The Boundary Problem in Democratic Theory

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I. Introduction

Who are eligible to take part in which decision-making processes? The boundary problem, or the demos problem as it is also called, is of both practical and theoretical importance for democratic theory. If nothing else, all the different notions of democracy have one thing in common: a reference to a community of individuals, "a people" who are, in some sense, collectively self-governing. Surprisingly, however, little attention has been given to this problem in the classical treatises on democracy. As Robert Dahl puts it, "how to decide who legitimately make up 'the people' … and hence are entitled to govern themselves … is a problem almost totally neglected by all the great political philosophers who write about democracy."[1]

I take it that it is pretty clear that the boundary problem is a practical problem. For example, what is the relevant constituency for a democratic solution to the conflict in Northern Ireland? Should a treaty be approved by the citizens (or their representatives) of Northern Ireland alone or should it also involve those of the United Kingdom and the Irish Republic as well? Presumably, the present solution, with the United Kingdom of Great Britain and Northern Ireland on the one side, and the Republic of Ireland on the other, could be "democratically" supported by a referendum in Northern Ireland or in the United Kingdom of Great Britain and Northern Ireland. It is the latter entity that an old-style Unionist considers the relevant domain for a democratic process. Yet, such a referendum would not impress an Irish nationalist who would consider these boundaries arbitrary and illegitimate,

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[1] Dahl (1970), p. 60. Cf. Dahl (1989).

nothing more than a kind of international gerrymandering. Still, both the Unionist and the Irish nationalist could be dedicated democrats.

It is perhaps not equally clear that the boundary problem raises problem regarding the justification and legitimacy of democracy. However, F.G. Whelan, one of the few theoreticians that have discussed the boundary problem at length claims that

> … democratic theory *cannot itself* provide any solution to disputes that may – and historically do – arise concerning boundaries. …. It may not be surprising that democracy, which is a method for group decision making or self-governance, cannot be brought to bear on the logically prior matter of the constitution of the group, the existence of which it presupposes. Nevertheless, strong claims are frequently made for democracy, both by its philosophical advocates and by ideologues and activists of the modern world; Democracy is commonly put forward as the sole foundation of legitimate government, and as the sole legitimate method to make binding public decisions of all sorts. …. The boundary problem does, however, *reveal one of the limits of the applicability of democracy*, and acknowledgement of this may have the beneficial effect of moderating the sometimes excessive claims that are made in its name.[2]

I shall challenge Whelan's conclusion and suggest that it is based on a failure to take into account an important distinction between two kinds of ways of understanding democracy. Moreover, I shall try to show that there are resources within the democratic tradition to solve the boundary problem.[3]

II. Normative Ideals and Decision Methods.

Firstly, we need to consider an important but often neglected distinction between two ways of understanding normative theories which hasn't been observed sufficiently by some writers in

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[2] Whelan (1983), pp. 16, 43, my emphasis. Näsström (2003, 2004) repeats the same claim.

[3] Actually, the problem I have referred to above as "the" boundary problem is just one among a number of such problems. The perhaps most discussed boundary problem concerns people's capabilities as political agents, their political competence. In order to effectively further one's interests through democratic processes one must, arguably, possess a certain degree of knowledge and rationality. The question then becomes how we should decide the relevant political competence for membership in the political community. Another boundary problem concerns beings that lack the capacity to take part in the democratic process but who are going to be affected by policies adopted and that could be represented by proxies, for example future generations. I shall not discuss these problems here, but my suggested solution to Whelan's boundary problem has clear implications for how we should approach these boundary problems too.

the discussion of democracy. Among moral theorists, it is commonly acknowledged that one needs to distinguish between normative ideals, on the one hand, and practical decision methods or rules for regulating social interactions (e.g., social norms, laws, institutions), on the other hand.[4] Roughly, a normative ideal states the ultimate goal that that we strive towards, such as the just or good society (i.e., the considerations that ultimately make actions, policies, institutions etc, right, just, or fair), whereas a decision method is a strategy for decision-making which we use to achieve the goal specified by the ideal. We use the normative ideal, in conjunction with empirical considerations, to evaluate and rank alternative decision methods, social norms, laws, institutions, etc, for different situations and contexts, in respect to how well they would promote the ideal.

