

The Boundary Problem of Democratic Theory

A 20 Minute Thesis Explanation

Intro

Should Queensland have daylight saving? Should homosexuals be allowed to marry? Should the Amazon be protected from logging? These are three very diverse questions but they all share a common theme - a theme that is in fact common to all normative questions about suffrage - and that is that the answer depends on who you ask.

Now this is an issue that is much more interesting, and much more problematic than the tautologous notion that given a set of differing opinions, aggregate preferences will depend on which are included. The issue that I want to discuss today is in fact one that currently undermines the whole notion that democratic authority can ever be legitimate.

Why is it that time zones are a state issue and not local or federal? What normative principle dictates that marriage falls under commonwealth jurisdiction, but de facto relationships are a matter for the states? Why should people outside of a country's borders have any say in the affairs of another state?

These are all normative issues of suffrage. Who ought vote on what issue. They are also questions that address what's known as The Boundary Problem, which very briefly is:

If democracy is a political process governing an association of some people, then how do we properly determine just who constitute that people.

This is a critical question because how one defines the people typically predetermines the outcome of any democratic process.

Take daylight saving. If we were to ask the people of Roma or Cloncurry if they should have daylight saving, the answer would be a resounding no. If we put the same question to the people of Queensland, the answer would be a marginal yes while if put to the people of Australia, the yes would be overwhelming.

In each of these cases, all parties may be committed democrats yet the decision of who's voice should be included actually determines the outcome of any vote.

The Problem

So what exactly is the problem of The Boundary Problem? The problem is created by the interaction of three distinct but related notions:

- that democracy makes claims of legitimacy,
- that boundaries largely determine outcomes, and
- that the problem can't be solved democratically.

The boundaries of inclusion - the question of who gets to vote - largely determine the outcome of any vote, regardless of whatever voting process is used. Simple majorities, preferential, or Condorcet voting - whatever their normative claim for capturing the will of the people is, it is rendered vacuous once we realise that the 'democratic process' has almost no effect on the outcome of a decision compared to the process of inclusion. Put simply:

If the process that imbues a political authority with legitimacy doesn't actually affect the outcome because it's predetermined by the choice of boundaries, how can that process be legitimate in the first place?

It's important not to confuse this issue with that of *suffrage within a jurisdiction*. Since the Treaty of Westphalia in 1648, the paradigmatic conception of jurisdiction has been the state, and normative questions of suffrage have dealt with who from *within* the state (women, blacks, ethnic minorities, children, criminals etc) ought vote.

The Boundary Problem on the other hand, is concerned with who ought be *included within a jurisdiction*. Thought of another way, typical democratic theory views jurisdictions as static - an accident of history. But if inclusion largely decides the outcome of democratic processes, then any normative democratic theory that accepts descriptive accounts of jurisdictions is worthless. We are left with the sad fact that political philosophers have simply picked up where generals and politicians leave off, and the normative content of their work is therefore undermined.

Where we draw our boundaries - who we include - is a significant normative issue for democratic theory that has received very little attention.

A Brief History

Surprisingly little has been written about The Boundary Problems (which has also been referenced as 'The problem of constituting the unit', 'the problem of inclusion', and 'The problem of constituting the demos')

Dahl 1970 "curiously neglected and yet absolutely crucial problem"

Whelan 1983 This is the canonical work on the issue. "The difficulties posed by controversies regarding boundaries thus present an important practical limit to the scope of democracy as a method of making collective decisions."

Dahl 1989 "a problem almost totally neglected by all the great political philosophers who write about democracy"

Arrhenius 2005 'The boundary problem' "not only a philosophical conundrum but also a pressing practical political problem"

Goodin 2007 'The problem of constituting the demos'

Interestingly, no one has yet proposed a viable solution.

Democracy & Legitimacy

I'm not going to spend much time on how democracy relates to political legitimacy as I think most people, from the liberal tradition at least, are in agreement on it.

Contemporary accounts can be broadly divided as instrumental or non-instrumental. Instrumental accounts hold that democracy imbues political authority with legitimacy either from its superior epistemic qualities, its structural form than ensures the vote of everyone

(or at least most people) are heard, or from the empirical claim that democracies produce better outcomes than other forms of government.

Non-instrumental accounts typically claim that democratic authority is legitimate because democracy equates to political equality (and thus we must respect its authority or commit with worst type of inequality), that democracy is political liberty and thus freedom, or that democracy is a form of our consent to authority.

Not all normative accounts of democracy claim it legitimates political authority but for The Boundary Problem to have bite, the conditional/modal premise - (if) democratic theory (wants to) make claims of political legitimacy - is sufficient.

Boundaries determine Outcomes

We've already seen a few examples of how boundaries determine outcomes, regardless of the democratic process used. But what exactly is the extent of the problem. So far I've prefaced my claims with terms like 'largely' determine and I've done so because I currently have no clear answer, and it seems that no work has been done that measures the extent of the problem in reality.

