



Submitted: 6.9.2024.  
Revised: 10.10.2024.  
Accepted: 12.12.2024.

# DOES DEMOCRATIC LEGITIMACY HAVE A BOUNDARY PROBLEM? NOT IF YOU'RE A REALIST

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## ABSTRACT

Abizadeh has argued that when democratic theory defines the people who comprise a demos, the character of that theory is self-referential because the democratic principle of legitimacy invokes the same people over whom democratic rule is exercised. On this view, the legitimate outcome of a decision is simultaneously its precondition. This challenge to democratic legitimacy is known as the legitimate boundary problem. In this realist reply informed by Bernard Williams, I argue that Abizadeh's position renders democratic legitimation an undesirably open-ended question and that democratic legitimacy is satisfied internally, with reference only to the state's citizens as its demos.

**KEYWORDS:** Arash Abizadeh, Bernard Williams, political realism, democratic legitimacy, legitimate boundary problem

## 1. INTRODUCTION

In "On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem" (2012), Arash Abizadeh has argued that democratic legitimacy faces the boundary problem – that when democratic theory specifies or defines a people who comprises a demos, its character is self-referential: "... if the exercise of political power is legitimized by conforming to the expressed will of the people, then the second question (b), of *who* the people is, cannot itself be settled by interrogating the people's will." (Abizadeh 2012, 874).

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Conceptually, there are at least three areas in which this problem has normative implications: the territorial rights of states, the desirability of cosmopolitan democracy, and the democratic right of polities to unilaterally allocate civic membership and political rights. In this paper, I look at how Abizadeh's position complicates the third point, which radically challenges the practices of democratic states, whose right to define their demos is regarded as fundamental to their self-determination.

Abizadeh opens with the idea that any prepolitical anchor to which a demos is bounded (by which a "people" is defined), for instance, culture, is a project to be realised via the exercise of political power. In democracies, this project is expressed through the "will" of the people.

The case with traditional democratic theory, according to Abizadeh, is that the legitimacy principle is cofounded with the boundary problem, meaning that any institutionally articulated group of people instantiates an enforced exercise of power due to this group being an outcome of (democratic) procedures in reference to the same people. Abizadeh importantly points out that when the composition of the demos is specified, it is not the same question as the composition of the demos being specified as bounded (Abizadeh 2012, 878). He says this to in fact argue that defining a demos in a way that complies with the legitimacy principle requires including every person subjected to political power because political power exercised within the defined civic boundary is also an instance of an outward extension of power over the people on the outside of the civic boundary, which is an instantiation of unjustified use of state political power.

Abizadeh's solution to these twin problems, one which would satisfy the criteria for democratic legitimacy, is the *all-subjected* principle: "... that all those subjected to the exercise of political power be included in the demos, i.e., granted a right of democratic say over political decisions." (Abizadeh 2012: 878). The condition of democratic legitimacy here is that all those subject to the exercise of political power ought to have a right to democratic participation, and this "in principle unbounded" demos is what makes a *politically* as opposed to a prepolitically constituted demos. He has some desiderata for what counts as subjection, for example, it suffices that the state subjects a group to coercion. But this leans toward a normative discussion about who falls under this category of subjection, a discussion Miller (2009) already opened by arguing that a demos is justified theoretically, with reference to some normative ideals of democracy, not via democratic procedure. Instead, I want to argue empirically and show that there is a strong case for an internally legitimate democratic polity that is politically constituted in reference only to its citizens as the demos. I appeal to a more proceduralist view of democratic legitimacy by showing that states

must be able to arrive at democratic decisions without loose ends with regard to who ought to be the ones making them.

My thesis is that a recognition that the bounded demos yields a theory of democratic legitimacy based on a politically constituted demos. The view is that the democratic legitimacy principle is not conflated with the boundary problem and is therefore not self-referential. Civic boundaries, as I will show, do not furnish a basis for enforced decisions about granting or denying political membership and rights, which is an important provision given that Abizadeh is correct in saying that “A theory according to which the proverbial “will of the people” can be discerned and expressed by an inspired autocrat, without procedures for the participation of those composing the demos, does not amount to a *democratic* theory of legitimacy.” (Abizadeh 2012, 874). My standpoint is not entirely antithetical to Abizadeh either. What makes Bernard Williams a tactful interlocutor for Abizadeh is that they both stress how “might does not make right” (i.e. that power itself does not justify). Hence the search for a democratic legitimation story from both Abizadeh’s moralist (i.e. what Geuss (2008) dubs the “ethics-first” view) and Williams’s realist camps, where the core of the dispute lies in the descriptive notion about *who* makes the demos.

As Abizadeh had already pointed out in his paper, decision about who constitutes the demos require an already demarcated demos, which itself must be democratically constituted, contrary to e.g. autocracies or theocracies, where legitimacy derives from the outside, a demagogue or a divine entity. The thesis that a bounded demos thesis yields a theory of democratic legitimacy is motivated by two ideas. First, that Abizadeh is too cavalier about the question of feasibility, for it is impossible to enfranchise into the democratic process everyone who expresses a grievance on account of being coerced, and (to appropriate Williams’s phrase) there is always some place for grievance. Second, one of the more potent arguments for the expansion of the demos appeals to the notion of justice, and it is widely believed that justice requires treating all persons as equals. It would seem that Abizadeh formulated the problem of civic boundaries as a problem of legitimacy, but I want to show throughout the paper (conclusively in section 3.2) that his problematisation of civic boundaries and consequently his fix with the all-subjected principle are problems in the domain of justice rather than legitimacy, since it would be too demanding to make his point without making an argument for global justice. The principle of justice is the bedrock of democratic theory and, like many moralist theorists, Abizadeh is uncomfortable with anything that appears to violate it.

