

A Tale of Two Demoi: Boundaries and Democracy beyond the Sovereign Point of View

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Recent years have witnessed an explosion of debate about what democratic theory has to say about the boundaries of democratic peoples. Yet the debate over the ‘democratic boundary problem’ has been hindered by the way contributors work with different understandings of democracy, of democratic legitimacy, and what it means to participate in a demos. My argument is that these conceptual issues can be clarified if we recognize that the ‘demos’ constitutive of democracy is essentially *dual* in character: it must be defined from a *third-person*, observer’s perspective from which it can be represented as a whole entity; but it must also be seen as arising out of an association of numerous and ongoing *second-person* relationships that participants negotiate among each other. Both perspectives are essential to conceptualizing the demos, but their relation to each other has been obscured by democratic theory’s historical reliance on the imaginary of the sovereign state. Drawing on literature from deliberative democratic theory, this article reconstructs the concept of the demos in a way that better distinguishes the logic of democracy from the logic of the state, allowing us to think more clearly about how demotic boundaries may be subjected to standards of democratic legitimation.

It was not so long ago that one could begin an article on the *democratic boundary problem* by noting how little attention the topic has received in democratic theory literature. One cannot make that claim today. In brief, the democratic boundary problem concerns the question of what the principles of democratic theory have to say about the makeup and boundaries of the demos itself. The central idea of democracy is that the exercise of political power must be legitimated by ‘the people’. But how is it to be decided who makes up ‘the people’? Is it possible to address the issue of who is to be included and who excluded from the demos in a way that can itself be described as ‘democratic’?

Until recently, the answer to this question was ‘no’: since democracy already *presupposes* a demos, democracy cannot *choose* the demos. Even if the boundaries of existing democracies were not determined by anything resembling democratic means but

usually through war, conquest, colonialism, or some other form of coercion, there is little if anything democratic theory has to say about them.¹ In the last two decades, however, democratic theorists have come to find this answer increasingly dissatisfying. In the present age of mass immigration, human rights, international organizations, and new social movements; in an age when decisions made in one country increasingly affect the lives of citizens elsewhere; and in an age when the power of the state and state-centered democracy appears to be shrinking in the face of globalization—it is becoming starkly clear that we need to rethink the justification of boundaries and their relation to democratic communities. As a result, the literature on what is variously called ‘the boundary problem’,² ‘the problem of inclusion’,³ ‘constituting the demos’,⁴ ‘the legitimacy of the people’,⁵ or ‘the question of the “who”’,⁶ has grown massively. If the question of how to constitute the demos were once ignored by democratic theory, today it is an inescapable part of it.

The purpose of this article is not to *solve* the boundary problem but to *clarify* the issues that come up when engaging it. In my view, the debate over the boundary problem has been hindered by the fact that contributors frequently work with different understandings of democracy, of what it means to make something democratically legitimate, and what it means to participate in a demos. ‘Democracy’, for example, can refer to a decision-making *method*, a form of *governance*, or a way of organizing *society*. We can use the idea of ‘democratic legitimation’ in reference to the process of *establishing* something in a democratic way, but we can also use it to refer to the process of

¹ Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (London: George Allen & Unwin, Ltd., 1976 [1943]), pp. 242-5; Frederick G. Whelan, ‘Democratic Theory and the Boundary Problem’, J. Roland Pennock and John W. Chapman (eds), *Nomos XXV: Liberal Democracy* (New York: New York University Press, 1983); Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), pp. 119-31.

² Whelan (1983).

³ Dahl (1989).

⁴ Robert Goodin, ‘Enfranchising All Affected Interests, and Its Alternatives’, *Philosophy & Public Affairs* 35:1 (2007), pp. 40-68

⁵ Sofia Näsström, ‘The Legitimacy of the People’, *Political Theory* 35:5 (2007), pp. 624-58

⁶ Nancy Fraser, *Scales of Justice: Re-Imagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009).

democratizing something already established. Even the concept of a ‘demos’ harbors a certain ambiguity. As I will show, the demos can be theorized from both a *third-person, observer’s* perspective and a *second-person, participant’s* perspective. The former is the perspective from which the demos appears as a whole entity, a thing, a concrete and discrete totality; it is the perspective from which the demos becomes something that can be represented by a state. But a demos is also an association of ongoing relationships among thinking, speaking, and acting participants striving to organize a common life together. From this *second-person* point of view, the demos is not intrinsically tied to the perspective of the state; rather, it is constituted through the numerous person-to-person relationships that participants negotiate among each other.

Different understandings of these concepts lead contributors to different conclusions about how the boundary problem can be feasibly addressed. In what follows, we will work through these conceptual issues, and in doing so we will see if there are not new insights to be gleaned that can make the boundary problem a productive one instead of a paralyzing one. Ultimately, I will show that the dual-structure of the concept of the demos and its proper formulation will be decisive here. While the concept of the demos requires both the second-person and third-person perspectives, democratic theory has long privileged the third-person observer’s perspective *over* the second-person participant’s perspective in a way that obscures the differences between the logic of democracy and the logic of the state. This distorts how we think about boundaries, the role they play in relation to the demos, and how they may be subjected to democratic criteria. Drawing on literature from deliberative democratic theory, I will show that the principle of democratic legitimation that governs the demos ultimately resides in the second-person perspective, the perspective of the participant in politics engaged with fellow participants in politics. If we reconstruct the demos from this second-person perspective *up to* the third-person perspective, we get a rather different conception of the demos that provides more fertile ground for thinking about how demotic boundaries may be subjected to standards of democratic legitimation.

Three (or Four) Meanings of ‘Democratic’

Joseph Schumpeter, giving an early formulation of the boundary problem, described democracy as simply a *method* for making decisions.⁷ Under this *democratic method* model, there are no democratic grounds on which to contest the makeup of any particular demos, as democracy, being a mere method, only speaks to the procedures through which decisions are made *within* that demos. Thus, if a state were to exclude a certain race, religion, or social class from participating, this would be perfectly consistent with democracy, and we would need some other, *non*-democratic grounds on which to protest. It is this way of thinking about democracy as a decision-making method that forms the basis of the oft-cited *boundary paradox*⁸ in contemporary democratic theory.⁹ According to the boundary paradox thesis, any attempt to legitimate the boundaries of a demos on a democratic basis would lead to an endless regress: in order to democratically decide who is to be included in the demos and who excluded, there would already have to be some kind of ‘demos’ in place authorized to make that decision; this then raises the question of how to democratically constitute the demos that chooses the demos; and so on. Versions of this argument have been used to show that the question of boundaries is simply beyond the scope of democratic theory;

⁷ Schumpeter (1976), pp. 242-5.

⁸ In this article I will use the phrase ‘boundary *problem*’ to refer to the general question of how to democratically legitimate demotic boundaries, while I will reserve the phrase ‘boundary *paradox*’ to refer to the specific puzzle that a demos cannot establish its own boundaries by formal democratic methods such as voting.

