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Who Should Decide? Beyond the Democratic Boundary Problem*

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Who should have a say in a given decision for it to count as democratic? This is the question with which the *democratic boundary problem* is concerned. Three main "solutions" have emerged in the literature: the All-Affected Principle (AAP), the All-Subjected Principle (ASP), and the Affinity Principle (AP).[1] These principles respectively hold that, from a democratic point of view, a say should be given to all and only those affected by a decision, all and only those subjected to a decision, and all and only those who share national, social, or cultural affinities.[2]

As things stand, the AAP and ASP are the "front-runners" in the race for the best solution to the boundary problem, with the AP lagging somewhat behind. And as several scholars have observed, both the AAP and the ASP come with radically expansive implications as far as the scope of the franchise is concerned.[3] Subscribing to either of them implies that democracy should go – to a greater or lesser degree – global.

This is, in a nutshell, the state of the debate on the boundary problem.[4] My aim in this chapter is to question the presuppositions underpinning this debate. Scholars have proceeded by taking *democracy* for granted, treating it as an ultimate value. Consequently, the best solution to the boundary problem has been framed as the one that most loyally reflects the value of democracy. But it is not at all obvious that democracy is best conceptualized as an ultimate value. Arguably, democracy marks out a family of decision-making systems – characterized, at a minimum, by universal suffrage, free and fair elections, and broadly majoritarian voting procedures – that are themselves justified by appeal to how they reflect and promote important values in particular circumstances.[5] The values in question range from equality and self-determination to peace, security, and respect for fundamental rights. In other words, what we call "democracy" is *itself* one of several possible solutions to the boundary problem (i.e. the problem of *who* should take part

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in a given decision) – a solution that is contingently justified by appeal to a variety of different values. Or so I shall argue.

The chapter proceeds as follows. First, I explore different moral dimensions of decision making – the "who," "how," and "what" dimensions – and locate the boundary problem in relation to them. Next, I explain that democracy is one possible and contingently justified answer to the "who" question. In the third part, I revisit the most popular purported solutions to the boundary problem: the AAP, ASP, and AP. I show that all of them fail to offer general principles for allocating decision-making entitlements. Instead, they often pick out features that matter to *how* decisions should be made. Overall, this leads me to conclude that the search for a "general democratic principle" to answer the boundary problem is misguided.[6] Finally, I support this conclusion by looking at two real-world cases: the US presidential election and the Brexit referendum. I argue that neither the AAP nor the ASP nor the AP makes sense of the wrong involved in disenfranchising those who, intuitively, ought to have been given a say in these decisions. By contrast, taking into account a broader set of considerations that bear on the distribution of decision-making entitlements sheds light on this wrong.

THREE DIMENSIONS OF DECISION MAKING

Whenever a decision has to be made, there are at least three questions we may ask in relation to it: the "who," "how," and "what" questions.

- *Who* should make the decision? Who should have the moral power to issue authoritative pronouncements about the matter at hand? (This is the question the boundary problem is concerned with.)
- *How* should the decision be made? Through what process (e.g. reasoning, data gathering, consultation, etc.) should the decision makers make the decision? What considerations should they take into account?
- *What* should the content of the decision be? What is the right answer to the question at hand?

To illustrate the difference between these dimensions of decision making, consider the following three issues, which we assume are up for decision.

- Issue A: To which charity should Marc's money go?
- Issue B: Which questions should feature in the exam for the undergraduate module "Contemporary Political Theory" (CPT)?
- Issue C: Who should receive an offer for an assistant professorship in politics at University College London (or any other university)?

In relation to issue A, if it is Marc's money we are talking about, then presumably it is *up to Marc* to pick the relevant charity: this is our answer to the *who* question. Furthermore, in deciding which charity should receive his beneficence, Marc should consider the importance of the goals promoted by

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different charities, and the effectiveness and dedication with which each pursues them. This appears to be the most natural answer to the *how* question. Regarding the *what* question, probably several charities are worthy recipients of Marc's generosity, and several are not, due to corruption or inefficiency.

Turning to issue B, intuitively, whoever is in charge of CPT – i.e. whoever teaches it – ought to determine the structure and content of the relevant exam. Or, at least, this is how most universities operate. In setting the exam (the *how* question), the course convenor should consider the material covered and what students may be reasonably expected to know. Finally, with respect to the *what* question, the exam should be neither too easy nor too difficult, and allow markers to differentiate between well prepared and poorly prepared students. Here too several possible exam papers would presumably count as fair tests of the candidates' knowledge.

While, with regard to issues A and B, answers to the *who* question are intuitively straightforward, issue C is a little more complicated. I would imagine that most would fall back on whatever departmental practice is adopted in the institution(s) where they currently work, or for which they have worked in the past. (Yes, I suspect my readers are academics.) Some would likely answer that the entire department should decide whom to hire, through a majority vote after deliberation. Others might insist that a committee of department members, appointed by the head of department, should make the decision. Others still might suggest that the committee should include members of the hiring department, members of other departments, as well as external experts.