Justice understood this way plays on (negative) constraints on exercising state political power, in particular (1) the exercise of political power

should not be used to systematically prevent people from pursuing the opportunities to meet their basic needs, and (2) it should not be used to entrench structurally significant sources of material inequality among persons. These negative constraints produce a justice argument for open civic boundaries based on pro tanto moral duty; if the argument succeeds, it allows Abizadeh to ask the would-be question: why are democratic states justified in exercising political power to enforce a sub-optimal policy of justice? Or put differently by Bagg: “If legitimacy is really such a minimal standard, in other words, it is far from clear why we ought to pursue it at the expense of other worthy normative goals.” (Bagg 2022, 35). A state that enforces such sub-optimal policy and does not include in its making those whom it coerces does not, from Abizadeh’s point of view, satisfy the democratic principle of legitimacy.

In reply to Abizadeh and, by extension, to structural models (familiar from Rawls onwards) of democratic theory which seek to define the conditions under which political power can be rightfully exercised, I argue that democratic legitimacy is satisfied when there is an answer to the following: How is it possible to make a democratic decision tomorrow morning, without deliberating who ought to be making it the evening before? Likewise, how can a democratic decision be made without retroactively questioning it on the same account? My answer starts from the thought that democratic legitimacy requires and suffices with a *practical* justification of state political power whereas justification is demanded contextually instead of deriving from a set of principles at the level of theory. The realism of this justification rests on the idea that it must be offered *right now* (NOW), that is, tomorrow morning. Therefore, the argument that I will defend throughout this thesis runs like this. Democratic legitimacy is satisfied with an answer to the question of providing justification NOW, which is equated with the idea of tomorrow morning/evening before. For a democratic decision to be NOW, it must pass a feasibility test. This feasibility test requires a model of the demos which is in principle bounded. I pioneer a new model and argue that it complies with NOW and, as such, satisfies democratic legitimacy.

The paper unfolds as follows. Section 2 gives an overview of Bernard Williams’s political theory and economy of language (e.g. the Basic Legitimation Demand) and explains democratic legitimation in a realist key, with some deflection of Abizadeh. Section 3 scrutinizes the hitherto predominant “moralised” interpretations of democratic legitimation, based on which I offer a practical democratic legitimation story grounded in the idea that we need justification of state political power NOW. My analysis confirms, with some qualifications, that democratic legitimation can be satisfied through a bounded demos thesis while making concessions

for normative reasons as to why a substantive expansion of the demos is possible (which is where Abizadeh's demand is really located) in spite of a bounded demos. Section 4 concludes with some suggestions about what my analysis might mean for the place of democratic legitimation within realist political theory.

## 2. REALIST LEGITIMACY

Bernard Williams departed from mainstream Anglophone political philosophy by drawing the contrast between the predominant forms of political moralism and his political realism. His departure starts from the thought that for a state to be legitimate (LEG), it must meet the Basic Legitimation Demand (BLD). The distinctiveness of this alternative from other liberal political theorists, who demand a theoretical justification of liberal orders, is that the BLD represents a politically inward-looking justification of political regimes, which is seen as a rupture from the justificatory theories in the footsteps of political moralism: "It may be asked whether the BLD is itself a moral principle. If it is, it does not represent a morality which is prior to politics. It is a claim that is inherent in there being such a thing as politics: in particular, because it is inherent in there being a first political question." (Williams 2008, 5).

Williams asks the first political question in essentially Hobbesian language, which is crudely how to create order out of mayhem: "securing of order, protection, safety, trust, and the conditions of cooperation." (Williams 2008, 3). Any purported answer to the first political question is subject to the BLD which is equated with the idea that the solution is an acceptable answer. What makes for an acceptable answer adheres to Williams's formula  $LEG + Modernity = Liberalism$ , whereas modernity is an important proviso for political authority to be experienced as such that the legitimation story "makes sense" (MS) to those people who are subjected to state power. In the Williamsian dictionary, liberalism is more often than not synonymous with liberal democracy namely because this is what appears to MS in modern political societies.

We can start to bridge an early comparison with Abizadeh's all-subjected principle: "Note that for persons to be subject to political power it is not necessary that they be placed under legal obligations to comply... it is sufficient that the state subject them to coercion..." (Abizadeh 2012, 878). It is important to distinguish between judgements about what MS and the separate discourse about what a just social order looks like. Williams's capacious definition of liberalism (as (Hall (2015) points out, he does not over-specify liberalism so as to avoid imposing a set of liberal norms) is acceptable in spite there being disagreements on whether it is "optimally just." For this reason, Williams can argue that historically, there have been

legitimate states that were not liberal, while today, traditional hierarchical justifications of inequitable treatment no longer MS. In contrast, many moralist positions on legitimacy are grounded in the teleological view that liberalism is a political settlement of perennial moral truths that are to be realised if a political regime is to go down in history as legitimate. There does exist an oppositional view against the notion of latent judgments about what MS in relation to state legitimacy (Freeden 2012; Floyd 2011; Sleat 2010), but this paper maintains the framework that today, or as Williams put it, *now and around here*, only liberal political settlements MS.

