The Problem(s) of Constituting the Demos

Lippert-Rasmussen, Kasper; Bengtson, Andreas

Publication date:
2021

The Problem(s) of Constituting the Demos: A (Set of) Solution(s)

Kasper Lippert-Rasmussen[1,2] · **Andreas Bengtson**[3]

Abstract

When collective decisions should be made democratically, which people form the relevant demos? Many theorists think this question is an embarrassment to democratic theory: (1) because any decision about who forms the demos must be made democratically by the right demos, which itself must be democratically constituted and so on ad infinitum; and (2) because neither the concept of democracy, nor (3) our reasons for caring about democracy, determine who should form the demos. Having distinguished between these three versions of the demos problem, we argue that each of them can be solved.

Keywords All affected principle · Democracy · Demos problem · Relational egalitarianism

1 Introduction

Suppose that at least some important matters should be decided democratically. This supposition leaves open the question of what these matters are, e.g. should property rights to people's transplantable organs be decided democratically? It also leaves open whether democratic decision-making simply amounts to aggregating votes, or whether it requires something more than or different from that, such as deliberation. These are important questions. However, for present purposes, we can set them aside and simply assume that some matters should be decided democratically, and that procedure-wise, there are some ways of making such decisions democratically. Presumably, most readers will agree with these two assumptions. Now comes the hard question: who should take part in the relevant democratic decisions, i.e. who together forms the relevant demos?

One might think that this question itself should be resolved through a democratic vote. However, this view gives rise to the relevantly identical but higher-order question of who

✉ Kasper Lippert-Rasmussen
lippert@ps.au.dk

Andreas Bengtson
theandreasbengtson@gmail.com

1   Department of Philosophy, Arctic University of Norway, Tromsø, Norway

2   Department of Politics, University of Aarhus, Bartholins Alle 7, 8000 Aarhus C, Denmark

3   Department of Philosophy, University of Groningen Oude Boteringestraat 52, Groningen, GL, 9712, Netherlands

should be entitled to participate in *that* democratic decision. Alternatively, one might suggest that democratic theory itself is silent on how the demos should be constituted. However, 'Democratic theory being incomplete in this regard actually renders it powerfully permissible. It means that we do not (indeed, cannot) offend against democratic principles by organizing the demos in any manner that we choose' (Goodin 2007, p. 44). The difficulties of answering the question about the democratic delimitation of the demos is what, following Robert Goodin, we shall call 'the problem of constituting the demos', or more succinctly, 'the constitution problem' (Goodin 2007, p. 40).[1]

We make two main points. First, before exploring solutions to the demos problem we need to be clearer than much of the present literature is about the nature of the problem. Specifically, we need to distinguish between the procedural, the conceptual, and the value-focused versions of the problem.[2] The procedural version says that for a decision to be democratic, it is necessary that the rules regulating the making of the decision—including the rules delimiting the demos—are themselves decided upon democratically. The conceptual version says that for a decision to be democratic, it is necessary that the concept of democracy bears on how the demos should be constituted. The value-focused version says that for a decision to be democratic, it is necessary that what makes democracy desirable bears on how the demos should be constituted. As we will show, for each of these versions, there are political theorists who think that this version of the demos problem is *the* demos problem. Some of those fail to note that, really, they are addressing a problem different than the one that other political theorists are addressing, though under the same label. Additionally, some theorists confuse the different versions of the demos problem. By way of illustration:

> One of the enduring problems in democratic theory is its inability to specify who should belong to the demos. Democrats seemingly do not have the conceptual resources to determine who should comprise the people that are to govern itself democratically. For any group we pick, the question arises which prior group defined it as part of the demos, and how that prior group obtained its own right to belong to the demos or decide on its composition… "Democracies", as Seyla Benhabib notes, "cannot choose the boundaries of their own membership democratically" (Nili 2017, 99-100).

In this otherwise excellent article, the demos problem is taken to be the conceptual version (second sentence in the indented quote just above), and then later in the same paragraph, the procedural version (third and fourth sentence), even though procedural issues might not be crucial to the conceptual version of the demos problem, and conceptual matters do not settle the procedural demos problem. This passage is far from exceptional, and

---

[1] Others refer to the problem as the 'boundary problem' (Whelan 1983) or the 'inclusion problem' (Dahl 1989; cp. Goodin 2007, pp. 40-41n1).