This variation has some significance, and I will come back to it shortly. For now, it suffices to note that plausible answers to the *who* question will typically involve some combination of members of the university advertising the position and, possibly, third-party experts. Regarding the *how* question, decision makers should go about deciding whom to hire by carefully considering the candidates' strengths and weaknesses as researchers, teachers, and prospective colleagues, with sensitivity to considerations of inclusion and diversity. Finally, the answer to the *what* question should be: "the best candidate." Of course, there is likely to be reasonable disagreement about who that is. But even in those rare cases where a candidate is ranked top by every decision maker, they may turn out to be a disappointment. Giving right answers to the *who* and *how* questions does not guarantee the right decision outcome.

I have offered these three examples to illustrate the differences between the *who*, *how*, and *what* questions.[7] Let us now zoom in on the *who* question in particular, and ask what reasons support our intuitive answers in each of the cases discussed. Regarding choosing a charity (issue A), the reason why Marc should be ultimately in charge is that it is his money at stake. It would be a violation of his autonomy if he were forced to donate to one charity or the other, contrary to his will. Furthermore, the very point of the practice of charitable donation – as opposed to, say, taxation – involves voluntary transfers from donors to recipients. To the extent that this voluntariness strikes us as

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valuable – say, because it expresses a sincere willingness to help others – that value can only be preserved by letting each individual decide where their donation should go.

Moving on to setting exam questions (issue B), here the justification for letting each course convenor be in charge probably appeals to values other than autonomy, e.g. education, fairness, etc. On the whole, assigning decision-making authority such that each course convenor sets the relevant exam papers is likely to ensure the best results – fairest, best-designed exams – overall. Since this distribution of decision-making authority typically promotes the values behind the practice of a university, it is, all things considered, justified.

Finally, as we have seen, when it comes to procedures for appointing a new assistant professor, a variety of possibilities appear intuitively plausible. Each of them has its advantages and disadvantages. The more-inclusive procedures give more people a sense of ownership over the new hire, but in sufficiently large and internally divided departments, they might exacerbate conflicts and result in stalemates. The less-inclusive ones are more agile and efficient, but may not be as accurate or as conducive to building a strong sense of joint ownership within a department. Which procedure is best, it seems to me, will depend on local factors, including the relevant departmental culture, composition of the department, and so forth. But once again, how decision-making power ought to be distributed rests on what best furthers the point and purpose of the practice of a university (within the constraints of fundamental rights): high-quality teaching and research.

In sum, depending on the particular practice and context at hand, different values and considerations will bear on our answer to the *who* question. With this general theoretical background in place, we can now turn to one particular answer to the *who* question, and its relevant context of application: democracy within political communities.

DEMOCRACY AS A RULE OF REGULATION

The term "democracy" refers to a family of decision-making procedures, which we perceive to exhibit several moral virtues. Disagreement immediately arises, however, whenever we ask for a precise definition of democracy.[8] This, I suggest, following Arrhenius, is because the term "democracy" is associated with *both* a particular set of institutions – involving free and fair elections, universal suffrage, and broadly majoritarian voting procedures – *and* the values that justify those institutions, such as procedural equality, substantively correct outcomes, stability, solidarity, security, inclusion, non-domination and so on.[9]

I suggest that, for clarity's sake, we should use the term democracy to refer to a set of (contingently justified) institutions, rather than to the value or set of values those institutions are supposed to embody.[10] To put the point in a language familiar from contemporary debates about justice, it may be best to think of democracy as a particular family of "rules of regulation," the

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justification of which goes back to some fundamental values in conjunction with a variety of empirical facts.[11] This terminological recommendation is well motivated. After all, if we ask ourselves why, within a given political community, decision-making power should lie with all citizens, via their elected representatives, our answer won't itself appeal to "the value of democracy." Such an answer would be uninformative. Instead, the answer will point to how allocating decision-making power in this way favours stability, respect for fundamental rights, expresses citizens' equality in the circumstances at hand, and so on.

Furthermore, understanding democracy to designate rules of regulation is consistent with the widespread conviction that democracy cannot be the correct way of allocating decision-making power no matter which polity one is looking at. Polities characterized by considerable internal divisions, instability, and lack of mutual trust cannot be easily governed democratically. Instituting a democratic decision-making system when the conditions for its institution are not ripe can be inimical to the very values that justify democracy under the right circumstances.[12]

The foregoing observations, I should emphasize, are not dependent on a purely instrumental account of the value of democracy. They also hold for views that regard democracy as intrinsically valuable because it expresses a certain kind of respect for persons.[13] After all, whether universal suffrage, free and fair elections, and broadly majoritarian decision procedures express that kind of respect depends on the background circumstances at hand. It is hard to see how a democratic institutional setup could be said to embody a commitment to equal respect if, when implemented in certain settings, it would foreseeably lead to chaos and instability.[14] Similarly, the equal right to vote has now acquired a certain symbolic meaning, but this meaning is likely to be the result of a contingent historical process.