Take utilitarianism as an example. According to utilitarian ideal, we should maximise people's well-being, or expected well-being. Now, a common complaint against utilitarianism contends that it is self-defeating since it in many instances it is practically impossible to calculate the value of the outcomes of the alternative actions available to a person. Consequently, if we try to apply the utilitarian principle in every single case, we are likely to choose the wrong action since our calculations are bound to be wrong. This is, however, no argument against utilitarianism as a normative ideal but an argument against utilitarianism as a practical decision method. One can still accept utilitarianism as a normative ideal but hold that in practical deliberation, we have to rely on "rules-of-thumb" and approximations: help those that are in distress, be honest, do not break promises, obey the law, etc., on the individual level, and rule of law, democracy, independent mass media, and so forth, on the institutional level. Whether we should accept these practical decision methods, on the other hand, have to be judged against the utilitarian ideal in a "cool hour" when we have enough time and resources to evaluate the consequences of the general application and implementation of these decision methods relative to the goal specified by the ideal. Likewise for an advocate of equality of resources, well-being, power, etc, and other normative ideals.

There are two important lessons to draw from this example. Firstly, one can reject a theory as a decision method but still accept it as a normative ideal and *vice versa*. Secondly, even if we don't find a particular decision method satisfactory in regards to some case, it doesn't follow that it isn't useful in other cases. The utilitarian decision method, for example, might be a good one for some governmental bodies. Again, this has to be decided by evaluating the

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[4] See Bales (1971) and Danielsson (1974), pp. 28-9, for an excellent treatment of this issue. Danielsson and Tännsjö (1991) make the distinction in connection with democratic theory. See also Brink (1986), pp. 421-7; Kymlicka (1990), p. 29.

decision method against the ideal. A normative ideal, on he other hand, we expect to be applicable to any actions, rules, or institutions that falls under its domain without exceptions.

How does this distinction pertain to democratic theory? A normative theory of democracy can also be taken either as a normative ideal or as a practical decision method. As R. J. Pennock puts it succinctly in a discussion of Wollheim's paradox: "One must distinguish at the outset between democracy as an ideal and democracy as a practical device for approximating the ideal".[5] Now, if democracy is taken as a normative ideal, it is justified by being in a reflective equilibrium with our considered judgments and intuitions about democracy and by satisfying other relevant epistemological and methodological criteria.[6] Again, such a normative ideal need not be intended to be directly applicable to choice situations in the real world. Rather, we use the normative ideal, in conjunction with empirical considerations, to evaluate and rank alternative practical decision methods for different situations and contexts.

For those who study how democracy works in practice, it is probably more common to view democracy as a kind of decision method, as a matter of institutional arrangements.[7] Implicit in much reasoning about democracy, however, is also the idea that democracy is a kind of normative ideal. For example, it is presumed in much work in social choice theory and in many proud political declarations --- in the latter case often expressed in terms of justice and equality.[8] Although I shall not dwell much on the details of such a theory in this paper, I think that the most promising approach is to take democracy as a theory of just distribution of influence.[9]

III. Democracy as Decision Method and the Boundary Problem

Does Whelan discuss democracy as a decision method or as a normative ideal? Whelan's position is unclear on this issue. He sometimes writes like he has a normative ideal in mind, for example, when he talks about democracy as "the sole foundation of legitimate government". Someone who takes democracy as a practical decision method justified by a normative ideal doesn't hold that democracy is the foundation of legitimate government but that its legitimacy derives from the ideal. For utilitarians, for example, democracy (of some

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[5] Pennock (1973), p. 88.

[6] See Rawls (1971) and Tersman (1993).

[7] Schumpeter (1976) is a case in point.

[8] See Naess (1956) for a list of such slogans.

kind) is justified if and only if it maximises people's well-being as compared to alternative decision methods. For Rawlsian liberals, to take another example, democracy is justified (roughly) if it is the best decision procedure for the safeguarding of basic civil liberties, equal opportunity and the well-being of the worst-off. For Nozickian libertarians, democracy is justified insofar it respects people property-rights, and so forth for other normative ideals.

On the other hand, much of Whelan's writing seems to concern democracy as a decision method. For instance, he spends quite a lot of space on discussing boundary principle based on territory, nationality, culture, or geography. These principles are quite obviously poor candidates for a boundary principle seen as part of a democratic ideal. The territorial state principle is an illustrative example. According to this principle, we should just take existing territorial states as a given and include every person residing or born in a particular state in the democratic process governing that state. As Whelan himself points out, the territorial state principle cannot give any guidance in cases where borders of territorial states are in question. It falsely assumes that we can take boundaries between territorial states as something already fixed and undisputed. Needless to say, territorial disputes are frequent in human history and some of the most tragic and bloody conflicts in the present revolve around the issue of establishing the proper boundaries where no entrenched territorial boundaries exist.