⁹ Whelan (1983); Dahl (1989), pp. 119-31; Bernard Yack, ‘Popular Sovereignty and Nationalism’, *Political Theory* 29:4 (2001), pp. 517-36; Seyla Benhabib, *Another Cosmopolitanism*, Robert Post (ed) (Oxford: Oxford University Press, 2006), p. 35; *Dignity in Adversity: Human Rights in Troubled Times* (Cambridge, UK: Polity, 2011), pp. 143-4; Goodin (2007); Näsström (2007); ‘The Challenge of the All-Affected Principle’, *Political Studies* 59 (2011), pp. 116-34; David Miller, ‘Democracy’s Domain’, *Philosophy & Public Affairs* 37:3 (2009), pp. 201-28; Johan Karlsson Schaffer, ‘The Boundaries of Transnational Democracy: Alternatives to the All-Affected Principle’, *Review of International Studies* 38:2 (2012), pp. 327-8; Sarah Song, ‘The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State’, *International Theory* 4:1 (2012), pp. 39-68; Arash Abizadeh, ‘On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem’, *American Political Science Review* 106:4 (2012), pp. 867-82; David Owen, ‘Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and in Resolving the Democratic Boundary Problem’, *Ethics & Global Politics*, 5:3 (2012), pp. 129-52; Luis Cabrera, ‘Individual Rights and the Democratic Boundary Problem’, *International Theory* 6:2 (2014), pp. 224-54.

alternatively, it has been used to argue that the only democratically legitimate demos is a one that includes everyone¹⁰ or is at least ‘unbounded in principle’.¹¹

Yet most political theorists do not think of democracy as a mere decision-making method. A more common way to think of democracy is as a form of *governance* whereby ‘those subject to law as its addressees can at the same time understand themselves as authors of law’.¹² Above all, the *democratic governance* model seeks to institutionalize a set of values protecting those subject to a government’s political power against tyrannical abuse by requiring that those subject to power should have an effective voice in how that power is constituted and deployed. Democracy’s function is, on the one hand, to secure the freedom of those subject to governance from domination and, on the other hand, to ensure that the decisions made by government cohere with the interests and values of the governed.¹³ This approach informs a number of proposed solutions to the boundary problem: while it may not be possible to determine the demos by means of democratic method, this does not prohibit us from deducing who should be included on the basis of the values democracy is meant to embody. Thus the principle of ‘all affected interests’ states that the demos should encompass all those whose ‘interests’ are (‘actually’ or ‘possibly’, depending on the account) affected by a governmental decision,¹⁴ while the principle of ‘all subjected persons’ specifies participation in terms of those persons subjected to laws or coercive power of a given institution.¹⁵ If democracy is about the participation rights of the governed, the all-affected and all-subjected principles are tools for discerning who ‘the governed’ are.

¹⁰ Hans Agn , ‘Why Democracy Must Be Global: Self-Founding and Democratic Intervention’, *International Theory* 2:3 (2010), pp. 381-409; Arash Abizadeh, ‘Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders’, *Political Theory* 36:1 (2008), pp. 37-65.

¹¹ Abizadeh (2012).

¹² J rgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, William Rehg (trans) (Cambridge, MA: MIT Press, 1996), pp. 120-1; see also Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (New York: Columbia University Press, 2012), pp. 135-6.

¹³ Miller (2009), p. 205.

¹⁴ Goodin (2007); Matthias Koenig-Archibugi, ‘Fuzzy Citizenship in Global Society’, *Journal of Political Philosophy* 20:4 (2012), pp. 456-80; Owen (2012); cf. N sstr m (2011).

¹⁵ Dahl (1989); Fraser (2009); Abizadeh (2008); (2012); see also Schaffer (2012), pp. 336-42

But there is a third way of thinking about democracy. Decades before Schumpeter offered his ‘minimalist’ view of what democracy signifies, John Dewey insisted that democracy is much more than a form of government, but a way of organizing *society*.¹⁶ Evident in both the political liberalism of John Rawls and Jürgen Habermas’s discourse theory of democracy, this model of *democratic society* has become mainstream in contemporary political thought.¹⁷ Under this model, the ideal of democratic self-determination has to do not just with the *negative* values of checking power, but it is equally concerned with the *positive* values of developing and maintaining a form of life that participants share with one another, and which finds anchorage in a common system of laws and robust institutions. It invokes not just the vocabulary of power, rule, and domination but of solidarity, recognition, and obligation. Thus the *hierarchical* relation between those exercising power and those over whom power is exercised must be grounded in the *reciprocal* relation of free and equal citizens who share a sense mutual responsibility to one another and who understand themselves as co-participants in a common collective project. This more ‘maximal’ understanding of democracy thus presupposes a deeper set of social bonds among members of a demos than the democratic governance model. Hence defenders of the nation-state status quo frequently argue that the boundaries of the demos cannot simply be removed, expanded, or otherwise redrawn without disturbing the sense of solidarity that makes democracy viable, and it is therefore best that we accept boundaries as historically given.¹⁸

David Miller casts democratic governance and democratic society as two fundamentally different models of democracy that adhere to different sets of democratic values. On his reading, any attempt to adjust demotic boundaries must involve a ‘trade-

¹⁶ John Dewey, ‘The Ethics of Democracy’, *The Early Works, 1882-1898*, Jo Ann Boydston and Fredson Bowers (eds) (Carbondale: Southern Illinois University Press, 1969 [1888]); *The Public and Its Problems in The Later Works, 1925-1953*, vol. 2, Jo Ann Boydston and Bridget A. Walsh (eds) (Carbondale: Southern Illinois University Press, 1984 [1927]).

¹⁷ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); Habermas (1996).

¹⁸ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); David Miller, *On Nationality* (Oxford: Oxford University Press, 1995); *Citizenship and National Identity* (Cambridge, UK: Polity Press, 2000); Thomas Christiano, ‘A Democratic Theory of Territory and Some Puzzles about Global Democracy’, *Journal of Social Philosophy* 37:1 (2006), pp. 81-107; Song (2012).

off' between the negative values of checking power (democratic governance) and the positive values of sustaining the necessary sense of mutual responsibility (democratic society). Because the form of reasoning that descends from each value-set produces a different conclusion about where to (or not to) mark the boundaries of the demos, we can only espouse one set at the expense of the other.¹⁹ However, the vision of democratic society Miller and other liberal nationalists assume only holds so long as the solidaristic conditions necessary to sustain these positive values of democracy can be said to obtain *independently* of the political-legal guarantees that secure the negative values. Sarah Song, in arguing that demotic boundaries should remain as defined by existing states, identifies solidarity as an 'instrumental' condition for democratic society and thus antecedent to realization of democracy itself.²⁰ But as others have shown, this and other versions of what Arash Abizadeh calls the 'prepolitical ground thesis' of the demos are highly problematic.²¹ At best, they obscure the multiple ways in which relations of solidarity are always themselves permeated by political controversy, internal diversity and division, rival interpretations, and periodic efforts at redefinition and renewal.²² At worst, they can give license to paternalistic and extra-democratic attempts to enforce a particular idea of the 'true' demos over and above the views of existing and potential members.²³

We should be cautious, however. Proponents of the democratic governance model sometimes use this fact that solidarity relations are themselves politically contested as an excuse to disregard them altogether. Thus Abizadeh asserts bluntly that 'there is no collectivity prior to institutional articulation' and, consequently, the only real

¹⁹ Miller (2009).

²⁰ Song (2012), pp. 47-8.

²¹ Arash Abizadeh, 'Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments', *American Political Science Review* 96:3 (2002), pp. 495-509; Abizadeh (2012).

²² Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002); Abizadeh (2002); (2012).

²³ Rogers M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge, UK: Cambridge University Press, 2003); 'The Principle of Constituted Identities and the Obligation to Include', *Ethics & Global Politics*, 1:3 (2008), pp. 139-53; David Axelsen, 'The State Made Me Do It: How Anti-Cosmopolitanism Is Created by the State', *Journal of Political Philosophy* 21:4 (2013), pp. 451-72.

consideration when considering the boundaries of the demos should be the relation of ruler and ruled.²⁴ But showing that solidarities are contested is not the same as showing that they are irrelevant. Even if relations of power are, quite justifiably, the ultimate consideration when considering the proper scope of the demos,²⁵ as a democratic matter we cannot simply override the self-understanding of democratic participants by appealing to superordinate principles of right inclusion. We can agree with Abizadeh's point that liberal democracy need not *require* a 'cultural' or 'pre-political' nation and still heed Margaret Canovan's warning against taking the resources necessary for democratic cohesion for granted.²⁶ For the boundary problem to be addressed democratically, both current and potential members must be able to see themselves part of a democratic way of life they can claim as their own.