The unhelpfulness of treating democracy as an ultimate, context-independent value can be observed in debates about the justification of judicial review of legislation. By judicial review, I mean the practice – most typically exemplified by the US Supreme Court – of suspending the application of, or striking down, legislation approved by elected representatives. A good portion of the scholarly debate about judicial review concerns its democratic credentials (or lack thereof). Theorists such as Jeremy Waldron regard it as undemocratic, since it gives ultimate decision-making power to unelected judges, who are not representatives of the people.[15] Theorists such as Ronald Dworkin, by contrast, argue that judicial review can be democratic, provided judicial decisions promote the egalitarian values at the justificatory heart of democracy.[16] Others still, such as Corey Brettschneider, see judicial review as always "suboptimally democratic," though itself contingently justified by appeal to democratic values.[17]

The use of the language of democracy, which dominates this debate, obscures rather than clarifies matters, precisely because "democracy" is sometimes used to refer to specific decision-making procedures and sometimes to

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the values that justify them. The debate on judicial review would be more fruitfully conducted if it were couched in terms of judicial review's overall *justification*. This will likely appeal to the values that also justify democracy, including stability, procedural and substantive equality, respect for human rights, and much else. Whether judicial review is justified or not will depend on whether it facilitates or hinders expression and protection of these values, compared to feasible alternatives.[18] These values, however, *are not* the same as democracy, even if several of them may contingently justify what we routinely describe as democratic decision procedures.

These considerations, about how best to understand the conceptual domain of democracy, support the hypothesis that there is something wrong-headed in framing the boundary problem as essentially democratic. This framing treats democracy as an ultimate value, and then proceeds to ask which distribution of decision-making power is most responsive to it. But, as I have suggested, democracy is best understood as designating a particular institutional distribution of decision-making power, the justification of which refers back to several values. The question we should be asking, then, is: Which distribution of decision-making power is justified in any given context, in light of the values that bear on the relevant practice and feasibility constraints? We should not be debating about which distribution of decision-making power is most democratic.

THE BOUNDARY PROBLEM REASSESSED: THE NO-GENERAL-SOLUTION THESIS

The previous two sections have offered arguments in defence of the following theses:

a) the question "who should be given a say" ought to be answered in relation to each given practice – and, specifically, its underlying values – in light of the constraints imposed by the context in which the practice operates (first section);
b) "democracy" is a contingently justified answer to the *who* question, one that itself appeals to a variety of different values (second section).

Theses (a) and (b) should make us sceptical about the possibility of identifying a one-size-fits-all solution to the boundary problem: a *general principle* determining the scope of the franchise. And, as anticipated, they should also make us suspicious of the assumption that the relevant solution should always be democratic. Yet, the most prominent answers to the boundary problem – the AAP, ASP, and AP – have tried to do just that: articulate a *general* answer to the question of what makes a certain distribution of decision-making power *democratic*. To further support my theses, I critically discuss the AAP, ASP, and AP in turn. Doing so will reveal that each principle *either* captures considerations relevant to answering the *how* and *what* questions, *or correlates with* – but does not embody – considerations relevant to answering the *who* question.

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Examining the AAP

The AAP cannot provide a general answer to the "who should decide" question. As Robert Nozick famously put it, the decision to marry someone is for each person to make. Potentially rejected suitors, albeit deeply affected, should have no say in it.[19] Similarly, although candidates for an assistant professorship are highly affected by hiring decisions, it would be absurd to include them in the decision-making process.[20]

Proponents of the AAP might reply – as they typically do – that the scope of the AAP is restricted.[21] The AAP is meant to operate within the constraints of individual rights (e.g. the right to choose a romantic partner) and of group rights (e.g. the right of a university to hire its employees). Even with this scope restriction, the success of the AAP as a principle addressing the boundary problem remains doubtful. Recall how, in the university hire example discussed above, even once we have ruled out candidates taking part in a decision, a number of different possibilities remain on the table as to who should be included. These range from all faculty in the department, to a committee of department members, to a committee of both department members and external assessors.[22] While the first of these possibilities may be "rationalized" by appeal to the AAP, the other two cannot (or at least not straightforwardly).[23] But it seems mistaken to suggest that only the first one ought to be adopted by any department or university.

As I mentioned earlier, each procedure has its virtues and vices. Which is best depends on the circumstances. And when circumstances take a certain shape, then some scope-restricted version of the AAP will correspond to the "right answer" to the boundary problem. Note, however, that the AAP won't be what *justifies* the ascription of certain decision-making entitlements in that case. Instead, the AAP will just happen to *match* the ascription of decision-making entitlements recommended by underlying considerations about values and feasibility constraints.