Secondly, the territorial state principle has a very limited scope. Arguably, any social union, from the world community to the family, is part of the domain of democracy, i.e., are candidates for being democratically organised.[10] The territorial state principle only addresses one particular boundary problem and leaves open the question of how to delimit participation in decision making procedures in other social unions.

Thirdly, even if we lived in the best of possible worlds where all territorial boundaries were settled, these boundaries would still be irrelevant and ad-hoc from a normative point of view. Suppose the U.S. Government decides to resume atmospheric nuclear tests and predicts that fallout would cause several deaths and injuries. The test would either be performed above the Nevada desert, where the fallout will only affect U.S. citizens, or next to the Mexican border where, because of wind conditions, it would only affect Mexican citizens. As good democrats, the U.S. Government arranges a referendum where, not surprisingly, the vast majority of U.S. citizens votes for the Mexican border alternative. This would not only be a democratically impeccable decision but also democratically better than performing the test

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[9] Two examples of this kind of ideal in the litterature are Danielsson's (1974) suggestion to take problems of preference aggregation, such as Arrow's impossibility theorem, as problems of just distribution of influence, and Cristiano's (1993, 1996) idea of democracy as an ideal of equal chances to affect the outcome.

[10] See Cunningham (1987), p. 51, for the same view.

above the Nevada desert, since according to the territorial state principle, the views of the Mexicans should have no impact at all on a decision made by the U.S. Government. The main flaw of the territorial state criterion is that it is completely insensitive to who is affected by a decision. This will not suffice in a world where pollution, goods and capital move more or less freely over state borders.

The three other boundary principles mentioned above which Whelan discusses --- nationality, culture and geography --- share the same flaws as the territorial state principle. Since many of these problems are so obvious, it is hard to believe that anyone has seriously suggested them as a boundary principle for a democracy as a normative ideal and Whelan himself doesn't state clearly what he has in mind. However, Whelan's discussion of this topic becomes more interesting if we see it as a criticism of certain rules of thumbs for who should take part in which decision, that is, as partial boundary principles for democracy as a decision method. We can then see his criticism as an effort to point out when these rules are useful and when they are not. Moreover, I don't doubt Whelan's claim that these principles are commonly discussed among political scientists, geographers, and others, but it is quite likely that what these theorists had in mind was a useful rule of thumb for certain cases, not a general principle applicable in all cases.

There is, however, a problem for Whelan if his discussion is supposed to be about democracy as a decision method: his charge against democratic theory loses its force. If we take democracy as a practical decision method and again raise the question of who should take part in which decision procedures, it seems clear that this has to be answered by the normative ideal that motivated the choice of democracy in the first place.[11] Again, if our normative ideal is utilitarianism, then the allotment of voting rights and the scope of democratic decision-making should be devised such that the total welfare is maximised, and likewise for other possible ideals. In other words, it is a misplaced criticism of democracy as a decision method that it "cannot itself provide any solution to disputes that may – and historically do – arise concerning boundaries" since it never was supposed to do it by itself. Consequently, for Whelan's challenge to have any bite, we have to take it to be about democracy as a normative ideal.

IV. Democracy as a Normative Ideal and the Boundary Problem

An intuitively attractive boundary criterion for a democracy as a normative ideal is the all affected principle: The people that are relevantly affected by a decision ought to have, in some

sense, influence over it. It is perhaps implicit in the phrase "government by the governed" or as Lincoln once expressed it: "A government of the people by the same people."[12] I think it is fair to say that it is implicit in much reasoning in the democratic tradition and the few contemporary democratic theorists who explicitly take up the boundary problem endorse some version of this principle: "Everyone who is affected by a decision of a government should have a right to participate in that government" (Dahl); "In a perfect democracy all who are thus affected [by a decision] play some part" (Cohen).[13] In other words, the all affected principle seems to be entrenched in our idea of democracy – we don't need to look outside democratic theory to find support for it.[14] Thus, if the all affected principle can be shown to be a promising boundary criterion for a democratic ideal, then Whelan's claim that democratic theory cannot in itself solve the boundary problem is put in doubt.

It is easy to garner intuitive support for the all affected principle. We do not think that the curriculum imposed by the School board of Waco, Texas, is any business of Icelanders since they are not relevantly affected by this decision. However, what kind of hair spray the teachers use in Waco is the business of Icelanders too, i.e., if the hair spray used destroys the ozone-layer. Another example is France's nuclear bomb testing in the Muroroua Atoll -- we think that the people of the Muroroua Atoll should have much more influence over a decision that affects their environment in such a fundamental way.

