expresses this condition in terms of creating a 'common world...in which the fulfilment of all or nearly all of the fundamental interests of each person are connected with the fulfilment of all or nearly all of the fundamental interests of every other person' (Christiano, 2006, p. 85; see also Erman, 2014, p. 541.) Where basic interests are linked in this way, we have no reason to expect a consolidated majority emerging to dominate the remainder of the demos. Note that 'interests' here must be interpreted broadly so as to include not just material interests but also for instance cultural interests where these are pursued through political channels. A political association in which a majority group uses its political advantage to decide all cultural questions in its favour and without any concession to minorities does not realise political equality and is to that extent undemocratic. So boundaries drawn around that association as a single, undifferentiated unit also fail the test of democracy.

Such cases aside, the political equality argument will often speak in favour of existing territorial states as sites of democracy, since it is within such states that we are most likely to see the interlinking of interests that supports equality (see Song, 2012, pp. 58–62). Yet, although this allows historical contingencies to determine where the boundaries are drawn—since it is clearly a somewhat arbitrary matter that existing states have the precise shapes that they do—all the normative work is being done by the fact that they now enclose populations capable of living together as political equals. Where this is not the case, as in the example of the culturally polarised society, there will be an egalitarian case for redrawing boundaries to create new units that are better able to function as democracies.

I turn next to solidarity, which is also an essential component of democracy, though not in this case as a matter of definition but for empirical reasons. Solidarity within the demos matters on two main counts. First, it encourages people voluntarily to comply with laws and other decisions with which they may disagree, out of respect for fellow members who in turn are expected to comply with laws and decisions that *they* dislike. A democracy cannot rely on coercion as the main instrument to enforce its decisions. Second, solidarity encourages participants in the democratic process to reach decisions that are reasonably acceptable to every member, since they will be reluctant to impose policies that are socially or politically divisive. In the case where policies are made indirectly by elected representatives, they will not support parties standing on platforms that overtly privilege one or more sectional groups (e.g., racist or exclusive religious parties). This is the point at which political equality and solidarity converge: the more solidaristic an association, the more likely it is to be able to approximate equal political influence, because the members will attach the value to finding solutions to problems that everyone will find acceptable, which means listening to divergent voices and finding ways to accommodate them.

The implications for boundary drawing depend on what one believes about the sources of solidarity in groups whose members do not meet face to face (for some possible answers, see Miller, 2017). The main debate here is between those who hold that potentially any group can develop sufficient solidarity as its members co-operate politically over time, and those who hold that a pre-political identity of some kind—for example, a shared cultural identity—is also necessary. Its resolution may turn on how much one expects of democracy, in terms of its modus operandi and the policies it will produce. The higher one's expectations—for example, the closer it should come to reaching decisions by purely deliberative means—the more one will look for pre-political sources of solidarity among the demos, which in turn will mean attempting to draw the boundaries of democracy around groups likely to display that feature.

5 | CONCLUSION

I have argued that the existing literature on the boundary problem has (with one or two exceptions) mistakenly been searching for a single principle that could resolve the problem, such as AAIP. We need instead a broader approach that looks not only at individual claims for political inclusion, but at the collective properties that we want the demos to have, and at the anticipated quality of its decision-making. The issues of constituency, domain and scope need to be taken together, with the general aim of creating (or preserving) units that perform well, by democratic standards. This means that the decisions taken are well thought-out, consistent over time, fair to the different parties involved and so on. If we assume that the boundary question just is the question of who is entitled to participate in democratic institutions whose domain and scope are already fixed, we overlook the possibility that no well-functioning democracy can be created within existing boundaries. Instead, it may be these other dimensions that need to be changed, for example, by allowing a sub-unit to secede and become an independent decision-making body, or by amalgamating two units in cases where interests are intertwined in such a way that neither can make decisions that do not have significant repercussions for the other. Or, perhaps the problem is one of scope: decisions in a particular field ought to be shifted upwards or downwards in the hierarchy of decision-making bodies. To say that fishermen ought to have a voice when fishing quotas are being allocated because of their obvious

interest in the outcome does not yet settle which level of decision-making—local, national or regional—is the right one for decisions of that kind.

Equally, we should not assume that only democratically made rules can be politically legitimate. There may be valuable forms of international regulation, for example, that can be created by negotiation between states, but that cannot be made subject to direct democratic control. Proposals to democratise bodies such as the United Nations may seem attractive until one looks in more detail at what this would involve in practice, and at the content and quality of the decisions that would be reached. Solving the boundary problem also involves asking when democracy is the right answer, and when it is not.

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ENDNOTES

- ¹ It might be said that it points us towards global democracy: in principle, the demos is unbounded (Abizadeh, 2008; Goodin, 2007). But, philosophers who take this view immediately go on to concede that there is no way in which this could be realised in practice, so they fall back to the position identified in the text.
- ² For reasons of space, I leave aside here the vexed question of what it means to be affected by a decision. Does it mean that your material position is in fact changed, for better or worse, by the decision, that is actually taken? Or does it mean that your position might be changed, depending on what decision is reached? The latter interpretation of the principle will have the effect of rapidly expanding the number of bodies in which a person is entitled to participate. For discussion, see Arrhenius, 2018, pp. 112–114; Goodin, 2007, pp. 52–55; Owen, 2012, pp. 131–134.
- ³ Defenders of AAIP might be tempted to deal with these cases by stretching the notion of ‘influence’ (see, e.g., Fung, 2013). Certainly candidates for a position should be allowed to ‘influence’ the selection committee by presenting their credentials, and ditto for those bidding for the government contract. But here ‘influence’ has changed its meaning very considerably: it no longer conveys the idea of participating in the decision itself.
- ⁴ Beckman also introduces a third possible interpretation, namely being the subject of ‘power-conferring’ rules, but it is not clear to me why this might count in favour of enfranchisement, once AAIP has been rejected.
- ⁵ This is not inevitable. It is possible to imagine a perfect compromise, when everyone can feel that they have moved the outcome a little in the direction that they prefer. And there will be intermediate cases in which the minority manage to persuade the majority to cede a little ground. But normally we should expect winners and losers when single decisions are taken.

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