Where the AAP seems to have greater – though still less than perfect – purchase is in relation to the *how* dimension of decision making. As other scholars have already pointed out, while it is doubtful that all those affected by a decision ought to participate in its making, it seems plausible that when a decision needs to be made, decision makers should take the interests of those affected into account.[24] So, when deciding whom to marry, I should be sensitive to the feelings of the potential suitors I reject. Equally, when a small committee decides whom to hire, they should be sensitive to the interests of all department members.

Even with respect to the *how* dimension of decision making, though, the AAP fails to qualify as a fully general principle. Consider, again, the simple case of an academic hire. Even though those most affected are, arguably, the candidates themselves, taking *their* interests into account – beyond treating them professionally and fairly – is not what selectors ought to do. Doing so would be contrary to the purpose of the practice of hiring.

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In sum, the AAP appears to be neither a general principle for addressing the boundary problem, nor a general principle articulating how decisions should be made. Although it may, on occasion, match our considered judgements about who should participate in a given decision, it does not offer a plausible explanation of those judgements, which are ultimately traceable to our assessment of (i) the values at stake and (ii) which allocation of decision-making entitlements best honours and realizes those values in the circumstances at hand.

Examining the ASP

The ASP states that all and only those who are subjected to a decision ought to have a say in it. This formulation is ambiguous between at least two interpretations of subjection. The first sees subjects as the targets of coercion. A, in this case, is subjected to B, if and only if B coerces A (i.e. if B forces A to perform certain actions by threatening sanctions). The second focuses on someone's being the addressee of certain de facto authoritative commands. A, in this case, is subjected to B, if and only if B issues authoritative commands directed at A. Everyone falling within a state's jurisdiction counts as subjected to the state's commands in both senses.[25]

The ASP too, in both formulations, is not a plausible general principle for the allocation of decision-making entitlements. Consider, for instance, the coercion interpretation of the principle. If you insist on entering my apartment, I (or the police) may well permissibly coerce you to prevent you from getting in. It would seem absurd to suggest that such coercion could only be justified if you had participated in my decision to keep you out. While, to be sure, the use of coercion is subject to strict normative standards, those standards are typically *not* participatory. Coercion may be legitimately employed to protect people's rights, and what people's rights are is, at least to some extent, independent of the outcomes of collective decision-making procedures. Instead, those outcomes can be valid only if they respect the relevant rights.

It might be objected that although some rights are independent of collective decision making, others are not. The latter are rights on which there is reasonable disagreement, but whose content needs to be settled. This means that respect for everyone who will be subjected to coercion in the name of those rights requires them to contribute to deciding what the boundaries of those rights are.[26]

The difficulty with this argument is twofold. First, it is unclear why *only coercion* in the name of certain (potentially controversial) rights is disrespectful towards the prospective coercees, if they have not themselves taken part in the decision-making process determining the contours of those rights. What is so special about coercion as compared to, for example, affectedness more generally? After all, on the face of it, both can be inimical to individual autonomy, though in different ways: coercion through will bending, affectedness through reducing one's options, sometimes quite dramatically.[27] But if the rationale

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for focusing on coercion collapses into affectedness, then we already know, as stated earlier, why it fails to offer a general account of how entitlements to participation should be allocated.

Second, even if we just focus on coercion narrowly construed (i.e. as involving the threat of sanctions), it is unclear why participation is necessary to make such coercion in the name of reasonably contested rights justified. The argument here often refers back to how participation preserves individuals' autonomy. But this argument is known to be mostly metaphorical. It is unclear how an outvoted minority coerced in the name of what it regards as a mistaken understanding of rights preserves its *autonomy* through having participated. More likely, participation in such cases contributes to conveying, symbolically, the equal status of those coerced and to fostering a sense of ownership over the relevant decision and broader political institutions. These are, of course, important values, but they are, as we have seen, not the only ones that matter when it comes to allocating decision-making entitlements. Stability, respect for fundamental rights, and much else matter too – at least in contexts we regard as paradigmatically "political." So, while there may be contingent reasons in favour of some form of participation in decisions that coerce one, those reasons don't add up to vindicating *a general principle*.

Let us now turn to the second meaning of subjection, concerning one's claim to authority over others. Here, too, reflection makes it apparent that the ASP could not serve as a general basis for distributing decision-making entitlements. Consider a teacher and her pupils. She clearly claims authority over them, in certain domains. For instance, she claims authority over the content of the exams she will set, she claims authority to release students from the obligation to remain seated during her lecture, and so forth. It would appear absurd to suggest that her claim to authority is invalid unless students also contribute to making the relevant decisions. Such a principle would be contrary to the purpose of educating children.

Even once we move to broader contexts – including entire political communities – the validity of claims to authority does not seem systematically dependent on participatory entitlements being granted to those who are subjected to the relevant authority. To be sure, participation may (again) contribute to generating a sense of ownership over a given decision, and to conveying a special type of respect towards the subjects of authority. But it is unlikely to be sufficient (or necessary) for a claim to authority to be justified.