This brings us to one more way to characterize the democratic society model, one by which these positive and negative values of democracy emerge *together*. This is the conception, for example, envisioned by the deliberative theory of democracy. Habermas posits his conception of deliberative politics in contrast to the classical liberal and republican conceptions: whereas the liberal conception interprets democratic politics as the aggregation of individual private citizens defending their various rights and interests against the imposition of public power, the republican conception casts the democratic community as a singular 'macrosubject' whose citizenry combines into a unified general will. The deliberative conception, in contrast, takes the subject of democratic politics to be neither the aggregation of individual rights-holders nor the united general will but the *process* through which citizens navigate diverse identities, exchange claims, test arguments, and assess decisions.²⁷ On this account, the 'common good' provided by

²⁴ Abizadeh (2012), p. 881; for similar arguments see Agné (2010), pp. 385-6, and Cabrera (2014), pp. 243-4.

²⁵ See Fraser (2009).

²⁶ Margaret Canovan (1996) *Nationhood and Political Theory* (Cheltenham: Edward Elgar); (2005) *The People* (Cambridge, UK: Polity).

²⁷ Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, Ciaran Cronin and Pablo De Greiff (trans) (Cambridge, MA: MIT Press, 1998a), pp. 239-52; Rainer Forst, *Contexts of Justice: Political Philosophy beyond Liberalism and Communitarianism*, John M.M. Farrell (trans) (Berkeley: University of California Press), 121-2; see also Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004).

democracy is not the sum of the ‘subjective’ goods of individual participants, nor is it an ‘objective’ good that exists apart from and above its participants; instead, it is an ‘intersubjective’ good that accrues in the way citizens engaged in political, moral, and ethical discourses accept responsibility *both* for building a common institutional order of civic life *and* mutually guaranteeing each other full rights and entitlements as co-equal citizens.²⁸ The role of democratic institutions in society—at the level of basic constitutional guarantees, participatory democratic procedures, and fair processes of adjudication—is to secure the conditions under which citizens can exercise the communicative freedom necessary for them to see themselves as the authors of the law as well as its subjects.

Taking this conception of a *deliberative democratic society* as our starting point allows us to bring the contours of the boundary problem into sharper focus. Instead of asking whether it is the positive values or the negative values of democracy that should take priority in determining the proper scope of the demos, we can frame the democratic boundary problem as a discrepancy that arises between, on one hand, the level at which citizens (and would-be citizens) intersubjectively deliberate the conditions under which they coexist in a democratic society and, on the other hand, the level at which these conditions are institutionalized in positive law. It is in the discrepancy between these two levels that *the concept of the demos* itself opens up into a dual structure. The premise of the deliberative democratic model is that democratic legitimation arises both initially and ultimately from the level at which participants in a demos engage each other as coequal citizens, which is constituted by the *second-person* relationships that they take up with one another. But the institutional mechanisms for securing the communicative freedom that makes effective participation possible require a *third-person* perspective that can claim an administrative view over the demos as a whole. In addition to the boundary-related issues of distinguishing who is a formally full member from who is not, it is only from this view that the diverse voices circulating throughout the demos can be brought together and channeled into binding decisions. My argument is that

²⁸ Forst (2002), pp. 112, 152.

conceptualizing the democratic boundary problem requires us to appropriately conceptualize these two levels of the demos and how they relate to each other.²⁹

Two Meanings of ‘Democratic Legitimation’

Even if we settle on a deliberative conception of democratic legitimacy, there still remains an ambiguity in what we mean by democratic legitimation when it comes to the boundary problem. The idea of ‘democratic legitimation’ can be used in reference to the process of *establishing* something in a democratic way, but it could also mean *democratizing* something already established. Some treatments of the boundary problem seek principles for establishing the boundaries of the demos outright, as if we were beginning from the ‘state of nature’ of social contract theory. Robert Goodin argues, for example, that ‘unless we know what the right way to constitute the demos is in the first place, we have no way to know whether any given empirical tendencies within democratic politics will...lead them to (re)constitute the demos in precisely the right way’.³⁰

It should not be surprising that establishment-focused approaches to the boundary problem tend to end up favoring global demos as the proper scope of the demos. One argument stems from the boundary paradox: Given that it is impossible to decide democratically who is included or excluded from the demos without including all

²⁹ Francis Cheneval has previously noted the dual character of the demos of deliberative democracy and how this complicates the sense in which the demos can be accurately described as ‘bounded’. Though his analysis is important, the account offered here is crucially different. While Cheneval makes note of the boundary problem, he distinguishes between a bounded demos of formal lawmaking and an in-principle open demos of ‘subjectless’ deliberation primarily to bring to light the ongoing dialectic between ethical particularity and inclusive universality contained in the modern democratic ideal as such. In contrast, I divide the demos into second-person and third-person levels as a means of reconstructing the boundary problem itself. As we will see, it is only in terms of the second-person dynamics that constitute the demos *relationally* that the normative issue of boundaries first comes to the fore—i.e., as the boundary between ego and alter. This, combined with a pragmatist distinction between second-person acts of *making* claims and third-person *contents* of claims about the demos, allows us to link together the two levels in a way that allows us to comprehend more clearly how the constitution of the demos itself becomes an intrinsic part of democratic deliberation and contestation. See Francis Cheneval, ‘The People in Deliberative Democracy’, *Deliberative Democracy and Its Discontents*, Samantha Besson, José Luis Martí, and Verena Seiler (eds) (Aldershot, UK: Ashgate, 2006).

³⁰ Goodin (2007), p. 45.

those who might be excluded as a result of that decision, the demos tasked with democratically justifying boundaries can only be global, since there is no democratic justification at the outset to exclude anyone.³¹ The only other way to determine the proper scope of the demos at the outset is to introduce some superordinate principle like ‘interlinked interests’ or ‘all affected interests’.³² But such principles do not really address the problem of establishing boundaries through democratic means; instead, they seek workarounds that would make the problem of democratic process superfluous.³³ Democratic legitimacy requires that members be able to recognize the demos collectively as ‘their’ demos. Even if the correct solution in theory is the establishment of a global demos, in practice it is difficult to imagine how a global demos could be simply imposed upon existing demoi and still be considered democratic.³⁴

In any event, drawing a mere logical conclusion about what the demos ‘ought’ to look like runs into the additional problem of how the ideal demos is to measure against the actually existing demoi and their nonideal boundaries. Albenaz Azmanova (2012) points out the tendency of ideal theories to fall into a ‘judgment paradox’, whereby the more rigorously a theory is constructed according to precise principles of justice, the less relevant it becomes to actual political situations.³⁵ Indeed, the more idealist visions of the proper demos diverge from the global order of demoi we currently have, the more fanciful, utopian, and impractical such visions are bound to appear. Arguments for a global demos, even if correct in theory, are a long way off from the way democratic politics is organized today. Moreover, claiming the demos ‘ought’ to be global gives us little guidance by itself on how to *achieve* that goal, nor does it tell us much about how to evaluate the legitimacy of the boundaries of existing democratic polities.

³¹ Abizadeh (2008); Agné (2010); Cabrera (2014).

³² See Owen (2012) and Goodin (2007), respectively.

³³ Agné (2010), p. 388.

³⁴ James Ingram, *Radical Cosmopolitics: The Ethics and Politics of Democratic Universalism* (New York: Columbia University Press, 2013), pp. 127-8, 184.

³⁵ Albenaz Azmanova, *The Scandal of Reason: A Critical Theory of Political Judgment* (New York: Columbia University Press, 2012).

A better approach might be to frame the boundary problem as a question of *democratizing* boundaries—that is, of beginning with demoi as they exist and seeing if their policies toward boundaries can be reimagined on a more democratic basis. This can have the advantage of putting the boundary problem more in touch with actual political controversies that have to do with boundaries, such as the status of immigrants and refugees, accounting for historical injustices, or the effects of globalization. In contrast to Goodin, the question here is not to discover what the correct *result* of a democratic decision on boundaries would look like; rather, it is to find ways to mediate controversies over boundaries in ways consistent with the ideal of democratic *process*.