In his original realist voice, Williams places the question of justice (and for that matter, freedom, rights, and so on) lexically lower than political issues. This does not imply that, just because a (coerced) individual is not party to a political relationship with the state, that she may not be party to a moral relationship with the state (Hall 2015). It remains entirely possible that a set of moral principles governs that relationship, un beholden to the political sphere. As some critics pointed out, an affected interest grounds moral right due to consideration, but not political right to participate in the democratic decision (Beckman 2009). For others, like Abizadeh, any type of state coercion renders the individual a subject and makes her, by moral right, party to a political relationship. Naturally, there are other critical voices to the realist standpoint, namely realism being merely an extension of applied ethics (see e.g. Maynard and Worsnip 2018), or that “political justification is irreducibly moral” (Erman and Möller 2015, 1), according to which moral and political relationships cannot be differentiated. But my thesis bolsters the stronger realist claim that political values “can and should guide politics” (Rossi and Sleat 2014, 690).

On this view, the crucial message is that justification of state power is strictly a political concern because the first political question is contextual; it does not waver once we have arrived to an answer at the level of some theory (e.g. about human nature or statecraft) as has been the case with e.g. Rawls (1999a; 2005), who offers moral conditions for co-existence, or Dworkin (1986), who offers moral foundations for a just and authoritative rule. Here, the first political question means that an answer is demanded *all the time* since the meaning of politics is susceptible to change. What this implies for political theory is that neither the first political question nor the answers to it are constant; there is no single set of concerns through which problems permeate, anachronistic to contemporary settings. Such concerns are familiar from the literature on justice, e.g. the view that renders the equal moral worth of all humans, on which basis policy is made.

I have introduced so far the first political question, the securing of conditions of cooperation, being a necessary condition of LEG that the

state solves it. Any purported answer to the first political question is subject to the BLD, which is equivalent to the solution MS. With respect to meeting the BLD, the state must be able to offer a justification of its power to each subject: "... the subject of a state is anyone who is in its power, whom by its own lights it can rightfully coerce under its laws and institutions. Of course this is not satisfactory for all purposes, since a state can claim too many people, but I shall not try to pursue this question." (Williams 2008, 4). If we were to formulate a sense in which a state is LEG by virtue of meeting the BLD exclusively on part of its subjects, and if Williams had not shied away from defining who those subjects are (i.e. with whom the BLD arises), then we would have had a coherent picture of a political demography to whom the state owes a justification of its power. And so Williams's argument for state legitimacy could go like this:

- P1: State legitimacy derives from the state's justification of power to each subject  
 P2: A subject of the state is a citizen of the state  
 C: State legitimacy derives from the state's justification of power to its citizens

But this is not the present state of the argument and both premises, mainly the second, have been contested by Abizadeh, whose demos problem lingers on the conceptual question (with big normative implications) of who makes for a subject. For the rest of this paper, I want to show that Williams's account of political legitimacy is inward-looking, that this legitimacy is democratic, and that there are independent reasons to believe that the above argument is possible despite Abizadeh. The point, to have traction, must refer to some demos (citizens), which is politically constituted (through democratically articulated processes), and that this theory stops the legitimate boundary problem from arising in the first place.

Williams explains that when we ask what MS we "need concepts and explanations which are rooted in our more local practices, our culture, and our history, and these cannot be replaced by concepts which we might share with very different investigators of the world." (Williams 2006, 186–187). But he also writes that: "This principle [BLD] does not itself determine when there is a need for justification... It does do something to determine, when there is a demand for justification, what will count as one." (Williams 2008, 6). Here I would like to offer an amendment. Hall (2015: 4) remarks that when subjects ask if the state satisfies the BLD, this is for them a normative question. The BLD is not a reflection on subjects' commitment to liberalism, but rather to the normative standard of state legitimacy, and the state just so happens to be liberal (which is again sepa-

rate from the state having to be liberal to MS). In other words, the BLD must be framed by the circumstances through which the demand emerges, and those circumstances are contingent on judgements around whether the state's legitimation story is coherent or incoherent with what MS (or in this case, with liberalism).

The BLD locally corresponding to what MS as a legitimation story is a turn on the BLD as a principle that *can* determine a need for justification because, for example, if there is something illiberal going on within the state, subjects will pick up on it as no longer MS, which is a prompt for the BLD to emerge as a signifier for the state's need to justify its use of political power at that moment and on that particular issue. This means that the BLD may come to prominence at any given time, for any number of reasons, but most likely or in this scenario for reasons referring back to illiberal practices (whatever illiberalism means at that time and place). If a state cannot provide an answer when that happens, it does not meet the BLD and is therefore ILLEG.

Lastly, the state may coerce certain groups for reasons that MS only to the specific subjects from whom it seeks legitimation, and at that remain LEG. This premise is exhibited in Williams's historical example of the "radically disadvantaged" Helots in Sparta, who were openly regarded as enemies of the state: "...there is nothing to be said *to this group* to explain why they shouldn't revolt." (Williams 2008, 5). Williams's analytic placement of the Helots in Sparta is analogous to Abizadeh's concern for those who are today on the "outside" of the demos yet share the polity space with those who are within it and on that account are kept from the democratic right of say – his examples include Apartheid, the exclusion of religious minorities in Iran and the treatment of Hispanics in the U.S. One could think of plenty more – the Uyghur population in China, the Kurdish population across various Middle Eastern countries and less callously as of yet, non-citizen residents in the U.S., for whom we have yet to witness what the future holds in 2025 under the Donald Trump administration. Already at face value, we see that these examples characterize varying types and intensities of negligence for which reason it will prove necessary to differentiate between the kinds of relationships a particular group might or might not have with the state, something I will address shortly after below.