This can be easily seen by considering a scenario inspired by similar ones famously proposed by Robert Nozick and John Simmons.[28] Assume that I, and some others in my neighbourhood, want to set up a street-beautifying scheme. You're also a resident in the neighbourhood, but are not particularly interested in making our streets prettier or cleaner. The neighbourhood holds a referendum on whether to institute this scheme. You, qua resident, are given a right to vote. However, you don't exercise that right. The majority of voters select a fairly expensive street-beautifying scheme. This results in

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a decision to implement the scheme that is presumptively binding on you. Does the fact that you were given a say *validate* the claim to authority made by the neighbourhood and place you under an obligation to contribute? The intuitive answer appears to be "no," which suggests that entitlements to participate in a decision – even assuming its content is fully morally acceptable – are insufficient for claims to authority to be justified. In sum, the ASP too – in its different interpretations – does not offer a general answer to the boundary problem.

Examining the AP

Finally, I very briefly turn to the Affinity Principle (AP). This holds that, when it comes to political decisions, those who belong to the same nation or people should be given a say. I won't dwell much on the AP, since it has already been successfully challenged by others. I just limit myself to noting that one's cultural, social, or national affinities appear irrelevant to the issue of whether one should be given a say in certain decisions as a matter of principle. What the AP, however, seems to point to are the *empirical conditions under which* institutions we would most readily define as democratic can function reasonably well.[29] These are conditions characterized by sufficient mutual trust, commonality of interests, and mutual understanding. If so, the AP may be *a proxy* for one or more of the de facto conditions under which a democratic distribution of decision-making power, within a certain context, is justified.[30]

We have seen that the AAP, ASP, and AP do not offer general principles justifying the allocation of decision-making power. This further corroborates my hypothesis, namely that there is no single solution to the boundary problem: different assignments of decision-making power are justified in different circumstances.

IMPLICATIONS

To complete my discussion, I now wish to focus on two recent political events that raise the "who should decide" question quite prominently: the 2016 referendum on the UK's membership of the European Union (EU), and the 2016 US presidential election. Let me give you a bit of context for my choice of focus. I am an Italian citizen, and until December 2020 I was a resident in the UK, where I had lived, with short interruptions, for several years. Like any other non-British European citizen, I had no say in the decision about whether the UK should remain in the EU. And like any other non-US citizen, I had no say over whether Hillary Clinton or Donald Trump should be the next US president. I have found both forms of disenfranchisement somewhat troubling, but the former considerably more than the latter. What could explain these feelings?

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I know I am not alone in having felt like this – at least within the relevant demographic – so I hope that taking my intuitions as provisional "data points" to be explained is not too idiosyncratic. I will attempt to show that, while neither the AAP, nor the ASP, nor the AP can make sense of how I have felt in relation to the Brexit vote and US presidential election, looking at the plurality of factors that bear on the *who* question can.

Consider the AAP first. It is far from clear that my stakes in the Brexit decision were greater than my stakes in the US presidential election. Arguably, the reverse was the case. To be sure, I had lived in the UK for many years, I identified with the UK a lot more than I did with the United States (for that very reason), so my immediate moral intuitions may have been clouded by a sense of disappointment, rejection, and alienation. But the truth is, there is only so much damage that Brexit could do to someone in my position. If things took a turn for the worse, I told myself, moving back to the European continent, for instance, would be a feasible alternative – as it turns out, an alternative I eventually took, as I am now residing in Germany. And even a significant downturn in the British economy wouldn't have had deleterious consequences for someone in a fairly privileged position, like myself.

Who becomes US president is, bluntly put, a much bigger deal. I can (and did) escape Brexit, but I doubt anyone could escape the Trump presidency, no matter their location in the world. Just consider Trump's statements about climate change, his lack of diplomatic skills, his "America first" mantra, and his war-mongering tendencies. I was and still am upset about Brexit, but I was a lot more *anxious* about Trump (and still am, although he is no longer president). This alone suggests that when it comes to stakes, at least in my perception, the much more consequential decision was taken in the United States. If the AAP were the correct principle for defining the *demos*, then I should feel a lot more aggrieved for not having been given a say in the Clinton-vs-Trump race than for my lack of participatory entitlements in the Brexit referendum. Or, at the very least, I should feel equally aggrieved in the two cases. Yet my intuitions go in the exact opposite direction.