Favoring a democratization focus over an establishment focus does not rule out the possibility that we would need to establish institutions that do not yet exist to adjudicate certain issues. There are after all a number of questions related to boundaries that simply cannot be addressed democratically except on a supranational if not global basis. But there are two points to be kept in mind: First, while there are some boundary issues (e.g., secession disputes, certain effects of climate change) that demand the establishment and deference to higher-level if not global democratic institutions, there are other issues (e.g., immigration) in which existing nation-states can at least make some headway in allowing contestation on a more if not completely democratic basis. Second, even if the institutionalization of higher-level demoi does prove necessary, the movement from state-centered to supranational demoi must still be able to draw on democratic processes of legitimation that originate from within already existing demoi. To the extent that democracy must be conceived as more than a decision-making *method* or a form of *governance*, but a way of organizing *society*, the path to establishing demoi in a democratic way can only run through the further democratization of demoi that are already established.

The Dual Structure of the Demos

We can approach the problem of democratizing the demos by recognizing that the concept of the demos has a dual structure, consisting of *third-person* and *second-person* levels. In brief, the terms ‘third-person’ and ‘second-person’ follow the conventions of grammatical reference and its system of pronouns. We say we are referring to someone or something in the third-person when we can grammatically replace that referent with a pronoun such as ‘she’, ‘he’, ‘it’, or ‘they’. The referent is that which is spoken *of* in a given speech act. In the second-person, in contrast, the referent of a speech act is also the *addressee*: she is not merely spoken *of* but spoken *to*. Second-person referents can be replaced with some version of the pronoun ‘you’ and sometimes ‘we’.³⁶ When we take up a third-person point of view on a referent, we are referring to it from the *external* standpoint of an outsider looking in; the referent is not a participant in its own reference. When we take up a second-person point of view, in contrast, we are looking for an *internal* point of view; that to which we refer in the second-person is, by virtue of its being addressed, being brought as a participant into the conversation in which it is referred.

Implicitly, democratic theory has long recognized that the demos contains both third-person and second-person aspects, but it generally privileges the third-person point of view on the demos over the second-person. This is because, until recently, democratic theory has always assumed the paradigm of the sovereign state. As John Ruggie (1993: 159) has argued, this paradigm has its own particular point of view from which ‘political space [comes] to be defined as it appear[s] from a single fixed viewpoint’.³⁷ This is a *particular version* of the third-person point of view that Ruggie traces to the perfection of ‘single-point perspective’ in Renaissance aesthetics. Its conceit lay not in its aspiration to

³⁶ Cf. Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2009), pp. 9-10.

³⁷ John Gerard Ruggie, ‘Territoriality and Beyond: Problematizing Modernity in International Relations’, *International Organization* 47:1 (1993), p. 159.

representational objectivity and precision per se but in the assumption that said objectivity and precision can be encapsulated within a particular point of view: ‘a *single* point of view, the point of view of a *single* subjectivity, from which all other subjectivities were plotted in diminishing size and depth toward the vanishing point’.³⁸

Ruggie places the single-point perspective at the core of the ‘social episteme’ of modern sovereignty. It is the perspective that entitles the sovereign observer to bring its society under its gaze as unified whole: coherent, transparent, and—to use James Scott’s term—‘legible’.³⁹ This way of ‘seeing like a state’ had practical as well as epistemic implications: it served as a template not just for ‘observing’ society but for making society ‘observable’, for the active reorganization of political space around a common center. It is implemented, if not through outright coercion, in systems of documentation, identification numbers, standardized languages and education curricula, communication and transportation infrastructures, and the like, which organize a polity into a single continuous space within its boundaries.⁴⁰ In Torpey’s terminology, the single-point perspective is not just a means of observing a society but of ‘embracing’ a society.⁴¹

It makes sense that democratic theory would emulate this single-point, sovereigntist perspective. Since the seventeenth century, the sovereign state provided both the venue in which modern democracy developed and the problem with which it was concerned. The very term ‘popular sovereignty’ indicates that the problem to which it is a solution is not the sovereign perspective as such but merely *who* should occupy it. Thought-experiments about a ‘state of nature’, ‘social contract’, or ‘original position’ were not designed for considering the proper boundaries of society—they took it for granted that they already had the relevant demos squarely in view. This is not to say that

³⁸ Ruggie (1993), p. 159; see Erwin Panofsky, *Perspective as Symbolic Form*, Christopher S. Wood (trans) (New York: Zone Books, 1991 [1927]).

³⁹ James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1993), pp. 77-8.

⁴⁰ Anthony Giddens, *The Nation-State and Violence: Volume Two of A Contemporary Critique of Historical Materialism* (Berkeley: University of California Press, 1985); Scott (1993); Michael Mann, *The Sources of Social Power, Volume II: The Rise of Classes and Nation-States, 1760-1914* (Cambridge, UK: Cambridge University Press, 1993).

⁴¹ John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge, UK: Cambridge University Press, 2000), p. 11.

they ignored the second-person aspect of the demos, but these second-person relations were taken to hold good only *within* boundaries presupposed by other means. Since the seventeenth century, the demos of democratic theory has always been *the state's demos*.

This is not a problem so long as it is assumed that demoi *derive* their boundaries from those of existing states. But if it is the boundaries of the demos that are themselves the topic under investigation, this association can no longer be taken as given. Instead, the concept of the demos must have a validity *prior* to the existing state,⁴² since whether or not it fits the state is precisely what remains to be answered. If we accept that the demos can have a conceptual coherence independently of the state, if it forms itself 'from the bottom up' as a community which *only then* submits itself to the authority of a state, then it is no longer obvious that it is from the single-point perspective of the state that the demos should be defined.

A further advantage of distinguishing between third-person and second-person perspectives is that it brings into focus the distinction between claim-*contents* and claim-*making*. Philosophers of language commonly distinguish two levels of linguistic understanding that undergird practical rationality: the *semantic* level, which concerns the *contents* of statements, and the *pragmatic* level, which concerns the way statements are *used* in communicative practice.⁴³ Any third-person statement about something can only be made in the context of a speaker addressing to a hearer a second-person claim about

⁴² Yack (2001), pp. 522-3. Historically, it was the idea of the *nation* that filled this role of giving legitimacy to an idea of a demos that preceded the state. In the early modern era, this idea was used to retroactively legitimate the boundaries of already existing state jurisdictions (such as in England and France). In the nineteenth century, ideas of 'cultural' or 'ethnic' nationalism came to be used to frame narratives of non-state peoples *deserving* of a state. But the notion of a prepolitical 'nation'—of a group of people whose membership could be clearly and objectively demarcated for the purposes of exclusion—still presupposes the single-point perspective of a 'sovereign' judge who can declare where one culture or ethnicity ends and others begin. Fredrik Barth's studies, of course, showed how even ethnic membership is interactively negotiated, not prepolitically given; see Fredrik Barth (ed), *Ethnic Groups and Boundaries: The Social Organization of Culture Difference* (Long Grove, IL: Waveland Press, 1998 [1969]); 'Boundaries and Connections' in Anthony P. Cohen (ed), *Signifying Identities: Anthropological Perspectives on Boundaries and Contested Values* (New York: Routledge, 2000). As Rogers M. Smith (2003), Seyla Benhabib (2002; 2011), Margaret Canovan (2005), and others have shown, *any* idea of a demos, including those that purport to rely on 'factual' claims like ethnicity, are grounded in highly contested 'stories of peoplehood' which, as we shall see, are anchored in second-person relations of claim-making and reason-giving.

⁴³ Jürgen Habermas, *The Theory of Communicative Action, Volume One: Reason and The Rationalization of Society*, Thomas McCarthy (trans) (Boston: Beacon Press, 1984); *On the Pragmatics of Communication*, Maeve Cooke (ed) (Cambridge, MA: MIT Press, 1998b); Robert B. Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, MA: Harvard University Press, 1994).

that thing. This is not peculiar to the representation of demoi; it is a feature of the way we represent all things through language. However, it becomes an issue with particular practical implications when we are talking about social entities and groupings, for it is here that a gap begins to open between the perspective of a participant engaged with other participants and that of an observer making a judgment about the identity of whole. The danger here is a familiar one in interpretive social science: it is the risk of *reifying* the social entity by means of an overhasty objectification of what may in fact be a diffuse, heterogeneous, and contested collection of perspectives, practices, and relationships.