In another paper, Abizadeh makes an argument that seeks to extend this concern to foreigners and would-be immigrants, that is, to those who are "outside" the demos and do not (yet) share the polity space with those who are within it, which would amount to a reason to enfranchise them under the all-subjected principle: "To be democratically legitimate, any regime of border control must either be jointly controlled by citizens and foreigners or, if it is to be under unilateral citizen control, its control must

be delegated, through cosmopolitan democratic institutions giving articulation to a “global demos,” to differentiated polities on the basis of arguments addressed to all... Since border coercion invades the independence of *everyone* subject to it, a state wishing to place entry restrictions on foreigners owes those persons a democratic say.” (Abizadeh 2008, 54–55). The direction of my response will be that, no matter how praiseworthy a normative project like this might be, the concern still pertains to the domain of justice rather than legitimacy – the the apposite question is whether it is possible whether it is possible to consider a state legitimate unless it is also just and whether the state, in this regard, must be globally viewed as legitimate or if internal legitimacy suffices. It’s good to keep this in mind for section 3.2 when I will talk about the BLD in the global context.

It is in the BLD’s domain, as Jubb and Rossi (2015) have pointed out, that we find the distinction between political relationships and sheer domination. Helots, who were factual slaves (under heavy draconian treatment at that, so there can be no mistake about it), were never incorporated as political subjects, nor have there ever been any attempts to do so either, since Spartan tradition wantonly anticipated Helot revolts so that young Spartan men who had just completed martial training could “hunt” the Helots down in a sort of inauguration to military ranks. This fact makes it difficult to say that Sparta sought to claim *political* authority over the Helots – it was (as described by Williams) a case of internal warfare, which didn’t affect the legitimacy of Sparta vis-à-vis Spartan citizens, for whom Williams believed the state was legitimate as a historical point. If we were to extrapolate the case to contemporary settings, one would have to be sensitive when differentiating between groups that are party to a political relationship with the state, the groups that are dominated, and the groups that are not either.

Further, in the case that the argument for domination is successfully advanced, one can ride on Miller’s (2009) ticket, where he went on to say that coercive border controls do not grant would-be immigrants democratic entitlements because coercion does not equal prevention, and prevention itself does not necessarily undermine moral rights such as autonomy. So a case of domination does not amount to a political relationship and the state as such would have no obligation to meet the BLD on the part of that group. The relationship might amount to a moral one due to consideration, and it might be desirable to do so, but as I have argued earlier, that is beside the current point. It is therefore not a “yes or no” question whether Sparta had met the BLD; it is a non-question because the BLD had never been raised since there was no violation of a political agreement per se. For these two reasons, it can be argued that the all-subjected principle, which would seek to politically enfranchise non-citizens and would-be immigrants into deci-

sions on democratic boundaries, does not carry the question of legitimation. Let us now see how this plays out with Abizadeh.

### 3. ALL-SUBJECTED PRINCIPLE

The all-subjected principle is essentially a model of constituting a demos internal to the standards of democratic theory in terms of addressing the boundary problem so to satisfy the legitimacy principle (Beckman 2009; Erman 2014; Fraser 2009; Habermas 1996). This principle is one of the pillars of enfranchisement models next to the *all-affected* principle (Arrhenius and Tersman 2005; Dahl 1990; Goodin 2007; Miller 2009; Whelan 1983) and the *all-inclusive principle* (Näsström 2003; Song 2009), which both share in the common project of identifying prepolitical but democratic grounds on which a demos could be constituted in a way that the exercise of political power conforms to the legitimacy principle. The motivation, again, is that might does not make right. Abizadeh's view, however, does not suppose a prepolitically constituted corporate subject. In fact, he at times comes surprisingly close to a realist vision of legitimacy: "Rather than beginning with the *fiction* of an originary social contract, and asking how legitimately to construct political power from prepolitical grounds, we must reverse the image: Begin with the *fact* of political power – we begin with the already existing configuration of political power – and ask how to legitimize it." (Abizadeh 2012, 879-880).

Simultaneously, Abizadeh avoids collapsing the meaning of the demos into democratic procedures because, he argues, the democratic principle of legitimacy makes assumptions about legitimacy being grounded in a collective and politically expressed "will". Hence, any notion of democratic proceduralism is compounded with the legitimate boundary problem. This is precisely, I argue, what renders the all-subjected principle a normative model of enfranchisement, more so than a conceptual definition of the demos. Whether the all-subjected principle seeks to constitute a demos by defining its contours by virtue of people accepting political rule or being carriers of some moral right, its principal normative hallmark is that there must be some room for its expansion; it looks at who *ought to* be an eligible participant in democracy, which makes his demos "in principle unbounded." In contrast, the sort of demos I am proposing is descriptive and adheres to a procedural understanding of democratic legitimacy, and so is in principle bounded.