Now consider the ASP. Might it be that, because my degree of subjection to UK law – whether in terms of coercion or in terms of being the addressee of obligations – was much greater than my subjection to US law, this explains my intuitions? I doubt it. People like me are obviously subjected to several pieces of US law – e.g. US immigration law as well as law for which the United States claims extra-territorial jurisdiction – both in the sense of being coerced by it and in the sense of being addressees of presumptively binding commands.[31]

Still, one could insist that the *degree* to which I was subjected to UK rule while still a resident in the UK was much greater than the degree to which I was and still am subjected to US rule. But is this really so? For what does subjection amount to? In the eyes of proponents of the subjection argument, it involves the issuing of commands (backed by the threat of sanctions). But consider

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the following commands: "Don't steal on US territory, otherwise you shall be punished in accordance with US law" and "Don't steal on UK territory, otherwise you shall be punished in accordance with UK law." Someone like me is subjected to both of them, simultaneously, all the time. It just so happens that, since until December 2020 I was physically present in the UK a lot more than in the United States, the latter command was arguably more likely to have an impact on me than the former. But in both cases, the commands take the form: "Don't perform action X, otherwise you'll face consequence Y." It seems that *how likely* I am to perform action X is irrelevant to my degree of subjection to the corresponding commands. After all, I was and am supremely unlikely to commit theft in the UK (or anywhere else), yet, as a UK resident, I was most definitely subjected to UK criminal law – both in the sense of being coerced by it and in the sense of being presumptively bound by it.[32]

So, even as far as subjection is concerned, it is not clear that there was much of a difference between my relation to the United States and to the UK, even though I was a resident of the latter. And if there was one, this appears to reduce to a matter of affectedness: UK subjection was more likely to affect me than US subjection, for the reasons just mentioned. But as we have seen, overall, the Brexit vote arguably affected my interests *less* than the US presidential vote.

Finally, regarding affinity, I think it is fair to say that I had (and possibly still have) greater "affinity" to the UK, rather than to the United States, for the simple fact that I had lived there for many years. My sense of identification with the British polity, both cultural and political, was certainly greater than my sense of identification with the United States. But while this affinity might explain why being disenfranchised from the Brexit vote was somewhat upsetting to me, it does not explain why I ought to have been included in it. To begin with, as I have already argued, it is not clear why identification and affinity are in principle relevant considerations when it comes to assigning participatory entitlements. Moreover, I am not aggrieved about the fact that I am not a British citizen and that I was not allowed to vote in UK national elections, despite residing in Britain. Yet exclusion from the Brexit vote had a very different effect on me. Mere affinity cannot explain this disanalogy. I thus conjecture that something to do with the *nature of the question being decided on*, in the Brexit case, may do part of the explanatory work.

What explains my intuitions here – i.e. that EU citizens' exclusion from the Brexit referendum was problematic in a way that their exclusion from the US presidential election was not – is a combination of factors, which cannot be captured by a single, overarching principle. First, while I think "affected interests" should be taken into account in political decision making pretty much across the board, *how* they should be taken into account – e.g. whether via enfranchisement or some other mechanism – is a contingent matter. A rule of regulation that required all those affected by the US election to have a say in it would be utterly impracticable in the world in which we live, incompatible with the state

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system as we know it. Trying to implement it would be disastrous. By contrast, allowing long-term EU residents to vote in the Brexit referendum would have been entirely feasible. The different *feasibility* of including someone like me in the relevant *demoi* for these two decisions has certainly influenced my intuitive judgements. If ought implies can, as a matter of principle, the United States cannot have "wronged me" by not including me. The same is not true of the UK.

Second, I had moved to the UK on the bona fide assumption that this came with the guarantees of EU citizenship and, quite suddenly, those guarantees may be unilaterally revoked. It is, therefore, as if an implicit "social contract" had been breached. By analogy, when the terms of a contract are changed, either all parties to the contract get to participate in the change in terms and conditions, or at least changes in the contract should *not* alter the rights and duties of the parties excluded from the amendment process. Such exclusion, then, appears particularly problematic in the Brexit case, for reasons that do not equally apply to the United States.

It might be tempting to add to these two reasons – one pragmatic (feasibility), the other principled (unilateral change in terms and conditions) – that EU residents in the UK had acquired a sort of "moral citizenship," by virtue of their long-standing cooperation within British society. Such cooperation, in turn, would entitle them to becoming co-authors of the relevant terms of cooperation, including in the case of Brexit.

These considerations about moral membership, however, would do little to explain the sense of unfairness felt by EU residents in the UK for being excluded from the Brexit vote. Typically, long-term residents would have qualified for citizenship. Had they taken up citizenship – which, admittedly, involves a number of hurdles – they would have been automatically included in the franchise. The option of becoming a UK citizen was available. To that extent, long-term EU residents who chose to exclude themselves from the franchise have little to complain about, or so it could be argued.[33]

This response has some merit, but it ignores the fact that, for many, the choice not to take up citizenship was made *under the assumption* that their rights would be guaranteed by virtue of the UK's membership of the EU. Those were the terms and conditions under which many EU citizens moved to the UK in the first place. This is why the sense of unfairness for being excluded from the Brexit *demos* is best explained by appeal to a perceived "unilateral change in terms and conditions," rather than by a failure to acknowledge long-term residents' moral entitlement to citizenship.