Yet there are reasons to think this issue is pressing for the concept of the demos in a rather particular way. For starters, a demos is more than a diffuse collection of agents, relationships, and practices; it also possesses a centralized organizational form that integrates it through formal rules, procedures, and membership criteria. An important feature of a demos is that it is *codified in law*, and it is this centralizing feature that allows us to refer to it objectively in a way that is less problematic than when we refer to other types of entities, such as language groups, cultures, or even nations.

At the same time, what makes a demos a demos is that it aspires to be organized not just through law but through *democratically legitimated law*.⁴⁴ Because democratic legitimation requires participants to be able to see themselves not just as subjects of law but also as authors of law, the demos cannot be reduced to its mode of legal institutionalization in a way that excludes the second-person voices of the speaking, hearing, and acting agents it comprises. The dialectical tension between third- and second-person perspectives—as Habermas puts it, between ‘facticity and validity’—is incorporated into the very concept of the demos in a way that remains latent or at least informal in other contexts. For here it is not simply that third-person claims about the demos are ‘pragmatically’ dependent on second-person acts of claiming;⁴⁵ they are *made*

⁴⁴ Hence we do not generally refer to the people of an authoritarian state as a “demos,” unless we are attributing to them at least a *desire* to be ruled democratically, such as the peoples of Eastern Europe in 1989 or of the Arab Spring nations in 2011.

⁴⁵ Brandom (1994), p. 330.

so dependent by virtue of the idea of democracy as a form of self-determination by a citizenry of politically autonomous agents.

To overlook the significance of this distinction is to overlook the significance of the deliberative turn in democratic theory, for which the second-person level of claim-making and reason-giving is central to the idea of democratic legitimacy as such. This can be demonstrated in reference to the ‘boundary paradox’, the thesis that the boundaries of a democracy cannot be legitimated democratically because any attempt to do so would produce an infinite regress. This account of the boundary paradox appears an *intractable* theoretical problem only to the extent that we define ‘democracy’ as a mere *decision-making method* in which the sole means participants have for effective political communication is voting. This takes us back to a Schumpeterian ‘aggregative’ model where democratic politics is little more than the weighing and tallying of exogenously given claim-contents of the individual citizens’ preferences.⁴⁶ In addition, because this model of democracy as a method of aggregating preferences elides the way individual preferences are generated through the second-person engagements of claim-making and reason-giving that demotic participants have with each other, it forecloses attributing any content to the demos itself that is *endogenous* to the polity’s democratic character, such as solidarity or mutual responsibility. If the only relevant relationship citizens have to their democracy is their individual relation to the state via the medium of the ballot, then any broader sense of affiliation to each other as co-participants in the demos can only be attributed to them *exogenously* to the political process. The aggregative model presupposed by the boundary paradox abets the assumption that democratic solidarity requires some kind of ‘prepolitical’ ground.

Moreover, while voting and free elections are essential to democracy—along with the right to stand for office, they remain without doubt the most express *formal* embodiment of democratic legitimation—they neither exhaust the requirements for

⁴⁶ For critiques of the aggregative model of democracy, see Jack Knight and James Johnson, ‘Aggregation and Deliberation: On the Possibility of Democratic Legitimacy’, *Political Theory* 22:2 (1994), pp. 277-96; Iris Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), pp. 18-21; Ian Shapiro, *The State of Democratic Theory* (Princeton: Princeton University Press, 2003), pp. 11-21; Gutmann and Thompson (2004), pp. 13-21.

democratic legitimacy, nor do they guarantee it. Activities such as free and open expression, public debate, civil society organizations, civil disobedience, mass demonstration, protests, and strikes are also essential to democratic legitimation, and sometimes they are even more effective than the simple casting of a ballot.⁴⁷ Conversely, the mere availability of universal suffrage and free elections is no guarantee that the laws and policies adopted will actually reflect the beliefs and wills of those casting the votes.⁴⁸

Opening up our conception of democratic politics to these additional means of democratic expression—which rely more directly on second-person relations of association than more formal procedures—will not allow us to fully escape the boundary paradox, but it does allow room for greater nuance and maneuverability. This is why, in approaching the democratic boundary problem, it would make more sense to follow the deliberative formula for democratic legitimation forwarded by Habermas and Rainer Forst: that those subject to law also be able to understand themselves as authors of law. At first glance this looks like a retreat into a weaker standard than that of formal suffrage, since it need not in principle mean inclusion in formal procedures. But in another sense it is actually a *stronger* standard, since in the end it assumes a more active affinity between popular will and enacted law than formal procedure can often guarantee on its own.

Beyond the Sovereigntist Perspective

Most accounts of demotic boundaries present the concept of the demos in third-person terms: ‘The demos is *X*’, ‘The demos ought to be *X*’. This is not a problem in and of itself: it is impractical if not impossible to avoid referring to the demos in this way,

⁴⁷ Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (London: Cambridge University Press, 2008), pp. 177, 298-9; Stephen K. White and Evan Robert Farr, “No-Saying” in Habermas, *Political Theory* 40:1 (2012), pp. 32-57.

⁴⁸ Colin Crouch, *Post-Democracy* (London: Polity, 2004); Martin Gilens and Benjamin I. Page, ‘Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens’, *Perspectives on Politics* 12:3 (2014), pp. 564-81

and the concept of the demos, being dual, ultimately requires *both* the second-person and third-person levels. The question is how we relate these two levels to each other.

The problem with many attempts to address the boundary problem is their tendency to tacitly adopt the conceptual assumptions of the sovereign state, which presupposes the *sovereignist perspective* of an observer ‘looking down’ from a single fixed point. This traps the theoretical purview within a *particular kind* of third-person stance divorced from the second-person perspectives of demotic participants, and it restricts our understanding of how demotic boundaries function and the theoretical alternatives available to us. If, on the other hand, we were to begin from the second-person perspective and ‘work up’ to the third-person perspective, these assumptions change substantially.

The chief problem with taking this sovereignist perspective for granted with regard to the boundary problem is that, as Ruggie notes, it utilizes a very particular conception of the political space in which demoi are situated. The sovereignist perspective envisions political space as *absolute space*: the demos is all that is within the ‘frame’ of the sovereign point of view; the boundaries of the frame represent the external limits of the demos, which hermetically contains all that transpires within those limits. This view cultivates a presumption of demotic isolation—a presumption that a given body politic can be taken and treated from the outset as a discrete, self-contained unit unto itself, disconnected and unaffected by anything that might be happening outside of it. Of course, few truly believe that demoi subsist as isolated units. Democratic-governance approaches like the all affected interests principle, for example, aim precisely to address the fact that people in nominally ‘separate’ societies can greatly influence each other’s lives in ways that might require democratic redress. But the principle still retains the general idea of a demos circumscribed from a central point, where the relevant relation is that between a hypothetical locus of decision-making and the particular persons being ‘affected’ by the decisions issuing therefrom. What relationship the included persons have to one another is defined by their common relation to this central

locus; their relation to everyone else is defined negatively, by the latter's absence of such a relation—they are 'out of frame'.

The problem with this top-down conception of bounded space is it excludes the contexts of in which contests over boundaries are made. This problem is in line with Sofia Näsström's critique that arguments like the all affected interests principle are better suited for criticizing existing boundaries than setting new ones.⁴⁹ A person outside of a given boundary can *claim* to be affected by decisions made within that boundary and thereby entitled to democratic inclusion, but such acts of claim-making can only be incorporated into our model of boundary politics if we first presuppose *a second-person level of exchange between insiders and outsiders* in which these claims can be exchanged and evaluated. Liberal nationalists who appeal to the 'preexistence' of a certain form of collective identity face a similar problem. By judging the existence and contours of democratic solidarity from a top-down sovereigntist perspective, they disregard the second-person contexts that make collective identities and solidarities possible in the first place.