[2] For a helpful but substantively different taxonomy of distinct 'boundary problems', see Arrhenius (2015, p. 14). The distinction we are after here is different from the commonly drawn distinction between procedural and substantive conceptions of democracy (see Dworkin 1996, pp. 1–35; Waldron 1998). First, a conception of democracy speaks to many issues other than the issue of how the demos should be constituted, e.g., the issue of whether judicial review might promote or restrict democracy. Second, taking a certain view on how the demos should be constituted often leaves open many of the issues which divide friends of procedural and substantive conceptions of democracy, e.g., whether abiding by democratic decision procedures holds value in itself or only in virtue of the likely consequences of doing so.

progress toward solving the constitution problem would benefit from the taxonomy of its different versions offered in this article.[3]

We argue—and this is our second main point—that the procedural version of the problem is solvable in the sense that there is no procedural, regressive requirement to the effect that the relevant framing of a putatively democratic decision is itself democratically decided upon (Sect. 2); that the conceptual version is solvable too, even if the concept of democracy might not settle the issue of the demos (Sect. 3); and that, at least on some accounts of the value underpinning democracy, the value-focused version of the problem is indeed solvable, although different theorists will offer different solutions depending on what, in their view, makes democracy desirable in the first place (Sect. 4).

2 The Procedural Version of the Demos Problem

The procedural problem of the constitution of the demos pertains to the way in which collective decisions are actually made. Essentially, the problem consists in the following two claims: (i) a decision is democratic only if it is the outcome of a democratic decision process, the rules of which—including the rules delimiting the demos—have been democratically decided in favour, and that these rules in turn have been adopted through a democratic decision, and so on and so forth (the strong procedural requirement); and (ii) it is impossible to have an infinite series of democratic decisions (the impossibility claim).[4]

If we accept the strong procedural requirement and the impossibility claim, it is clear that the constitution problem has no solution, i.e. there is no way we could devise a

---

[3] In support of our claim that clarification is needed, consider: Arash Abizadeh's (2008, pp. 45–46) view that because, as procedural matter, the 'question of membership ultimately cannot itself be settled by a principle of participation: for we would once again have to ask, *whose* participation must be sought to answer the question of membership, which in turn raises a second-order membership question, ad infinitum', it follows that '[d]emocratic theory is incapable of legitimating the particular boundaries that, once we assume the demos is inherently bounded, it presupposes', thus ignoring the analyses of the concept and value offered by democratic theory; Luis Cabrera's (2014, pp. 229, 243–244) contention that what he calls the 'intrinsic approach' and what, in our view, amounts to an attempt to address the value-focused version of the demos problem is faced with *the* 'democratic paradox' that 'who "the people" actually are… cannot be decided democratically'—a fact that is only a problem for the procedural approach in our view; Hans Agné's (2010, p. 385) complaint against a nationalist, value-based approach to *the* (our italics) 'democratic paradox' that 'if a nation has not been democratically founded, how could it confer [democratic] legitimacy on a state', thereby assuming that this approach is best understood as a solution to the procedural version of the demos problem; David Owen's (2012, pp. 130, 143–148) discussion of the all-affected principle—in our view, a principle that, offhand, can either be seen as a response to the conceptual or to the value-focused versions of the constitution problem—as a response to what he calls a '*general paradox* [our italics] of founding for democracy in that any act of legitimate democratic constitution of "the people" or "demos" would itself already require a legitimately constituted "people" or "demos" to engage in that act'—a paradox which, in our view, only captures the procedural version of the demos problem; Rainer Bauböck's (2015, p. 822) description of the demos problem as the problem of 'whether a demos can determine its own boundaries through applying democratic procedures or principles'—a formulation which most naturally is read to refer to either, or both, the procedural or the conceptual version of the demos problem; and, finally, Johan Schaffer's contention (2012, p. 328) that 'when we try to determine the demos by means of the all-affected principle we enter an infinite regress of constitutive decisions from which the all-affected principle offers no escape', thus implying that the all-affected principle is supposed to solve the procedural version of the demos problem, while it—in our view—is better seen as either a response to the conceptual or the value-focused version thereof.