Williams, like Abizadeh, says that it is the *fact* of states claiming authority that generates the need for its justification, with the head difference being the question to whom the state justifies its power. In keeping with the BLD, which is seen as an evaluative standard of legitimacy derived from the practice of politics, the scope of the state's justification is limited

to those from whom the state demands allegiance (Hall 2015). In Abizadeh, this scope is not limited in any meaningful way because of his normative demand for the unbounded demos. Abizadeh's account must be contingent on external (moral) principles governing the ideal of democratic participation, which in its present form remains an abstract theory-level exercise. Here, it becomes more readily apparent that justification of state political power can be seen as a matter of practice rather than a perpetuation of presupposed ideals about democracy and democratic participation: "As answering the first political question is a matter of practical concern, legitimacy is not an abstract moral ideal but a live contextual possibility or, to put it another way, a reachable threshold." (Hall 2015, 3).

The point is stronger than outright rejecting unfeasible ideals, as non-ideal theorists such as Valentini (2012) suggest. If democratic legitimacy requires justification, and justification is conducive to a democratic ideal rather than praxis, then it is also worth putting into question what the democratic ideal even is. Just as there is pluralism of moral outlooks (Berlin 2013), Abizadeh puts forth his vision with the all-subjected principle, but it is the fact of pluralism that keeps a single understanding of democracy (or any political settlement) from being the dominant view in pluralistic societies like in today's liberal democracies. One could compare this point with Bourdieu's (2000: 79) criticism of Rawls for being unaware of his cultural habitus that informs his liberal philosophy, which is why Rawls can argue to be neutral, whereas he can only be so within his own liberal philosophy. Another way of seeing it is that Abizadeh's vision of democratic legitimacy appeals only to those inside the demos who already condone it without giving (practical) reason to those who don't, and to those outside the demos who *would* condone it, which is everyone and anyone who feels like they should be party to a political relationship.

What the all-subjected principle lacks to fully bridge the challenges posed by the fact of pluralism and the abstract character of democratic participation found in the all-subjected principle, is a practical response to the justification of state political power. This practical response comes from answering how it is possible to make a democratic decision about anything if it is unrestrictedly put into question the constituency behind said democratic decision and consequently, what even makes any decision democratic. Some critics point out the implausibility of normative enfranchisement models such as Abizadeh's insofar as they cannot ensure that all those who fall under the affected, subjected, or inclusive categories are truly partaking in democratic decision-making processes (Rosenberg 2020). Theoretically, if the primary intention behind the all-subjected principle is to address the concerns of justice through democratic enfranchisement, then the principle does not hold up to scrutiny on its

own terms since it would be equally unjust not meeting its standards as it would be not considering the principle in the first place. Others describe this as the problem of a changing demos that impinges on the performative functions of democracy (List and Koenig-Archibugi 2010). My view that we need justification NOW is more sympathetic to the latter form of criticism, which is why the demos can or even must be, in principle, bounded.

My analysis takes it further, or at least in a different direction, than the question of feasibility of the all-subjected principle as a normative enfranchisement model. I suggest that feasibility here is not conventionally understood as some logistical impediment but understood on the basis of whether an enfranchisement model complies with NOW, to recall, whether it is possible to make a democratic decision tomorrow morning without deliberating who ought to be its authors the evening before. A model that satisfies this requirement can be said to have passed the Practical Implementation Test or, more lyrically, to have passed the PIT. On the other hand, if an enfranchisement model cannot be NOW – if it cannot arrive at a democratic decision without deliberation about who is to make the decision – this model fails the PIT. And this is the case with the all-subjected principle.

The all-subjected principle does not yield a conclusive subject body to work with, or, more succinctly put, it only gives us an idea of who makes for a subject in principle but not in practice. If we accept that the all-subjected principle fails the PIT because of this, then the outcome is that the state is left with no room to provide justification in the first place (and in realist terms, to meet the BLD) since there is no one to raise the demand for it, meaning that no individual can express their grievance (if everyone is a subject, no one is). This is why the PIT makes for a sound test to see whether a normative enfranchisement model is fair to the standard of democratic legitimacy and indeed fair to the state as a political actor; if a model is abstruse enough in the way it conceals from whom justification is demanded, then it is setting the state up for failure in the democratic legitimation game, in which case this would allude to the off-key discussion on the desirability of cosmopolitan democracy. We may ascribe to the model that passes the PIT and complies with NOW a name, to continue the appropriation of Nancy Fraser (2009), the *all-attested* principle, with the constituency behind the all-attested principle being the citizens of the state.

### 3.1. ALL-ATTESTED PRINCIPLE

I have so far argued that (1) democratic legitimacy requires NOW, (2) NOW requires PIT, and (3) PIT requires the all-attested principle. In what follows, I will defend the all-attested principle, and continue to argue

that (4) the all-attested principle is NOW, and (5) that the all-attested principle satisfies democratic legitimacy.

The all-attested principle furnishes a basis for why there is no boundary problem, via a constitutive condition of democratic proceduralism and its corresponding legitimacy principle: that all holders of the political right of democratic say, at the given time of demand for the justification of state political power, be the sole capacitors of the demos, i.e. remain the exclusive holders of the political right of democratic say. The matter is more tangled than to claim, as Schumpeter (1976) had done, that any particular civic boundary will satisfy democratic legitimacy because boundaries are presupposed by democratic exercise of political power. That much is clear: we are familiar with democratic practices such as referendums, plebiscites, general elections, and other forms of mass participatory democracy, none of which ask the opinions of those beyond registered voters, i.e. legally aged citizens. The all-attested principle is more similar to Christiano's (2006) conservation principle, which advances the "strong presumption in favor of the boundaries of democratic states remaining as they are." (Christiano 2006, 91).