But if the sovereigntist perspective conceives political space in absolute terms, the second-person perspective constitutes political space *relationally*, through the interactions of thinking, speaking, and acting agents 'on the ground' who engage one another as 'I', 'you', or 'we'. Agents may have third-person views of their own on what the space they inhabit does or should look like, but these views remain exposed at the pragmatic level to second-person challenges and demands for justification.⁵⁰ Political space is not merely observed; it must be *constituted* through the way actors navigate and negotiate their relations to one another.⁵¹ Boundaries likewise take on a different character at this level. Absent a sovereign observer to decide who is 'in frame' or 'out of frame', boundaries can only be produced *through* the interactive relations that agents take up in second-person perspective: boundaries acquire salience only in virtue of the

⁴⁹ Näsström (2011).

⁵⁰ Brandom (1994); Forst (2012).

⁵¹ Margaret R. Somers, 'The Narrative Constitution of Identity: A Relational and Network Approach', *Theory and Society* 23:5 (1994), pp. 605-49; Young (2000).

reciprocal relationships of claim-making and reason-giving that already exist between actors on either side of the boundary in question. Boundaries, in other words, are already dependent on transboundary processes, and their constitution and maintenance must be understood in the context of networks of second-person relations that extend beyond them. Conceptualizing a bounded community from this perspective forces us ‘to examine how it was formed *as a community* out of the interconnected space that always already existed’.⁵²

This gives us an insight into how we might think about the democratic legitimation of boundaries from a second-person point of view. The very act of taking up a second-person relationship in the space of communicative rationality already presupposes a certain level of mutual recognition: each must be in a position to recognize the other as an accountable agent capable of accepting and giving reasons.⁵³ As participants in interaction approach a condition whereby each is willing to give and respond to reasons ‘without reservation’,⁵⁴ the recognition each gives to the other’s capacity to be rationally accountable momentarily *relativizes* any boundary that is otherwise structuring the relationship. This does not necessarily eliminate the boundary, but it does leave the third-person ideas that participants may have about the boundary exposed at the second-person level to new interpretations and reasons, which in turn prompt a second-person response.

Reconstructing the demos from this second-person perspective thus allows us to transcend the sovereigntist paradigm in two ways. First, it allows us to *situate* the demos

⁵² Akhil Gupta and James Ferguson, ‘Beyond “Culture”: Space, Identity, and the Politics of Difference’, *Cultural Anthropology* 7:1 (1992), p. 8; see also Fredrik Barth (ed), *Ethnic Groups and Boundaries: The Social Organization of Culture Difference* (Long Grove, IL: Waveland Press, 1998 [1969]); Barth, ‘Boundaries and Connections’, *Signifying Identities: Anthropological Perspectives on Boundaries and Contested Values*, Anthony P. Cohen (ed) (New York: Routledge, 2000); Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley: University of California Press, 1989); Andrew Abbott, 1995. ‘Things of Boundaries’, *Social Research* 62:4 (1995), pp. 857-82; Michèle Lamont and Virág Molnár, ‘The Study of Boundaries in the Social Sciences’, *Annual Review of Sociology* 28 (2002), pp. 167-95; Charles Tilly, *Identities, Boundaries, and Social Ties* (London: Paradigm Publishers, 2005).

⁵³ Habermas, *Truth and Justification*, Barbara Fultner (trans) (Cambridge, MA: MIT Press, 2003), pp. 93-4; Brandom (1994), pp. 67, 639-40; Klaus Günther, ‘Communicative Freedom, Communicative Power, and Jurisgenesis’, *Habermas on Law and Democracy: Critical Exchanges*, Michel Rosenfeld and Andrew Arato (ed) (Berkeley: University of California Press, 1998); cf. Darwall (2009).

⁵⁴ Habermas (1984), p. 294.

within the broader network of interactive relations in which actors draw boundaries and make claims about them. Despite the way they have been portrayed in modern political thought since Hobbes, demoi do not exist as insular, self-contained units. Instead of taking boundaries as the limits of meaningful interaction in a demos, beginning from the second-person level forces us to understand boundaries as *products* of interaction. Second, in addition to making us rethink how demoi and their boundaries are constituted in *space*, the second-person perspective also requires us to rethink how demoi reproduce themselves in *time*. In contrast to the ‘static’ top-down view of a discretely bounded demos in absolute space, the demos, situated in a network of multiple second-person relations that extend both within and across its nominal boundaries, must continually reproduce itself through various exchanges of claim-making and reason-giving, making it permanently subject to discursive renegotiation and revision. It might even be better to think in terms not of a singularly defined demos but of an ongoing discursive process of *demosgenesis*.

This is consistent with the deliberative-democratic formula that legitimacy arises out of ‘the process of discursively, argumentatively, and deliberatively reaching a generally justified political decision that is always only provisional and revisable’.⁵⁵ We can presently stipulate that a boundary established between two persons is ‘legitimate’ if the actors on either side of it are able to understand themselves as ‘authors’ of the boundary as well as its subject. This will require further elaboration, to be sure, and we still need to relate this principle to the *third-person* level of the demos—the level at which the demos is institutionalized in democratically legitimate law. While the second-person level is indeed primary to the constitution of the demos, our picture of the demos cannot be complete without an additional level at which second-person acts of claim-making are converted into claim-*contents*.

A look at Arash Abizadeh’s ‘unbounded demos thesis’ shows why we need this additional, third-person level. Like here, Abizadeh insists that the boundaries of the demos must be justifiable from an ‘internal, second-person’ perspective; he further notes

⁵⁵ Forst (2002), pp. 120-1.

the inherently ‘sovereign’-like point of view from which democratic theory has been developed since the early contract theorists.⁵⁶ Referring to the boundary paradox, Abizadeh claims the question of whether a community can determine its boundaries democratically recedes once we recognize that the very logic of democratic governance defies boundedness. Using a version of the all subjected persons principle, he argues that, not only do states engage in exercises of coercive power that subject people outside their extant boundaries, the boundaries states use to exclude people from citizenship are *themselves* exercises of political coercion that stand in need of democratic legitimation. The scope of persons entitled to participation in the demos by virtue of subjection to power thus always extends beyond the polity’s formal boundaries by definition. In an earlier article, he claimed this demanded the establishment of a global demos;⁵⁷ more recently, he claims that the demos, as a *regulative idea* of democratic theory, evades concrete definition. In his view,

the collective subject of democratic politics is in principle unbounded, or, more precisely, bounded only by the capacity of communicative decision-making practices to track the outward reach of political power. ...Hence the demos is both everywhere and nowhere. It is everywhere: in principle unbounded. It is nowhere: a regulative ideal that no actual, politically articulated collectivity can ever fully succeed in instantiating.⁵⁸

The problem here is that even a ‘regulative ideal’ must somehow link up to actual democratic practice. We can picture how a demos might make itself more inclusive, but it is less clear what it would mean for a demos to strive to be ‘unbounded’ in the sense Abizadeh implies. Moreover, in keeping with the *democratic governance* approach to the boundary problem, the unbounded demos thesis focuses entirely on the *negative* values of the democratic ideal—i.e., democracy as a check on power. But democracy also espouses a *positive* set of values, through which a citizenry can devise laws and collectively organize a common form of life. While this need not require a discretely bounded and exclusionary demos, it does require a demos with recognizably stable institutional

⁵⁶ Abizadeh (2012), pp. 869–70, 879–80.

⁵⁷ Abizadeh (2008).

⁵⁸ Abizadeh (2012), p. 881.

content.⁵⁹ To fulfill this purpose, the demos cannot be, as Abizadeh claims, ‘both everywhere and nowhere’; whatever else a demos is, it has to be *somewhere*.⁶⁰ A viable conception of the demos needs to show how second-person networks of claim-making can furnish a demos with mutually recognizable and generally stable claim-*contents*—that is, how a third-person perspective on the demos can be generated *from within* second-person relations. Otherwise, the thesis only tells us what the demos *can’t* be; it does not tell us what the demos *can* be. Abizadeh correctly identifies the second-person level of the demos, but he mistakes it for the whole story.