[4] The impossibility claim is clearly true if we have empirical impossibility in mind. But arguably, it is also true if it is understood to be conceptual impossibility (cp. Goodin 2007; Miller 2009, p. 204).

decision procedure that would enable us to make democratic decisions since there is no way in which we can make an infinite series of democratic collective decisions. What is also clear is that this impossibility should not worry friends of democracy, since despite the seriousness with which the procedural version of the demos problem is treated by many democratic theorists, the strong procedural requirement is demonstrably false.[5]

First, standard definitions of democratic decisions do not include procedural clauses to the effect that the decision procedures pertaining to that decision have themselves been adopted through the application of a democratic decision procedure (Arrhenius 2011, pp. 28–29; Christiano 2006a, p. 1; Dahl 1998, pp. 35–43; Tännsjö 1993, pp. 16–17). Admittedly, this could be a mere oversight, but intuitively—and this is our second reason for thinking that the strong procedural requirement is false—the fact that a decision is democratic is not undermined by the fact that the making of it was structured in a certain way that was not a result of a democratic collective decision made by an appropriate demos. Suppose the relevant decision was made through a unanimous vote after a deliberative process in which everyone was legally guaranteed a fair and equal opportunity to express and argue in favour of their views on the relevant matter. That fact, however, was not the result of a prior democratic collective decision, e.g. suppose the rule was put in place by the monarch just before unavoidably resigning and handing over power to the people. We can even suppose that had there been a prior vote on that rule, it would have been defeated. That, however, does not mean that the decision made was not democratic. Similarly, analogous regressive procedural conditions do not apply to other forms of rule, e.g., a monarchical decision does not become non-monarchical just because a monarchical constitution was democratically adopted. Third, many think we ought, morally speaking, to make collective decisions democratically. But if the strong procedural claim and the impossibility claim are true, this is impossible. Given our undemocratic past, any putatively democratic framing can be traced back to non-democratic decisions on the framing of future putatively democratic decisions. But it is indeed the case that we ought to make (at least some) collective

---

[5] Others will supplement that since we know in advance that democratic decisions are possible, we know that either the strong procedural requirement or the impossibility claim (or both) is false (cp. López-Guerra 2005, p. 218). A clearheaded proponent of the procedural problem who is acutely aware that the procedural version of the demos problem entails that no democratic decisions are possible and, thus, that it cannot be the case that we ought to make political decisions democratically (since 'ought' implies 'can') might accuse López-Guerra and us of begging the question at this point. However, not all proponents of the procedural version of the demos problem are clearheaded in this way. Some are undecided about whether democratic decisions are possible and some do believe that we ought to decide political decisions democratically (thus contradicting the entailments of their own embrace of the procedural version of the constitution problem). There is a reason why the constitution problem is labelled a 'paradox'. Additionally, many proponents of the procedural version see the constitution problem as a challenge to identify a mistake in our theoretical assumptions or the theoretical resources that are available to us and which the procedural version of the constitution problem ignores. As David Miller puts it: 'Clearly then, the domain problem cannot be solved by appeal to democratic procedure. But this does not mean that it cannot be solved by appeal to democratic theory, understood to mean the underlying values, such as political equality, that justify procedures like majority voting. It is too quick to conclude, as Whelan does, that "democratic theory cannot itself provide any solution to disputes that may—and historically do—arise concerning boundaries" on the grounds 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 itself, the existence of which it presupposes." This conflates democratic theory, as a set of normative ideals, with democratic method, as a procedure or procedures that reflect these ideals' (Miller 2009, p. 204; see also Arrhenius 2005, p. 19, 23; Goodin 2007, p. 47). Against proponents of the procedural problem of these types, our arguments, and the present contention by López-Guerra, do not beg the question.

decisions democratically. Hence, at least one of the two claims comprising the procedural constitution problem must go.

In light of these three arguments, we conclude that a decision can be democratic even if it is not the outcome of a democratic decision process whose rules—including the rules delimiting the demos—were democratically decided in favour. In short, to be democratic, a collective decision need not be democratic all the way down (though if, *per impossibile*, it really was, that suffices for its being democratic). Thus, the procedural version of the demos problem is solvable.