What we can say however is this. The Boundary Problem arises whenever we examine normative issues of jurisdiction. This includes things like:

- where in a federalist structure should particular issues be decided (recall our example of daylight saving)
- who ought have a say in succession or unification of jurisdictions (Northern Ireland, Former Yugoslavia, European Union etc)
- how many levels of government should we have
- collective decisions by transnational bodies (who should have a say on international treaties and agreements)

Democracy's Failure

So if we accept that boundaries largely determine outcomes, that current boundaries are primarily ad hoc and accidents of history, then the obvious response is why not let the people decide what the boundaries are.

Yet simple reflection will demonstrate that this is hugely problematic. The question of who the people are is logically prior to how can they vote. If we were to attempt to solve The Boundary Problem democratically, we would be faced with an infinite regress of first deciding who can vote on who can vote, then voting on the issue of who can vote on who can vote, then voting the prior issue of who can vote on the issue of who can vote.....

Clearly we need another solution to the boundary problem, one that's exogenous to democratic theory, yet one that can lend its normative weight and solve the problem in such a way the selection of the people is legitimate. Without a strong normative foundation to the issue of who the people are, any normative claims of legitimacy that democracy makes will be vacuous.

But there is also another issue that hasn't been addressed by the literature. In finding a solution to The Boundary Problem, and one that is legitimate at that, we must also be careful to ensure that the process that imbues the formation of the people with legitimacy doesn't make democracy redundant. After all, if the eventual solution can legitimate the process of defining the people for decision making, it's possible that can also legitimate the process of decision making. Doing so (if it ever did so) would replicate and replace the normative role of democracy, but at this stage of my research, I have little to say on this issue either way.

Other Solutions

A number of potential solutions to the boundary problem exist yet all of those proposed to date have failed to provide adequate normative support to the formulation of the demos.

Nationality may seem like an immediate candidate and one already common place. The French people, the Australian people, or the British are the ones who should be included in French, Australia, or British decision making.

Immediate problems with this arrive however. What of immigrants or residents of different nationality? What of states like Canada or Belgium that are composed of two nationalities? Should the hundreds of nations within the US - the Navaho, the Mowhawk, the Hispanic - each have their own state? What exactly is a nationality? No objective criteria of cultural, ethnic or historic salience seems to exist?

And isn't the idea that nations determine boundaries backwards? What were the Yugoslavian, the Soviet, or even the Australian people except those who lived within the boundaries of those states. Clearly, nationality is no solution to the problem?

Geography is another contender but again, simple examination demonstrates it's unsuitability. What geographic features are appropriate for delineation. Rivers divide just as much as they centre communities. Mountains only seem like edges to people from the plains while the defensibility of borders varies with changes in military technology.

Affect

One normative principle that has a strong normative claim is affect. Take the All Affected Principle:

Anyone affected by the outcome of a decision should have a say in its determination.

I shouldn't have any say in the school curricula of Bulgaria any more than the Taliban should have a say in non-discrimination laws in Australia, simply because one is not affected by the other.

Yet the problems with the All Affected Principle are well known. On a practical scale, it means that each issue requires its own jurisdiction owing to the different bounds of affect. Parking laws in Brisbane have a very narrow geographic scope while climate change is global.

There is also the issue of degree. How affected must I be to have a say. I may have an interest in the treatment of women in Saudi Arabia owing to empathetic concern for all humans but does that really qualify my voice to be heard? Is offence at another's lifestyle,

language, dress or beliefs sufficient for suffrage or must I have some kind of legitimate material interest.

Potentiality is another concern. I am only affected outcome of a decision (if it affects me at all), but the outcome isn't known until it's known. Thus we must include those likely affected by the yay or nay of the vote. Yet those likely affected is determined by the content of the issue at hand.

An example may help. If the vote is on whether or not Australia should pay compensation to the stolen generation, then those affected seem to be those forcibly adopted as children, as well as Australian taxpayers in general. But the only reason that both groups are potentially affected is because we are considering this issue in the first place.

Who can propose the issues at hand determines who is likely to be affected by the actual outcome, but the question of who should be able to propose issues results in its own boundary problem. The only way out of this dilemma seems to be to include everyone.

An final, and largely overlooked, issue of the All Affected Principle is that over inclusion is just as harmful to autonomy and liberty as under inclusion. My autonomy, my ability to influence the outcome, in collective decisions, is a function of the extent of suffrage. More people voting means I wield less influence over the final outcome and there under the the All Affected Principle and its global government, my autonomy is diluted by 7 billion others who hold little justification for voting if they aren't affected by an issue to the same degree as me.

Consent

Wing it from here Dave!

- implicit consent fails
- explicit consent never happens
- hypothetical consent is a normative joke
- consent theories work for voluntary associations but not for states claiming exclusive territorial jurisdiction

Dynamic Federalism

- while nothing works to date, consent is the most plausible explanation of legitimacy
- exactly what makes something coercive is key to solving the consent problem (no independent moral justification to impose costs of non-consent)
- how can we have voluntary associations within the exclusive claims of the state
- A footnote from Rousseau hints at the solution
- “I had intended to do this in the sequel to this work, when in dealing with external relations I came to the subject of confederations. The subject is quite new, and its principles have still to be laid down.” footnote 32 Book III The Social Contract
- Providing the smallest jurisdictions in the federation are small enough (think 100's or council wards), their boundaries can be arbitrary and it doesn't matter as long as majorities within the jurisdictions can decide on while level of the federation is to be dealt with.