An objector might counter that, in fact, "terms and conditions" were not changed. After all, at least as a matter of principle, each EU country retains a right to leave the Union. This raises interesting questions about how to *ascertain* the terms of an implicit contract, such as the contract that arguably exists between a legal immigrant and their host state. Depending on our answer, the "unilateral change in terms and conditions" argument for the unfairness of excluding permanent EU residents from the Brexit vote will either stand or fall.

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The point to be emphasized in this context, though, is that the peculiar sense of unfairness felt by EU residents in the UK excluded from the Brexit vote cannot be explained *solely* by reference to the AAP, the ASP, or AP. Rather, it likely also hinges on feasibility considerations as well as on the impression – the validity of which, I have suggested, is arguable – that an implicit "deal" has been *unilaterally* broken by one of the parties.

CONCLUSION

In this chapter, I have tried to cast doubt on the framing of the boundary problem. Instead of asking who should be given a say for a decision to count as democratic, we should focus on the question of what distribution of decision-making power is justified in any given circumstance. Democracy is itself a *contingently justified* answer to this broader question. To call the boundary problem "democratic" from the start is to put the cart before the horse, to prejudge our answer to the "who should decide" question. In any given circumstance, how decision-making power should be distributed depends on the values underpinning the practice within which the decision has to be made, broader applicable moral principles (e.g. concerning legitimate expectations, implicit contract making, and so forth) in conjunction with feasibility constraints. This means that our answer will sometimes look like democracy and sometimes not, and that the search for a general one-size-fits-all principle for answering the boundary problem is, ultimately, misguided.[34]

A final objection is worth considering. This is that, even though decisions shouldn't always be made democratically, there is always some value in the democratic pedigree of a given decision. So it may still be useful to ask "who should be given a say for a decision to instantiate democratic value?" If my argument is correct, however, there is no such thing as "democratic value" per se. Instead, there are several values that contingently justify our attachment to democracy. Of course, one might concentrate on one such value in particular – say, autonomy, or political equality, or non-domination – and call it "democratic." But it is unclear what the advantage is, other than rhetorical, of using language in this way. It would be better to instead say that a commitment to autonomy, or political equality, or some other value gives us a pro tanto reason to confer decision-making power on some people rather than others. This, however, falls short of a conclusive answer to the "who should decide" question. And to the extent that reference to democracy is often seen to point to a particular set of concrete decision-making mechanisms, labelling particular values "democratic" obscures the pro tanto nature of such determinations. Moving away from a democratic framing of the boundary problem, then, still allows us to capture all that democrats find valuable in substance, without becoming blind to the full range of morally relevant considerations that bear on the "who should decide" question.

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NOTES

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1 There is also a fourth contender, namely the "Proximity Principle" (PP). I omit to discuss it here since, as Robert Goodin shows in his contribution to this volume, proximity is just a proxy for other morally salient factors, and comes close to affectedness.

2 Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," in *Liberal Democracy: NOMOS XXV*, ed. James R. Pennock and John W. Chapman (New York: New York University Press, 1983); Gustaf Arrenhius, "The Boundary Problem in Democratic Theory," in *Democracy Unbound: Basic Explorations I*, ed. Folke Tersman (Stockholm: Filosofiska institutionen, 2005); Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy and Public Affairs* 35, no. 1 (2007): 40–68; Arash Abizadeh, "On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem," *The American Political Science Review* 106, no. 4 (2012): 867–82; Sofia Näsström, "The Challenge of the All-Affected Principle," *Political Studies* 59, no. 1 (2011): 116–34; 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 and Global Politics* 5, no. 3 (2012): 129–52.

3 For example, Goodin, "Enfranchising All Affected Interests"; Robert E. Goodin, "Enfranchising All Subjected, Worldwide," *International Theory* 8, no. 3 (2016): 365–89; Arash Abizadeh, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory* 36, no. 1 (2008): 37–65.

4 For further details, see the Introduction to this volume.

5 For discussion see, for example, Richard J. Arneson, "Democracy Is Not Intrinsically Just," in *Justice and Democracy*, ed. Keith Dowding, Robert E. Goodin, and Carole Pateman (New York: Cambridge University Press, 2004); David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2008); Thomas Christiano, *The Constitution of Equality* (New York: Oxford University Press, 2008); Laura Valentini, "Justice, Disagreement and Democracy," *British Journal of Political Science* 43, no. 1 (2013): 177–99; Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989).

6 A pluralistic picture of (democratic) inclusion has recently been offered by Rainer Bauböck, who accepts the AAP, ASP and the "all citizenship stakeholder" principles as each relevant to determining who should be included within democratic boundaries in different contexts. The principles should thus not be conceived of as competing, but as working in concert. See Rainer Bauböck, *Democratic Inclusion* (Manchester: Manchester University Press, 2018).