We suspect that some readers will find our objections to the strong procedural claim so persuasive that they will worry if any theorist has ever thought of the constitution problem along the lines of the procedural version of the problem (but see Agné 2010, p. 382). However, this worry is unwarranted, and before we move on to the conceptual version of the problem, we will offer two examples of prominent theorists who have thought about the problem of constituting the demos (at least also) as a procedural problem (for further support for this claim, see the footnote).[6] Robert Dahl writes that one reason why many democratic theorists have ignored the constitution problem is that 'they take for granted that a people has already constituted itself… the nation-state is what history has made it' (Dahl 1973, pp. 60–61). If the constitution problem were not procedural but conceptual or value-focused (see Sects. 3 and 4), that assumption would simply be irrelevant to the issue at hand.[7] Consider also Frederick G. Whelan's remark that 'democracy is practicable only when a historically given solution of [the constitution problem] is acceptable' (Whelan 1983, p. 16). If the constitution problem is conceptual or value-focused, it would be odd to insist on some 'historically given solution' since even in the absence of any real-world constitution of the demos, democratic theory could still offer the resources to sketch which solution should be adopted. So much for the procedural version of the constitution problem.

3 The Conceptual Version of the Demos Problem

The conceptual version of the constitution problem pertains to the thinness of the concept of democracy. Unlike the procedural version of the constitution problem, the conceptual version does not require that the constitution of the demos results from a prior democratic decision. Rather, it requires that the concept of democracy tells us how the demos should be constituted.[8] Basically, the problem consists in the following two claims: (i) a

---

[6] Other theorists who accept the procedural version of the demos problem include Agné (2010, p. 382), Doucet (2005), Honig (2007), Miller (2009, p. 204), Nagel (2005, pp. 145–147), Nässtrom (2007, pp. 627–629), Näsström (2011, p. 126), Espejo (2011, p. 174), Espejo (2014, pp. 466–469); and Rosseau (1997, p. 71), even if some, but not all, of them eventually reject it.

[7] Admittedly, Dahl is sceptical of that assumption, and in the very same passage, he introduces the notion of constitution as a 'purely hypothetical event' (Dahl 1973, p. 61).

[8] Admittedly, to submit that democratic decisions are possible in principle, because the concept of democracy is such that it entails no procedural requirements which are impossible to fulfil, is to make a claim about the concept of democracy. However, that claim is a very modest, negative one and is consistent with denying that the concept of democracy offers any guidance for how to individuate different demoi for the purpose of democratic decision-making; i.e., it is consistent with affirming the no-implication claim (see below). Hence, one could consistently claim that the procedural version of the constitution problem can be solved and yet think that the conceptual version cannot.

decision is democratic only if it is the outcome of a democratic decision process, the rules of which—including rules pertaining to the delimitation of the demos—are implied by the concept of democracy and relevant empirical facts (the conceptual requirement); and (ii) the concept of democracy (in conjunction with the relevant empirical facts) does not imply any substantive delimitation of the demos (the no-implication claim).[9] By 'substantive delimitation' we intend to signal openness regarding whether the concept of democracy entails certain formal delimitations of the demos, e.g., that everyone in the demos should be included.[10] Such entailment regarding formal delimitations of the demos is irrelevant for our purposes, since it leaves completely open which are the correct, substantive grounds on the basis of which someone is part of a particular demos. If both (i) and (ii) are true, it follows that democratic decisions are impossible. Assuming that democratic collective decisions are possible, we must reject either (i) or (ii) or both.

Some theorists believe that we should reject (ii), i.e. that a delimitation of the demos is internal to the concept of democracy. For instance, López-Guerra (2014, pp. 134, 151) submits that a 'meaningful account of inclusiveness is what informs the very idea of democracy', though admittedly, in his view, this idea does not provide 'detailed prescriptions'. Additionally, Robert Dahl offers a 'reductio' of Schumpeter's view that the concept of a democratic decision is itself neutral on 'any criterion for defining the demos':

> …"suppose that the Politburo were internally democratic, and ruled by the party, which ruled over the State, which ruled over the people. Then the members of the Politburo would constitute the Soviet populous, and the Soviet State would be, on Schumpeter's interpretation, a democracy"… Notice that Dahl is not simply saying that those ways of constituting the demos are evil or absurd or preposterous. He is suggesting that they are "not democratic". That, in turn, is to suggest that there are indeed principles somehow internal to the standards of democracy for preferring the demos to be constituted one way or another (Goodin 2007, 47; cp. López-Guerra 2014, 136-137).