A mere descriptive model like Schumpeter's proves normatively bankrupt; it embodies the legitimate boundary problem, and it is much too laborious to argue that it doesn't carry over concerns from the fallacious prepolitical demos thesis. Therefore, there must also be attributed to the all-attested principle a normative but non-moral feature, in particular, one that renders it a normative enfranchisement model. One could turn to Burelli's (2020) functional normativity for the heavy lifting on this problem, that institutions are assessed politically on the basis of their capacity to secure binding collective decisions despite persistent disagreement. On this view, moral reasons for political enfranchisement would not become salient "as long as the ability of a social group to issue and implement collective decisions is satisfied to a minimum." (Burelli 2020, 643). This form of problematisation appeals closely to the procedural elements of the all-attested principle, which could then be seen as a functionally autonomous political feature; the political standard of legitimacy hinges on the success of the polity to provision binding collective decisions, and, arguably, binding collective decisions are best achieved through democratic procedure (Cheibub et al. 1996; Przeworski 1991). There are, however, problems that are packaged with the functional normativity approach that will lead the normative feature of the all-attested principle in a different direction.

Chiefly, the "minimum" satisfaction of groups' democratic impact is inestimable. It might also be that the margins of this minimum will change over time, but that is only second to the lack of threshold in the first place

which is why, again, anyone who feels like it can express a grievance for being a second-class citizen, for not being able to bring their problems to the forefront or claim they not a part of the demos at all, which gives rise once more the legitimate boundary problem. What the functional normativity approach reveals here is that the normative feature of the all-attested principle cannot have what Burelli calls a “range property,” which, in his case, determines the level of political satisfaction below which moral concerns have no salience. It must instead have a “binary property” that is stricter on the partitioning between what counts as a moral or a political concern or, in enfranchisement terms, who makes for a moral or a political subject of the state. As a normative enfranchisement model, the all-attested principle is binary insofar as it functionally satisfies the bounded demos through its clear delineation of who gets to be in the demos.

Specifically, the all-attested principle makes explicit who is a subject in principle *and* in practice, whereas the all-subjected principle only (and arguably only partially) does the former. It does so by harmonizing the bounded demos thesis with the granting of concessions to Abizadeh for the potential expansion of the demos; only then can the all-attested principle prove more than a self-legitimizing proposition for satisfying democratic legitimacy. The BLD provides the normative import appropriate for addressing this problem.

As I have argued before, the BLD is a principle that can determine a need for justification of state political power, down to the specific moment and issue, because what invokes the BLD stems from the local evaluation of what MS. There is nothing which indicates that what MS is anchored to a set of beliefs, which also includes beliefs about who constitutes a demos. If anything, that belief comes from moralist theory, since moral standards applied to politics are strategically designed under idealized conditions (Sangiovanni 2008; Schmitz 2016). If what MS is not anchored to beliefs about who constitutes a demos, it stands to reason that judgements about what MS are not anchored in any regards to enfranchisement either. What I mean by this is that if at some point it begins to MS that a particular group ought to be included in the demos, then the state must enfranchise this group if it wishes to remain LEG. Abizadeh is correct in saying that “boundaries require not just consent, but serial consent” (Abizadeh 2012, 875), and a political consensus based on what overwhelmingly MS seconds as serial consent. Plainly, the circumstances for enfranchisement may change as the BLD within the existing demos changes, and this is what makes a polity internally legitimate. But is it *democratic* legitimacy?

Once more, a (bounded) demos is *politically* constituted because it does not refer to an essential core (e.g. culture, or an extracultural supplement like ethnicity) as a sociopolitical artifact, which serves the

boundaries of membership as some vision of a natural identity in which the conception of the demos is grounded. Abizadeh himself confirms that “each generation’s view of what that core is may change” (Abizadeh, 2012: 872). Williams is clear on the point that judgements about what MS also change over time (modernity proviso). In the future, it may very well be the case that the scope of the all-attested principle (for whom it makes sense to be part of the demos now and from whom it makes sense to demand legitimation) will capture all those who are currently disenfranchised or in the all-subjected category (provided it MS), betokening what can be described as a “Burkean conservatism” point of view: whatever Burke likes is whatever we happen to have, but understanding that prudence taken to the extreme is sometimes a vice. One of the key takeaways from Burke’s practical approach to political philosophy (largely from *Reflections* [1790] 1982) is the inherent risk of abstract theorising, underscoring the significance of understanding the limits of the demos not merely in principle but in practice too, which is what the all-attested principle aims to provide.

Burelli and Destri (2022) offer a second strategy which may be suitable for explaining how the BLD can lay the groundwork for a politically constituted bounded demos, in principle and in practice, tantamount to an internally legitimate and democratic polity. They articulate their idea of realist normativity by amalgamating two non-moral sources of normativity. Namely, epistemic normativity (if something is empirically true, this gives us reason to believe it) and instrumental normativity (if we believe that something is a necessary means to a goal, there is reason to do it). We can think of the all-attested principle as the corollary to epistemic normativity inasmuch as it tells us who the demos is in practice – if it is empirically true that the demos is made up of legally aged citizens, there is no reason to dispute the fact. This is to say that the legitimacy of political institutions rests on what MS to those they rule over, not on their ability to coerce. Instrumental normativity corresponds with the practical solution to the BLD – if legitimation is satisfied through interrogating legally aged citizens, then we have reason to believe that a polity which interrogates its legally aged citizens is legitimate. This marriage between epistemic and instrumental normativity forms a realist normativity based on which polities can make internally legitimate democratic decisions.