7 I am assuming that, in cases of collective decision making, someone is included in the answer to the "*who* question" only if their will is given more than zero weight

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in determining the outcome. (This is to exclude limiting cases in which everyone votes, but the procedure for aggregating votes takes a particular person's vote – i.e. the dictator's – to be always decisive.)

8 W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1956): 167–98; Christian List, "The Logical Space of Democracy," *Philosophy & Public Affairs* 39, no. 3 (2011): 262–297.

9 Arrhenius, "The Boundary Problem in Democratic Theory."

10 For views that instead see democracy as itself a value, see Gray and Warren (this volume).

11 G. A. Cohen, "Facts and Principles," *Philosophy & Public Affairs* 31, no. 3 (2003): 211–45.

12 David Miller, "Democracy's Domain," *Philosophy and Public Affairs* 37, no. 3 (2009): 201–28; David Miller, "Against Global Democracy," in *After the Nation: Critical Reflections on Post-Nationalism*, ed. Kaith Breen and Shane O'Neill (Basingstoke: Palgrave Macmillan, 2010); Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," *International Theory* 4, no. 1 (2012): 39–68; Laura Valentini, "No Global Demos, No Global Democracy? A Systemization and Critique," *Perspectives on Politics* 12, no. 4 (2014): 789–807.

13 For example, Christiano, *The Constitution of Equality*; Christopher G. Griffin, "Democracy as a Non–Instrumentally Just Procedure," *Journal of Political Philosophy* 11, no. 1 (2003): 111–21.

14 Arneson, "Democracy Is Not Intrinsically Just."

15 Jeremy Waldron, "The Core of the Case Against Judicial Review," *Yale Law Journal* 115 (2006): 1346–406.

16 Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986); Ronald Dworkin, *Freedom's Law* (Cambridge, MA: Harvard University Press, 1996).

17 Corey Brettschneider, "Balancing Procedures and Outcomes within Democratic Theory: Core Values and Judicial Review," *Political Studies* 53, no. 2 (2005): 423–41.

18 Brettschneider, "Balancing Procedures and Outcomes Within Democratic Theory."

19 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

20 See the example offered in Stilz (this volume).

21 Owen, "Constituting the Polity, Constituting the Demos"; Valentini, "No Global Demos, No Global Democracy?"

22 I am here assuming that votes would be aggregated via majority rule. But of course one could think of more creative aggregation procedures, e.g. where votes by different individuals are given different weights. Cf. Mathias Koenig-Archibugi, "Fuzzy Citizenship in Global Society," *The Journal of Political Philosophy* 20, no. 4 (2012): 456–80; Harry Brighouse and Marc Fleurbaey, "Democracy and Proportionality," *The Journal of Political Philosophy* 18, no. 2 (2010): 137–55.

23 One could argue that any hire in department X affects the relevant university and/or the relevant discipline as a whole. Even if true, it remains the case that the hiring department is orders of magnitude more affected.

24 This corresponds to what Stilz (this volume) calls the "substantive" as opposed to "procedural" reading of the All-Affected-Interests Principle. See also Rainer Bauböck, "Global Justice, Freedom of Movement and Democratic Citizenship,"

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European Journal of Sociology / Archives Européennes de Sociologie 50, no. 1 (2009): 1–31; Owen, "Constituting the Polity, Constituting the Demos"; Charles Beitz, "Global Political Justice and the 'Democratic Deficit'," in *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, ed. R. Jay Wallace, Rahul Kumar, and Samuel Freeman (New York: Oxford University Press, 2011), p. 235.

25 See, respectively, Abizadeh, "Democratic Theory and Border Coercion"; Miller, "Democracy's Domain"; John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 194; cf. Goodin, "Enfranchising All Subjected," p. 9.

26 Cf. the arguments in Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton, NJ: Princeton University Press, 2009).

27 Laura Valentini, "Coercion and (Global) Justice," *American Political Science Review* 105, no. 1 (2011): 205–20; Laura Valentini, "No Global Demos, No Democracy?"

28 A. John Simmons, *Moral Principles and Political Obligations* (Princeton, NJ: Princeton University Press), p. 133; Nozick, *Anarchy, State, and Utopia*, p. 94.

29 Miller, "Against Global Democracy"; Christian List and Mathias Koenig-Archibugi, "Can There Be a Global Demos? An Agency-Based Approach," *Philosophy & Public Affairs* 38, no. 1 (2010): 76–110; Song, "The Boundary Problem in Democratic Theory."

30 Cf. the structure of Goodin's argument about the proximity principle (this volume).

31 Abizadeh, "Democratic Theory and Border Coercion"; Goodin, "Enfranchising All Subjected."

32 Cf. Goodin, "Enfranchising All Subjected."

33 In fact, for some, long-term residents should be obliged to take up citizenship. See Helder De Schutter and Lea Ypi, "Mandatory Citizenship for Immigrants," *British Journal of Political Science* 45, no. 2 (2015): 235–51.

34 Arthur Applbaum expressed a similar concern in discussion.

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