In view of this, Robert Goodin suggests that the all-affected principle—roughly, that all individuals affected by a certain collective decision should have a(n equal) say in the making of that decision—is internal to the concept of democracy. In his view, that principle is 'itself a democratic principle' since it is 'fundamentally egalitarian, counting all interests equally: and equal political power is arguably the cornerstone of democracy' (Goodin

---

[9] The concept of democracy determines which empirical facts are relevant, e.g. if the all-affected principle is part of the concept of democracy, facts about who are affected are relevant facts.

[10] We thank an anonymous reviewer for pointing out the need for this restriction.

2007, p. 50).[11] If the all-affected principle is contained in our concept of a democratic deci-sion, then the no-implication claim—i.e. (ii)—is false.

Is the all-affected principle (or for that matter, the all-subjected principle) contained in the concept of democracy (whether or not that is López-Guerra's, Goodin's, Dahl's, or any other theorist's view)?[12] We are sceptical of this proposition. Even if we grant Goodin the claim that 'equal political power is the [conceptual] cornerstone of democracy' (Goodin 2007, p. 50), it does not follow that the all-affected principle is contained in the concept of democracy. For one thing, seemingly without being guilty of any conceptual confusion, some theorists argue that the most plausible, fully articulated version of the all-affected principle implies that people should have unequal political power; to wit, that those whose interests are affected more by a certain decision should have a greater say than those whose interests are affected but to a lesser degree (Brighouse and Fleurbaey 2010, pp. 137–138; cp. Miller 2009, p. 216).[13] Moreover, there are ways to bring about equal political power other than through the all-affected principle; e.g., the all-subjected principle would seem to realize equal political power in the same way as the all-affected principle does (assuming that the latter principle does indeed do that). Hence, the concept of democracy cannot settle which of these principles for the delimitation of the demos we should embrace. While the all-affected principle (and, for that matter, the all-subjected principle) is surely consistent with democracy, it is not conceptually implied by it. In view of this, we are open to the pos-sibility that the no-implication claim in the conceptual version of the constitution problem is true.

This, however, does not imply that we think democratic decisions are impossible. Rather, we are inclined to reject the conceptual requirement. That is, we believe that a demos is democratically constituted if its constitution derives from the value underpinning democracy, i.e. that which makes us care about democracy in the first place. Basically, our thought is that if the demos is constituted in accordance with whatever value makes democracy valuable, then there can be no moral complaint against the relevant delimitation deriving from a concern for democracy. And surely, if all demoi have been constituted in such a way that there is no complaint against that constitution from the point of view of the

[11] As an alternative to the all-affected and to the all-subjected principles, Rainer Bauböck (2015, p. 825) proposes the stakeholder principle: 'those and only those individuals have a claim to membership whose individual autonomy and wellbeing is linked to the collective self-government and flourishing of a particu-lar polity'. Since our focus in this article is on the constitution problem and not primarily different princi-ples which are supposed to solve the problem, and because Bauböck seems to favor the stakeholder prin-ciple at least partly on grounds other than that it solves the constitution problem as we understand it here, e.g., the desirability of the long-term stability of the demos, we set aside the ways in which this principle differs from the more commonly discussed all-affected and all-subjected principles—most importantly, that it is input- and not output-focused according to Bauböck (2015, p. 823) and, thus, presupposes a 'world of bounded polities', the boundaries of which the stakeholder principle does not purport to assess. Whether one accepts Bauböck's stakeholder principle should make no difference to our analytical point regarding how the constitution problem really divides into three distinct problems (see also Bauböck 2015, p. 825 on the three 'specific tasks' that the 'three principles of democratic inclusion' mentioned here are assigned).