An important reason why many people would agree with the all affected principle is, of course, that it is vague. As others and I have stated it, it doesn't say anything about what amounts to being relevantly affected or what it means to have influence over a decision. For the present discussion, I don't think more precision is needed and that the intuitive notions illustrated by the example above will suffice. Let me just hint at what I think an analysis of these concept would look like. "Relevantly affected" could be spelled out in terms of people's interests. The reason why the curriculum in Waco is no business of the Icelanders is that,

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[11] Cf. Dahl (1989, Barry (1991).

[12] Lincoln in Message to Congress, 1861, quoted from Naess (1956), p. 285.

[13] Dahl (1970), p. 64; Cohen (1971), p. 8. Cunningham (1994), p. 147, also seems to endorse the all affected principle when he says that "since democracy applies to any social environment in which the behaviour of some people affect affects others in an ongoing way, it is appropriate to extend . . . democratic decision making . . . beyond national boundaries to regions and to the entire globe." See also Cunningham (1987), pp. 25-6.

[14] Whelan (1983), p. 17-8 suggests that the all-affected principle "may even be derivable as a political application of [utilitarianism]". According to classical act-utilitarianism, we have a duty to perform the act that maximise happiness. If we add the liberal assumption that people are the best judges of their own happiness, then we arrive at the all affected principle, or so the argument goes: An individual can defend and promote his own good by taking part in the decision that affects her welfare. I am sceptical about this argument. Maximised happiness can very well be obtained by excluding people from democratic procedures since what the excluded people lose can be outweighed by an increase among the included. Many contentious empirical assumptions have to be added to avoid this and similar conclusions.

arguably, their interests are not at stake. On the other hand, actions in Waco that have consequences for the global environmental situation might very well affect the interests of Icelanders too and thus they should have some influence over decisions of that kind. It is interesting to note that if we see the all affected principle as part of a democratic ideal, then whether or not a decision is democratic, or whether it is more or less democratic, will depend on some conception of "interests". Without knowledge of what interests people have, we cannot determine whether an institutional structure is sufficiently democratic or how it could be improved. [15]

How to spell out "influence over a decision" is a tricky question which needs its own essay. A starting point, however, could be to analyse it in terms of whether and individual's preferences ordering could determine the collective ordering in some possible situations. In a collective choice between option A and B, I have some influence on the decision if there is a possible situation (i.e., a possible set of individual preference orderings of the involved people) where A will be the collective choice if and only if I prefer A to B.[16]

What is then the Whelan's problem with the all affected principle? He worries that the all affected principle "would require a different constituency of voters or participants for every decision."[17] Dahl writes that the "logic of the [all affected principle] … is that for every different set of persons affected there be a different association or decision-making unit."[18] In other words, the all affected principle demands what is practically impossible.

This is surely true about the all affected principle taken as part of a practical decision method but misses the target if we take it as part of a normative ideal. As with utilitarianism, the all affected principle might not be possible to use as an everyday decision method but it might still be correct as part of a democratic ideal. As such, it is part of an ideal that we use to evaluate the practical procedures that we implement in the real world in respect of how well they approximate the ideal. We will never be able to create a perfect democratic system on earth but that is not an argument against trying to approximate it. To take an analogue

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[15] There are of course other ways of spelling out "relevantly affected". Ludvig Beckman has suggested in personal communication that "government by the governed" should be taken to mean that the people who are legally bound by certain laws should have the right to take part in making the laws. This might very well be a better exegesis of, for example, the quote from Lincoln above. However, my tentative suggestion above concerns how the most reasonable explication of "relevantly affected" would look like. Clearly, the "legally bound principle" has a too narrow scope to be such a candidate. Although the Danes aren't legally bound by the laws regarding the maintenance of nuclear plants on the south coast of Sweden (just across from Copenhagen), they certainly, and justifiable me thinks, would like to have a say in this matter. Moreover, the scope of "legally bound" is quite unclear. I'm in a sense legally bound by the laws of South Africa since I spend a week there every year. Does that mean that I should have a right to take part in the South African elections?

[16] For a more elaborate suggestion, see Goldman (1999).

[17] Whelan (1983), p. 19.

example: It would be silly to criticise a criterion of "tall person" on the grounds that we cannot in practice measure length exactly. Although there is always going to be borderline cases, there are clear examples of procedures that are better and worse on the all affected criterion, as the examples used in this paper illustrates.