There is a further case to be made for the latent satisfaction of democratic legitimation based on the normative commitment to democratic legitimacy as a desirable social and political good. Recall that solving the first political question for Williams is the condition of advancing any other normative ideals and material interests citizens may have. This is a closely Hobbesian point of view, who canonically argues that while people may discover true principles of justice by moral reasoning alone, actual justice

is only achievable within a sovereign state: “Before there was any government, *just* and *unjust* had no being.” (Hobbes [1642] 1984, 146). In the Williamsian vein, if democratic legitimacy is considered a desirable good consistent with the normative ideal that citizens hold, and the normative ideal is something to be realised under the condition of solving the first political question, then democratic legitimacy is the desirable outcome of the state solving the first political question. It may then be said that even if the state does not overtly demonstrate an exercise of political power that conforms to the democratic legitimacy principle, this is a condition of the state not yet having solved the first political question, which is a picture coherent with a trustee (or paternal) model of the state which holds long-term normative commitments to (in this case) democratic legitimacy.

The all-attested principle is a normative enfranchisement model in positive response to the PIT, the feasibility test to whether a decision can be NOW, that is, whether a decision can derive practically and without open deliberation on its authors. The argument that the all-attested principle passes the PIT and consequently satisfies democratic legitimacy is equated with the idea that (only) the existing demos can deliberate about its boundaries. The BLD shows that internal reason statements with respect to LEG are not universally normative, but normative for that agent, meaning that whenever a regime MS to the citizen, this gives them internal reasons to comply with its command, thus, MS is normative for that agent. Is this consistent with democratic legitimation in the global context?

### 3.2. NO GLOBAL BLD

It might be tempting, due to the highly interwoven global political landscape, to think states do not derive their legitimacy (solely) internally from their polity and citizens, but from international recognition in the global forum. For instance, a wide panel of critics showcase the colonial legacy of some states and how this shapes their relationship with (the populations of) historically colonised states. Some scholars of migration philosophy (realists among them) have focused on the omission of historical injustice from migration literature (Finlayson 2020; Jaggar 2020; Mills 2015), giving reason to ex-colonial powers for adjusting migration policy concurrent with justice-based arguments. What this does is that it challenges the notion that migration policy and, by extension, whether the normative question of enfranchisement is the domain of political legitimacy to begin with; that enfranchisement is a question of justice, and that a state cannot be legitimate if it is not just. What will follow is my reply as to why enfranchisement is not a question of justice.

It is an important matter to clear up because first, if left unattended, it would prove difficult to conceive of internally legitimate bounded demoi, since state use of political power would require an outside reference point of justification beyond the citizens. Second, I am coming back to what I had said in the introduction, that Abizadeh's problematisation of civic boundaries is a thematic pastiche of a legitimacy-related concern, whereas his claims are difficult to support without making a global justice argument. There are some who have already crack-opened this line of thinking. Kreutz (2022) defends the realist intervention into migration philosophy by arguing against political realist redundancy in this domain and presenting a realist payoff from uprooting moral normativism in migration philosophy. Bender's (2024; c.f. Bender 2021) realist treatment of refugeehood shows that moral arguments for admitting refugees fail and that refugeehood possesses political functions for receiving states more so than it appeals to humanitarian and justice-based reasons for admittance. So, there is already a firm theoretical backbone to treating migration and enfranchisement as a realist enterprise.

But first, I would like to accredit Williams with more accolades for his "now and around here" proverb than he does himself and take it one practical step further by eschewing the now from around here. "Now" is primarily a claim that judgements about what MS must be sensitive to the exigencies of contemporary political thinking, which means, as I will show, that some form of justice is internationally desirable. "Around here," on the other hand, refers to the content of justice responsive to local (geopolitical) settings. This breakup of the taxonomy makes it more straightforward to identify the specific problems that emerge under particular circumstances, which yields a clearer picture of how the BLD will have to be met. In some arenas, this might mean addressing the question of public services, and in others, migration policy. The bottom line is that legitimacy is an internally normative criterion for states vis-à-vis their citizens and their particular understanding of what MS at that point in time and place.

Now for my reply, which is that while it might internationally MS that justice is applied globally, it might also be the case that what MS in terms of provisioning justice does not align vertically (local level in relation to the global level) or horizontally (between local levels). Vertically, the content and practice of justice might look different when interpreted by e.g. Poles than when understood by a UN committee. This can be understood through the global justice argument based on a "global basic structure" in both its formal or institutional conception (UN, WTO...) and informal or interactional conception (mainly social norms) of social arrangements (see Julius 2003; Ronzoni 2008). Ronzoni wants to bridge the gap between domestic and global theories of justice by drawing on

Rawls to say that analyses of domestic institutions do not yield an understanding of global justice because no institutional structure is a given: "... an institutional structure is just if it succeeds in realizing the appropriate standard of justice in the specific context in which it operates" (Ronzoni 2008, 74; c.f. Cohen 2001).