[12] Goodin could be interpreted as first and foremost proposing a value-focused understanding of the demos problem since he suggests that the 'principles [for constituting the demos] somehow internal to the stand-ards of democracy for preferring the demos be constituted one way or another' (Goodin 2007, p. 47). We turn to the value-focused version of the constitution problem in the next section.

[13] Brighouse and Fleurbaey (2010, pp. 137–138) think that 'power should be distributed in proportion to people's stakes in the decision under consideration' because that better promotes social justice aims. Addi-tionally, they believe that such a distribution 'corresponds better to how democracy is intuitively understood by many people nowadays' (Brighouse and Fleurbaey 2010, p. 138).

value informing democracy, then, for all practical purposes, the demos problem has been solved. This brings us to the value-focused version of the constitution problem.

4 The Value-Focused Version of the Demos Problem

In this section, we first introduce the value-focused version of the constitution problem. We then explain how it can be solved. Finally, we note that since there are different accounts of what makes democracy valuable, there are different solutions to the value-focused version of the problem. Basically, the value-focused version of the constitution problem consists of the following two claims: (i) a decision is democratic only if it is the outcome of a democratic decision by a demos whose delimitation is prescribed by the value underlying democracy and the relevant empirical facts (the value requirement), but (ii) the value of democracy (in conjunction with relevant empirical facts) does not imply any particular delimitation of the demos (the no-implication claim). These two claims imply that democratic decisions are impossible. However, they are not. Hence, we must reject at least one of them. As we shall now argue, we should reject the no-implication claim (cp. López-Guerra 2005, p. 221).[14]

There are different views in the literature on what makes democracy valuable.[15] While we want to explore the implications of some of these views in the next section, our aim here is not to adjudicate between them. Rather, we want to show that at least some views about what makes democracy a valuable collective decision procedure also speak to the issue of how the demos should be individuated. Hence, if any of these views are correct, the no-implication claim is false. Admittedly, it could be the case that some other views about the value of democracy are true, but we think that, similarly, most (if not all) of these alternative views imply the falsity of the no-implication claim and thus the solvability of the value-focused version of the constitution problem.

Consider first the all-affected principle, which we briefly encountered in the previous section. Roughly put, it is natural to associate that principle with the view that what makes democratic decision-making desirable is that people who are affected by certain collective decisions also have the opportunity to influence those decisions.[16] That value, however, pertains not only to why it is better that a group of people who are all equally affected by a certain collective decision makes it democratically; it also speaks to who should take part in making that decision. It implies that those who are affected by that decision should be included in the demos. Hence, the no-implication claim is false, provided at least that part of what makes democracy desirable is that it gives people who are affected by a collective decision the chance to influence it.

Consider next the view defended by Niko Kolodny that democracy is valuable because it is a 'particularly important constituent of a society in which people are related to one

---

[14] Rejecting the no-implication claim regarding the value of democracy is consistent with affirming the no-implication claim regarding the concept of democracy which we discussed in Sect. 3. Indeed, it is the possibility of affirming the latter which renders it possible for theorists to disagree about what justifies democracy and different delimitations of the relevant demoi rather than simply to address different topics using the same label to refer to them.

[15] Valentini (2012, p. 177) claims that there is no a priori correct account of the nature of the value of democracy.

[16] Making it slightly more precise, perhaps one should say that it is desirable that people have an equal chance to influence collective decisions by which they are equally influenced.

another as equals' (Kolodny 2014b, p. 287; see also Kolodny 2014a)—something which is valuable in itself. In that view, it is a good thing that people who are socially related make collective decisions together in a democratic way since doing so is a crucial part of what it is for them to relate as social equals because political decisions have a final de facto authority (Kolodny 2014b, p. 306).[17] That view too has implications for the constitution of the demos. In that view, it is not disvaluable that people who are not socially related to one another do not take part in the making of democratic decisions together, e.g., it is not disvaluable that Earthlings and (hypothetical) Martians do not make decisions together when they in no way interact with one another. That is, they do not communicate with one another, nor can they coordinate their actions, take part in the same institutions, or otherwise affect each other's situations (Lippert-Rasmussen 2018, pp. 123–129). It is, however, disvaluable that people who are relevantly socially related democratically do not decide matters together.