Institutionalizing the Demos

Even if we accept that claims about the demos must originate at the second-person level of claim-making and reason-giving, participants cannot glean a conception of the demos about which they are making claims and giving reasons unless they can also *refer* to the demos of which they are members, from which they are excluded, or whose boundaries they are affirming, contesting, or otherwise negotiating. For a demos to actually function as a demos, actors must be able to attribute to it contents that can be broadly recognized as constituting features around which it is possible to envision the organization of a collective form of life, to which particular actors engaged in negotiation over the demos can see themselves as possibly belonging or not belonging. It is through the third-person perspective on the demos that actors can take up a reflexive relation to the demos they are negotiating through their second-person acts of claim-making and reason-giving.

Yet while the ability of actors to negotiate third-person accounts of the demos and its boundaries provides a necessary condition for maintaining a demos, the demos cannot fully serve as a venue for the democratic organization of a shared form of life unless it is *institutionalized* in democratically legitimate law. The role of institutions is to

⁵⁹ Cf. Antionette Scherz, ‘The Legitimacy of the Demos: Who Should Be Included in the Demos and On What Grounds?’, *Living Reviews in Democracy* 4 (2013) p. 6.

⁶⁰ I thank [name redacted] for helping me work out this point.

regulate and coordinate the various narratives about the demos into a coherent, general, third-person account that can be generally recognized as legitimate by those engaged with the demos. Positive law, official policies, and legitimate coercion function as tools for managing the diversity of possible narratives about the demos and staving off the centrifugal effects of too much divergence in actors' ideas about the character of a political community. But even here, the third-person perspective on the demos institutionalized in law cannot be severed from the second-person perspectives of the participants themselves.

In Habermas's discourse theory of democracy, political power unequivocally arises from below. The legitimacy of power stems ultimately from the position actors take as those who *authorize* the coercive power to which they are made subject, and this requires them to possess both the freedom and authority necessary to see themselves as the authors as well as the addressees of the law. In Habermas's words, 'Legitimate law is compatible only with a mode of legal coercion that does not destroy the rational motives for obeying the law: it must remain possible for everyone to obey legal norms on the basis of insight'.⁶¹ This is why the legitimacy of law depends in the last instance on the mobilization of what he calls *communicative freedom*, which exists 'only between actors who, adopting a performative attitude, want to reach an understanding with one another about something and expect one another to take positions on reciprocally raised validity claims'.⁶² Communicative freedom allows actors taking up a second-person relation to one another to understand the reasons for which they act in society as *their* reasons and the norms according to which they act as *their* norms. It is not just the right to speak; it is the right to be heard; it is the right to be acknowledged as a rationally accountable actor and to have one's claims acknowledged with reasons and counter-reasons.⁶³

As such, the effective use of communicative freedom is most secure when it is anchored in the legal guarantees of formal citizenship: equal liberties, due process, free

⁶¹ Habermas (1996), p. 121.

⁶² Habermas (1996), p. 119.

⁶³ See also Günther (1998); James Bohman, *Democracy across Borders: From Dêmos to Dêmoi* (Cambridge, MA: MIT Press, 2007); Benhabib (2011); Forst (2012).

expression, free assembly, rights to petition, voting, and so forth. This puts communicative freedom and legitimate law in a *virtuously circular relation* to each other: legitimate law secures the conditions under which participants can most effectively mobilize their communicative freedom, and participants mobilize their communicative freedom to shape the content of legitimate law. It also makes the balance to be maintained between the communicative generation and the institutionalized enforcement of legal norms a highly precarious one. Robert Cover and Frank Michelman analyzed this relationship with regard to the role of what they call ‘jurisgenesis’ in American practices of judicial review.⁶⁴ The key point of both concepts is that even formal procedures of democratic lawmaking do not suffice to guarantee legitimacy. For the contents of law to remain legitimate, they must be able to continue to resonate over time with the various interpretations circulating in society—that is, at the level of second-person exchanges of claim-making and reason-giving. So long as the law claims democratic legitimacy, the state has no dictatorial authority to decree *for* its citizenry what the law is or means, nor does it have privileged access to its ‘original’ or ‘true’ meaning; rather, its function is to coordinate and manage various interpretations that arise from within the society itself. This does not rule out occasional need of the state to override the interpretations of at least some part of the community, favoring one interpretation at the expense of another in order to preserve the integrity of the law as a coordinating mechanism; just as often, however, it requires new interpretations of law to bring it into accord with evolved understandings. If the coercive power of the state oversteps its coordinating and managing function to take an ‘authoritarian’ position on what the law is or means, it becomes ‘jurispathic’: it breaks the circle between communicative freedom and law.⁶⁵

⁶⁴ Robert M. Cover, ‘The Supreme Court, 1982 Term—Forward: *Nomos* and Narrative’, *Harvard Law Review* 97:1 (1983), pp. 4-68; Frank Michelman, ‘Law’s Republic’, *The Yale Law Journal* 97:8 (1995), pp. 1493-1537.

⁶⁵ Cover (1983), p. 44.

Seyla Benhabib has recently used a similar concept of ‘democratic iterations’ to analyze changing ideas about citizenship and the legitimation of international law.⁶⁶ But for her the issue concerns not potential conflicts between the communicative and institutionalized levels of the demos but an ongoing mediation between moral universality and ethical-political particularity.⁶⁷ This leads to the criticism that Benhabib’s account is a little too triumphal, downplaying the risks of real conflicts and reversals while envisioning a forward march toward cosmopolitanism marred by only light friction.⁶⁸ Taking the dual structure of the demos developed in the preceding pages, we can give the above reading of democratic legitimacy a more schematic reading. If the democratic constitution of the demos originates in the second-person acts of *claim-making* in which actors engage to generate the third-person *claim-contents* of the demos, then it must exhibit the same dependence on communicative freedom: the democratic legitimation of a demos and its boundaries ultimately depends on the ability of participants to understand the demos as *their* demos and for those subjected to boundaries to see them as *their* boundaries. The role of laws that govern the third-person conception of the demos is to coordinate and manage among the diverse and ever-evolving second-person interpretations of demotic identity that emerge from within and across its nominal boundaries. Neither the state nor international law can accord to itself any privileged standpoint on what constitutes ‘a people’. When they attempt to enforce a sovereigntist point of view on the demos that stands over and above the understandings of the participants themselves, they risk suppressing the very communicative freedom that makes democratic legitimacy and solidarity possible in the first place: they become, as it were, ‘demospathic’. Instead, the role of institutionalized

⁶⁶ Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge, UK: Cambridge University Press, 2004); Benhabib (2006); (2011). Similar cosmopolitanizing narratives can be found in Onora O’Neill (2000) *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), pp. 186-97; Max Pensky, ‘Two Cheers for Cosmopolitanism: Cosmopolitan Solidarity as Second-Order Inclusion’, *Journal of Social Philosophy* 38:1 (2006), pp. 165-84.

⁶⁷ In her words, ‘between the moral and the ethical, the moral and the political’ (Benhabib (2006), p. 19; (2011), p. 146).

⁶⁸ See Bonnie Honig ‘Another Cosmopolitanism? Law and Politics in the New Europe’, *Another Cosmopolitanism*, Robert Post (ed) (Oxford: Oxford University Press, 2006), 112; Näsström (2011), pp. 127-8.

law must be to maximize the effective communicative freedom necessary for participants to negotiate boundaries and demotic identities that they can claim as their own.

Legitimizing and Contesting the Demos

A crucial implication of the above is that the makeup of a given demos can never be static. The ability of a democracy to maintain its demos in a way consistent with deliberative-democratic principles depends on its ability to cultivate a virtuous circle of ongoing ‘demosgenesis’ that takes place between members and non-members alike. Putting the above arguments together, we can reformulate the criterion for legitimizing boundaries in a way consistent with the idea of democratic legitimacy in the following way:

The communicative freedom necessary to *legitimate* a boundary presupposes the communicative freedom necessary to effectively *challenge* the boundary, and vice versa.