On Ronzoni's ticket contra G.A. Cohen (who asks whether principles of justice for the basic structure are different for individuals and the private sphere, see Cohen 1997), I do not incontrovertibly disagree that, internationally, *some* notion of justice might be deserving of application, also in the domain of migration and enfranchisement. But there is no reason to believe, and it might be imprudent to desire so, that this notion of justice will be uniform when provisioned across contexts. This goes to the point that moralism, in which justice theories are grounded, looks to apply to live political contexts moral standards that are designed under idealised assumptions. Horizontally, rejecting the uniformity of justice would mean that there is no reason to expect citizens, for instance, in Poland and in Germany, to share common views on what justice is. This attitude can (in most recent world events) be seen in the Polish government's preference for Ukrainian over Syrian refugees, as opposed to Germany's open border policy toward both.

But both Poland and Germany have programmes for admitting refugees (albeit with different outlooks), so it is safe to say that both states and their citizens recognize that some form of justice is important (so far as migration and refugeehood are understood as a topic of justice), but the content of justice is up for debate. If we subscribe to Bender's realist analysis of refugeehood and refugee enfranchisement, it can be said that both states hold different internal legitimation criteria, at least with regard to refugeehood. This is approximate to how Williams argues that judgments about what MS are collected from those to whom state power must MS in order to be LEG, and that state coercion (in this case, to abstract it, a particular conception of justice, or a particular method of legitimation) need not MS to everyone, it only has to MS to the citizens of the state to whom justification is required. The argument is caught up between Rawls (1999b) who says that that we (liberal democracies) can recognize well-ordered but non-liberal (e.g. theocratic) regimes with which we may have certain kinds of principled differences that are limited in particular ways, and between Williams's point that "The present point concerns what turns on regarding them as LEG or not. The idea of "LEG" is normative for us as applied to our own society; so it is also normative in relation to other societies which co-exist with ours and with which we can have or refuse to have various kinds of relations: they cannot be separated from us by the relativism of distance." (Williams 2008: 14).

The global justice argument can also take another shape. Julius (2006) questions the (moral) significance of state boundaries (particularly, on matters around justice and redistribution) and argues that the difference in treatment of people between domestic and global contexts is not sufficiently justified. His response to Nagel (2005), who challenges the cosmopolitan view and says that obligations (of justice) apply primarily within the context of a sovereign state rather than globally, is that his framework inadequately addresses the moral responsibilities of citizens toward non-citizens. Nagel's oblique realist viewpoint argues for a *political* conception of justice which arises from specific social and political relationships within sovereign states (think Hobbes). On this view, states play the unique role of enforcers of justice due to their capacity to impose legal frameworks on their citizens. But even though this political membership does not extend globally, it does not get us "off the hook" from the general duties to those with whom we don't identify, which are the moral considerations states may have toward non-citizens.

According to Abizadeh's "special obligations challenge" (Abizadeh in Fine and Ypi 2016), there exists a special concern among citizens to protect the most disadvantaged members of their political community, which is a greater concern than that which we might have for the global poor. In this scenario, helping the global poor would be a desirable moral consideration as long as it MS to the domestic population, which is a condition of the domestic poor being addressed first. There is, therefore, a public order argument to be made that could justify a more firmly controlled border regime if it happens to be the case that a certain border policy leads to the incapacity of the state to solve the first political question and satisfy the BLD among the domestic population.

It might be worth, in this case, taking another look at functional normativity and asking whether it is possible to raise the questions of justice before finding a reliable solution to the NOW problem of democratic legitimacy, vaguely similar to how Rossi (2012) had argued that legitimate authority does not depend on justice understood as a pre-political moral commitment. Point being, the first political question must be solved before any other moral concern can be raised. The question is then whether one can defend pragmatic or even normative grounds for the democratic enfranchisement of new groups without relying on an already demarcated constituency, which is why the demos is warranted in deciding on its boundaries.

#### 4. CONCLUSIONS

I argued that Abizadeh's legitimate boundary problem renders democratic legitimation an undesirably open-ended question and merely multiplies

things to be explained. My thesis is that the bounded demos thesis yields a theory of democratic legitimacy based on a politically constituted demos. The main argument is that democratic legitimacy suffices with a practical justification of state power NOW. The BLD acts as the response to the state solving the first political question, being the securing of conditions under which all other normative questions and material interests arise. Among those normative and material interests is Abizadeh's desire for the expansion of the demos based on theory. The basic idea of the argument is this: (1) democratic legitimacy requires NOW, (2) NOW requires PIT, (3) PIT requires the all-attested principle, (4) the all-attested principle is NOW, and (5) the all-attested principle satisfies democratic legitimacy.

The big conceptual question with even bigger normative implications is which collection of individuals, given the existing structures of political power, ought to receive democratic entitlements? In the global (or at least supranational) context, nearly all (if not all) fundamental interests of each person are implicated, which is a gateway to claiming that each person is subjected to some form of political power exercised elsewhere. This is essentially how Abizadeh puts forth the all-subjected principle in terms of legitimacy, whereas I argued it is hard to make that claim without resorting to an argument based on global justice. My argument for internal democratic legitimacy does not depend on any broader normative context, which is why democratic theory yields another answer to "who is the people" – the citizens of the state in question at the moment of a particular democratic decision being made.

Simultaneously, this is not incoherent with the potential for the expansion of the demos. The point is that the state politically enfranchises those groups for whom it MS to be enfranchised to the current demos, something that is not decided prepolitically, which is why internal political legitimacy of the state is satisfied. None of this excludes the fact that the state extends its hand to moral considerations toward non-citizens; it is only that the citizens are party to the political relationship, which renders them as being the only ones to whom state political power must be justified and grants them the unique role of political deliberation within the boundaries of the demos.

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