Consider finally a Schumpeterian-like (1950) instrumental justification for democracy, to wit, that democracy is valuable as a means of bringing about the rotation of governing elites. In that view, the demos should be constituted in such a way that this function is safeguarded or even optimized.[18] Admittedly, this might leave some indeterminacy as to how the demos should be delimited in some cases. However, it is unclear that such cases add up to anything like the demos problem.[19]

Suppose that the present argument is sound. In that case, we can see how the conceptual version of the constitution problem can be solved. It can because the no-implication claim of the value-focused version of the constitution problem turns out to be false, and this in turn implies that the conceptual requirement in the conceptual version of the constitution problem is false as well. While some principles delimiting the demos might not be part of the meaning of 'democracy', what makes democracy a valuable decision procedure has implications for how the demos should be constituted. That suffices for thinking that the demos can be constituted in democratic as well as undemocratic ways, i.e. ways that either fit or clash with the concerns forming the reasons in favour of democracy.[20] Hence, the

---

[17] Considered in isolation, this claim has no implications for whether it would be desirable for people who are not socially related to democratically make decisions together. However, at the very moment they start making such decisions, they are ipso facto socially related.

[18] Schumpeter might have taken a different view himself (unless he takes the idea of democracy not to include the values underpinning democracy): 'In his [Schumpeter's] view, the idea of democracy contains no categorical constraints on how to constitute the demos' (Song 2012, p. 41f).

[19] Some indeterminacy might also apply to Kolodny's social relational account of the value of democracy. Suppose a set of people relate to one another socially. Suppose also that they split into two equal-sized demoi, each governing themselves democratically, and the two states they form relate as equals. It is not clear that this situation is not perfectly compatible with Kolodny's justification of democracy. Again, we think such cases are marginal and that a solution to the demos problem is consistent with indeterminacy at the margins.

[20] It might be suggested that while the value-based solution might offer a solution to the demos problem, there is no particular reason to think that this solution is a *democratic* solution (cp. Nili 2017, p. 119; see also note 12). Suppose that it turns out that, ultimately, democracy is valuable because, and only because, it maximizes welfare. On this assumption, the value-based solution recommends that demoi should be constituted in such a way that welfare is maximized. On some views of welfare and given the existence of widespread, strong external preferences, this could, in principle, lead to most surprising delimitations of the demoi. In response, we note first that, arguably, this implication demonstrates not a problem with the value-based solution to the demos problem, but a problem with the supposition that we are concerned with democracy because, and only because, we are concerned with maximizing welfare. The present challenge draws its force from the difficulties that we have in taking onboard the assumption that our reasons for caring about democracy are purely utilitarian, because if indeed they were, there would be no moral com-

problem of constituting the demos has a solution even if the meaning of 'democracy' does not tell us how to constitute the demos. Note finally that since we have argued that the procedural version of the constitution problem is solvable, it turns out that the constitution problem can be solved.[21]

5 Conclusion

In this article, we have distinguished between three different versions of the constitution problem which many contributions to the literature either confuse or otherwise fail to distinguish between: the procedural, the conceptual, and the value-focused problem. We have argued that all three versions rest on false claims. Specifically, we have argued that what makes democracy valuable determines what is the proper demos for making collective decisions. What makes democracy valuable is a huge question in itself. We have shown that different answers to this question have different implications regarding the proper constitution of the demos. The overall message of this paper is thus that, *divide et impera*-style, once we distinguish between different problems that people have in mind when they talk about the problem of constituting the demos, these more well-defined problems turn out to be solvable, and thus, in this regard at least, we can be quite optimistic on behalf of democracy.

References

Abizadeh A (2008) Democratic theory and border coercion: no right to unilaterally control your own borders. Polit Theory 36(1):37–65

Agné H (2010) Why democracy must be global. Int Theory 2(3):381–409

Arrhenius G (2005) The boundary problem in democratic theory. In: Tersman F (ed) Democracy unbound: basic explorations I. Filosofiska institutionen, Stockholms Universitet, Stockholm, pp 14–29

Arrhenius G (2011) Defining democratic decision making. In: Svensson, Sliwinski (eds) Neither/nor: philosophical essays dedicated to Erik Carlson on the occasion of his fiftieth birthday. Uppsala University, Department of Philosophy, Uppsala, pp 13–29

Arrhenius G (2015) Democracy, future generations, and the all affected principle. Stockholm, mimeo 151105

Footnote 20 (continued)

plaints against a purely utilitarian individuation of different demoi. Second, other accounts of the value of democracy, e.g. Kolodny's relational account, appear much less counterintuitive, if indeed to any degree at all.