Whelan raises another problem that at first sight looks more damning for the all affected principle:

> The deeper problem is that before a democratic decision could be made on a particular issue (by those affected), a prior decision would have to be made … as to *who* is affected and therefore entitled to vote on the substantive issue… And how is this decision, which will be determinative of the ensuing substantive decision, to be made? It too should presumably be made democratically --- that is, by those affected --- but now we encounter a regression from which no procedural escape is possible. …. Thus to say that those who will be affected by a given decision are the ones who should participate in making it is to … propose what is *logical as well as a procedural impossibility.*[19]

These are harsh words but Whelan's reasoning begs the question. Why is it that who is relevantly affected by a decision should be determined by a prior decision? Why shouldn't it, as I suggested above, be determined by a theory of interests and an analysis of the consequences of different courses of action, policies, and institutional structures on people's interests? Whelan seems to conflate two different issues: what makes an action or policy right and what justifies a theory. When we try to figure out which theory of democracy is the best one, and which conception of relevant effects is correct, we have to weigh the evidence for and against different theories – it is an epistemic question, not a moral or political one. I don't think any democratic theorist has thought that the whether or not their theory is correct depends on people's opinions about it. Compare again with utilitarianism according to which an act or policy is right if it maximises people's well-being. No utilitarian, however, has ever made the absurd suggestion that what constitutes well-being should be determined by the utilitarian principle.[20]

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[18] Dahl (1970), p. 64.

[19] Whelan (1983), p. 19, my emphasis.

[20] It might be that Whelan himself believes in a normative theory according to which a principle can only be justifiably implemented in a constitution via some kind of democratic decision. Well, even if this is true (it would imply that all the decisions in the past to implement democracy in undemocratic countries have been

To sum up: If we take democracy as a decision method, then Whelan charge against democratic theory misses its target since it is not supposed to deliver any solution to the boundary problem. If we take democracy as a normative ideal, then there seems to be a promising candidate for a boundary principle: the all affected principle.

V. Possible Objections

To forestall some possible objections, let me point out that I haven't given a full-fledged defence of the all affected principle and of democracy as a normative ideal, just some intuitive support and a rebuttal of the criticism directed towards it by Whelan et al. We might, in the end, reach the conclusion that democracy is not an attractive normative ideal as compared to other such ideals – further inquiry has to determine this. However, the reason will not be that the all affected principle "propose[s] what is logical as well as a procedural impossibility" but that another normative ideal is more in reflective equilibrium with our considered intuitions. Notice also that democracy need not be our only ideal, we might have other ideals that the democratic ideal has to be weighed against in reaching a final theory of how a just or good society should look like.

Secondly, the all affected principle fits well with democratic conceptions that concern distribution of influence or power. It might not fit other conceptions very well, however. Consider, for example, the epistemic democrat. According to the epistemic conception of democracy, one thing that makes democracy valuable is that it generates better decisions, that is, it is a better "truth-tracker" than alternative decision-making procedures.[21] As was already shown by one of the leading French Enlightenment figures, marquis de Condorcet, if the independent voter is on average better than chance at getting the right answer, then, given some other assumptions, the more people that vote, the greater likelihood of the majority getting the right answer.[22]

The all affected principle doesn't fit very well with this conception of democracy. Rather, one could argue that inclusions and exclusions should be based on whether it is likely that the voter in question is better than chance at getting the right answer. If there is good reason to believe that the average voter will be better than chance at getting the correct answer, then we have a prima facie argument for including as many people as possible in a decision making procedure. If not, the argument works the other way, that is, as a reason for

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unjustified), Whelan has overstated his case. The regression that Whelan suggests has an obvious end: when everybody is included.

[21] See, for example, Estlund (1990, 1993, 1997, 1998), List & Goodin (2000), Cohen (1986).

excluding people from the decision making procedure. Alternatively, one could formulate an argument for representative democracy along the lines of the epistemic conception of democracy. One could claim that the average citizen will be better than chance in finding "epistemically" good professional politicians, but that the professional politicians are better truth-trackers when it comes to complicated political decisions since they will have the time and resources to inform themselves about the relevant facts. In other words, the criterion of inclusion and exclusions for the epistemic democrat has to do with what will generate the most accurate decisions, not with who is relevantly affected by the decision.

I find it more plausible to take epistemic democracy as practical decision method that is justified by an appeal to some normative ideal, such as the utilitarian value of reaching the right decisions in many contexts. Some might not agree, however. If so, then we have a normative democratic ideal for which the all affected principle is not a suitable boundary criterion but for which there is another promising candidate: competence at getting the answers right. [23]

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[22] Condorcet (1785), cf. Rabinowicz and Bovens (2003), Pettit (2001).

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