To be sure, something of the ‘boundary paradox’ is still present in this formulation. For a person to have *fully* effective communicative freedom to challenge the boundaries of a demos in such a way that she can understand herself as author as well as subject of those boundaries, she would have to be formally equipped with many of the rights and entitlements that come with being a full citizen. At the other extreme, however, a state would require more than Berlin Wall-caliber boundaries to shut out the second-person claims of outsiders to insiders entirely, at which point the law of the demos would likely no longer be democratically legitimate to insiders or outsiders. In between these extremes, a demos must contend with the paradox that the very communicative freedom it requires for its legitimacy also allows for its makeup to be successfully contested and altered, while, conversely, efforts to enforce a determinate conception of the demos require uses of state power that constrict the very communicative freedom upon which democracy depends.

At the very least, we can demand of existing demoi adherence to the minimum guarantees necessary to set in motion the virtuous circle between effective exercises of communicative freedom and legitimate law.⁶⁹ This can be interpreted here as the minimum rights necessary for immigrants and refugees, global civil society groups, and world policy organizations to pursue a fair hearing of claims within various demoi (including claims based on all-affected or all-subjected principles), as well as the reasonable expectation for nominal outsiders to make valid claims for greater inclusion. The formal right to vote is a powerful, legally secured means of effectively exercising one's communicative freedom in deliberations over a demotic order in which one can see oneself as an author as well as a subject. But it is not the *only* means. Since the democratic value of formal suffrage lies precisely in its ability to maximize and protect the communicative freedom of those who exercise it, voting represents but one end of a broad and varied spectrum of possible avenues for exercising communicative freedom, with greater or lesser efficacy. This allows us to think about how demotic boundaries may be viewed *more* or *less* democratically legitimate, depending on the extent, security, and effectiveness with which insiders and outsiders are able to exercise the communicative freedom in negotiations over them. In the case of immigration, for example, it should not be beyond the means of social scientists and NGOs to tabulate, rate, and monitor, across democratic countries, the capacities of documented and undocumented migrants to enjoy legal and civic protections, publicly organize, protest, strike, vote in local elections, have some form of political representation, and so on up the scale of political participation. Though hardly a solution by itself, such a cross-country rating (perhaps in the style of Freedom House's 'Freedom in the World' reports) could provide an argumentative resource for groups pushing for greater rights in the public sphere. Measuring the 'effectiveness' of claims by persons not living in or trying to enter a given country, but who are claiming participation rights based on affectedness or subjection, would be admittedly trickier, but one could still imagine possibilities.

⁶⁹ Cf. Bohman (2007).

Specifying the legitimacy of demotic boundaries in terms of the effective freedom to contest them helps us ‘push back’ on the boundary paradox, but it does not overcome it altogether. The boundary paradox can still approach situations of intractability when the third-person level of the demos divorces itself from some or all persons making second-person claims. One such situation is when formal democratic procedures operate in such a way that a minority group within the established demos is routinely marginalized to the point where they are no longer able to understand the laws to which they are subject as *their* laws or the demos in which they are included as *their* demos. These are instances in which a minority group might reasonably make claims for increased demotic autonomy or even secession.⁷⁰ While there may still be sufficient goodwill among the parties within the existing democracy to arrange amicable terms of separation, if the democratic process has broken down completely, the only way to settle a secession conflict on democratic grounds is to reintroduce the circle of communicative freedom and legitimate law at a higher-level institution. Nancy Fraser, for example, advocates the establishment of global democratic institutions charged specifically with the task of adjudicating boundary disputes.⁷¹ But there is no reason—at least not with regard to local boundary disputes—that such an institution *has* to be global in every case. An adequately democratized EU, for example, whose democratic authority were accepted by Catalans, Basques, and Spaniards alike (or Scots, Irish, and Britons), would likely be sufficient to adjudicate their recent disputes—though the makeup and boundaries of the European ‘demos’ is subject to the same standards of legitimacy as lower-level demoi.

Higher-level institutions might also be necessary for more ‘complex’ forms of demotic autonomy—for example, of minority groups that *span* existing demotic boundaries. Understanding the constitution of demoi in terms of second-person relations can also allow us to consider the demotic viability of groups that do not fit the traditional nation-state mold, such as diasporas (the Hmong), identity groups divided

⁷⁰ Christiano (2006), pp. 90-1; Abizadeh (2008), p. 53; Cabrera (2014).

⁷¹ Fraser (2009), pp. 67-71.

among several states (Kurds), demoi that also share identitarian bonds with persons in other states (Hungarians), or groups that share a state but do not inhabit well-defined territories (Bosnia and Herzegovina). From the perspective of democratic adjudication, identity claims such as ‘ethnic belonging’ or ‘common culture’ can count as valid reasons *among others* for formalizing in law certain kinds of associative ties, but they cannot stand alone as a basis for exclusionary boundaries that override other possible claims. Like any set of third-person claim-contents about the constitution of a demos, narratives of ethnicity and culture are contested and subject to revision in broad networks of second-person claim-making, with regard to both their content and their perceived importance to demotic identity. But this does not rule out their validity as possible resources for empowerment and autonomy.

This of course points to challenge of democratizing international institutions to a sufficient extent that they can legitimately take on such adjudicatory burdens, which points in turn to the task of preparing the ground for generating demoi beyond the bounded territorial state. The first step is to recognize that the question of the democratic legitimacy of the demos can never be fully separated from the question of democratic legitimacy in general. If the boundaries of a democracy cannot be perceived as legitimate by both insiders and outsiders, the legitimacy of the democracy itself is likely to suffer as the pressures of transnational flows continue to increase.

Conclusion

In this article, I have argued that democratic theorists dealing with the boundary problem rely on a truncated conception of the demos—one that implicitly relies on the sovereigntist, single-point perspective of the modern state. In doing so, they privilege the third-person observer’s view of the demos over the second-person relationships of participants who give demotic relationships meaning and validity in the first place. It is at this level, the level at which actors make use of their communicative freedom to inform, replenish, and periodically revise third-person definitions of the demos, that

must be prioritized when we consider problems associated with making boundaries susceptible to standards of democratic legitimacy. Yet it is obscured by models of democracy and definitions of democratic legitimacy that presuppose the single-point perspective of the sovereign state.

Understanding the demos as having a dual structure in the way presented here may not be as amenable to the kind of decisive ‘solutions’ preferred by ideal theory, such as the ‘all affected principle’ or the ‘global demos thesis’, but it offers greater focus on the politics of demotic meaning and validity as encountered by those who contend with boundaries in today’s ever-changing world. Because the reproduction of the demos depends on the ongoing exchanges of second-person claim-making and reason-giving within and across boundaries, the only way for the state to ‘freeze’ the contours of demotic identity is by exerting an increasingly paternalistic position over the makeup of the demos and the capacities of *insiders as well as outsiders* to make claims. As is plainly shown in the legacy of modern nationalism, notably in times of war and economic crisis, the hardening of boundaries and the hardening of liberties for citizens as well as foreigners go historically hand-in-hand. To defend stasis in the composition of demotic boundaries, one must be prepared to defend not just the forms of coercion, colonization, and domination that first created them but those forms that will be required to maintain it in the future.⁷² The dual model of the demos outlined here should be both useful and necessary for social scientists and theorists alike to distinguish the sense of community demanded by the democratic state *as a state* from the senses of solidarity citizens build for themselves *as a people*, and to identify the subtle and overt ways in which the former asserts itself over the latter. The lifeblood of a democracy is dependent of the ability of insiders and outsiders to continually and with maximal communicative freedom reproduce, renegotiate, and reinvent their understandings of democratic communities both within and across their nominal boundaries. The democratization of the demos must be understood as an integral part of the democratic project at large—within, between, as well as across demoi.

⁷² Cf. Näsström (2007), p. 646.

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