[21] Miller agrees with our view that the value-focused version of the constitution problem can be solved (Miller 2009, p. 204). However, he thinks that it can only be partially solved on the basis of the value underpinning democracy—while we think that, setting aside other moral concerns, it can be fully solved on that basis (Miller 2009, p. 226; see also Christiano 2006b, p. 82).

Bauböck R (2015) Morphing the demos into the right shape: normative principles for enfranchising resident aliens and expatriate citizens. Democratization 22(5):820–839

Brighouse H, Fleurbaey M (2010) Democracy and proportionality. J Polit Philos 18(2):137–155

Cabrera L (2014) Individual rights and the democratic boundary problem. Int Theory 6(2):224–254

Christiano T (2006a) Democracy. Stanford encyclopedia of philosophy. https://plato.stanford.edu/entries/democracy/#DemDef. Accessed 16 Jan 2019

Christiano T (2006b) A democratic theory of territory and some puzzles about global democracy. J Soc Philos 37:81–107

Dahl R (1973) After the revolution? Yale University Press, New Haven

Dahl R (1989) Democracy and its critics. Yale University Press, New Haven

Dahl R (1998) On democracy. Yale University Press, New Haven

Doucet M (2005) The democratic paradox and cosmopolitan democracy. Millenium. J Int Stud 34:137–155

Dworkin R (1996) Freedom's law: the moral reading of the American constitution. Harvard University Press, Cambridge

Espejo PO (2011) The times of popular sovereignty. Pennsylvania State University Press, University Park

Espejo PO (2014) People, territory, and legitimacy in democratic states. Am J Polit Sci 58(2):466–478

Goodin RE (2007) Enfranchising all affected interests, and its alternatives. Philos Public Aff 35(1):40–68

Honig B (2007) Between decision and deliberation: Political paradox in democratic theory. Am Polit Sci Rev 101:1–17

Kolodny N (2014a) Rule over none I: what justifies democracy? Philos Public Aff 42(3):195–229

Kolodny N (2014b) Rule over none II: social equality and the justification of democracy. Philos Public Aff 42(4):287–336

Lippert-Rasmussen K (2018) Relational egalitarianism. Cambridge University Press, Cambridge

López-Guerra C (2005) Should expatriates vote? J Polit Philos 13(2):216–234

López-Guerra C (2014) Democracy and disenfranchisement. Oxford University Press, Oxford

Miller D (2009) Democracy's domain. Philos Public Aff 37(3):201–228

Nagel T (2005) The problem of global justice. Philos Public Aff 33(2):113–147

Näsström S (2007) The legitimacy of the people. Polit Theory 35(5):624–658.

Näsström S (2011) The challenge of the all-affected principle. Polit Stud 59:116–134

Nili S (2017) Democratic theory, the boundary problem, and global reform. Rev Polit 79:99–123

Owen D (2012) Constituting the polity, constituting the demos. Ethics Glob Polit 5(3):129–152

Rosseau J-J (1997) In: Gourevitch V (ed) The social contract and other later political writings. Cambridge University Press, Cambridge

Schaffer JK (2012) The boundaries of transnational democracy: alternatives to the all-affected principle. Rev Int Stud 38:321–342

Schumpeter J (1950) Capitalism, socialism, and democracy. Harper and Brothers, New York

Song S (2012) The boundary problem in democratic theory: why the demos should be bounded by the state. Int Theory 4(1):39–68

Tännsjö T (1993) Popular democracy: a defence. Routledge, London

Valentini L (2012) Justice, disagreement and democracy. Br J Polit Sci 43:177–199

Waldron J (1998) Judicial review and the conditions of democracy. J Polit Philos 6(4):335–355

Whelan FG (1983) Prologue: democratic theory and the boundary problem. In: Pennock JR, Chapman JW (eds) Nomos XXV: liberal democracy. New York University Press, New York, pp 13–47