

A Human Principle of Democratic Foundation: Global

Democracy as Democratic Intervention

– working paper –

Hans Agné, PhD, Researcher

Department of Political science
Stockholm university
106 91 Stockholm
Sweden
e-mail: hans.agne@statsvet.su.se

Swedish Institute of International
Affairs, Stockholm

I know there has been controversy about the promotion of democracy in recent years, and much of this controversy is connected to the war in Iraq. So let me be clear: no system of government can or should be imposed upon one nation by any other. (Barack Obama, US President, speech in Cairo, June 4, 2009)

In recent years a growing number of political and legal theorists have suggested that the founding of democratic states involves some kind of paradox. There are different variants of the argument, but a common element concerns the problem of delimiting the people.¹ Since there can be no democratic state prior to the delimitation of the people, according to proponents of this view, the delimitation of the people cannot be democratically decided. Hence a democratic state cannot be founded on a democratic decision, as the founders cannot themselves have been chosen by democratic procedures. If democracy is understood as a process in which people establish their own states or constitutions, rather than a particular process within political orders which came into existence for reasons other than democracy, the paradox implies that democracy is ultimately impossible to achieve.

In this article I will challenge the argument that the founding of democracy is entrapped in a paradox and suggest instead that the founding of a state is indeed democratic – i.e. undertaken by the people subject to this foundational decision – when agreed to by people who will live within as well as beyond the boundaries inherent in the foundation. This re-conceptualisation of the problem of democratic foundation has political implications especially in areas where there is little agreement on which political orders and communities exist and should exist, as in international relations. In this article, however, the purpose is not to spell out those implications but to dissolve yet another paradox suggested in political theory and debate, namely that impositions of democracy from the outside of a country by force are themselves

necessarily undemocratic. Let me begin with a presentation of this latter somewhat more practical problem.

The conceptual problem of imposing democracy

Whether democracy can be imposed on a country from the outside by force has often been treated as a purely empirical question.² Researchers have analysed the preconditions for a sustainable democratisation in the aftermath of war, colonial rule, and foreign interventions. The history of countries like Afghanistan, Bosnia-Herzegovina, East-Timor, Haiti, Iraq, Japan, Kosovo, and West-Germany has been analysed for the purpose of explaining why democracy appears to have been more effectively contributed to by foreign powers in some cases than in others. It has been debated, for instance, whether a successful imposition of democracy depends on the existence of an effective state apparatus; agreement on the distribution of citizenship; experience of democracy in the past; a willingness of intervening actors to spend time and resources in the target country; the breadth of international agreement on the policy; the inclusion of transnational actors in processes of initiating and implementing the policy. In view of these cases and hypotheses regarding sustainable democratization, empirical researches may think they have what is needed for providing a robust answer to the question of whether democracy can be imposed on a country from the outside.

An empirical approach is not theoretically neutral, however. It yields substantial implications for the concept of democracy, i.e. for what an imposition of “democracy” is all about.

Empirical methods, in order to be applicable in the first place, require that the concept of democracy is not understood so as to exclude by definition the very possibility that democracy can be imposed from the outside. Otherwise the “result” would in any case follow

from logical relations among concepts rather than empirical observations. But this assumption, that democracy *can* be imposed from the outside, is controversial and requires philosophical examination.

According to some critics of foreign democratic interventions, it is simply not possible to impose democracy from the outside: to the extent that a regime is imposed, it is not democratic. The point is typically part of a wider normative argument against particular military interventions, as in Kosovo 1999 or in Iraq 2003, but in itself the position concerns the meaning of democracy.³ It has been contended, for instance, that ‘if the basic idea of democracy is that of self-determination ... then it is self-contradictory to try to initiate that through a violation of their self-determination by a forcible invasion and occupation.’⁴ Or, that ‘a war of aggression is a means that contradicts its [democratic] ends’, and furthermore that this predicament ‘rules out the *possibility* that democracy can be exported militarily’.⁵ Similar conclusions follow also from arguments that democratic institutions cannot be exported because, if democratic, these institutions must have been shaped by the unique experiences of a unique people: ‘The parts of the [democratic] machine are not detectable; the organism is in fact indescribable, and what keeps it going, the “habits of the heart,” as Tocqueville called them, are unique and indefinable. In short, we cannot by any conceivable means “show them how to do it.”’⁶

Advocates of these positions need not go so far as to deny for instance that foreign intervention can liberate a people from a dictator.⁷ What they must insist, however, is that democracy requires something more than that, for instance that the people establish a political order by themselves. So if a foreign intervention would succeed in say removing a dictator while the people would not succeed in founding a new state or a new constitution, the political

result would, according to these views, be something like anarchy or foreign domination, or a mix of both, but not democracy. Inherent in this argument is also an emphasis that states or constitutions can and should be founded in ways more democratic than those which involve foreign intervention and war. (If all founding processes were equally illegitimate from a democratic point of view there would be little reason to object to the undemocratic character of particular attempts at founding democracy in the first place.) In some domains of political theory this is almost a standard assumption. Social contract theory, for instance, suggests that legitimate or even democratically legitimate states are founded on contracts, or voluntary associations, of individuals.⁸ In political discourse the most famous expression of the general idea, that states or constitutions can be established in democratically legitimate ways, is probably that of the US constitution: “We the people ... establish this constitution”.⁹

Democratic impositions as a problem of foundation

This is not to say that the idea of democratic self-founding is uncontroversial. As noted at the beginning, it has been argued that the founding of a new state or constitution is necessarily undemocratic: since a democratic government derives its legitimacy from the people, the composition of the people must be decided before a government can be democratic, which in turn makes it difficult to imagine how the composition of the people, who will do the founding, could itself be democratically decided. This alleged paradox of democracy applies to the founding of new states, with new delimitations of territory or citizenry, as well as the founding of new constitutions in existing states, without any changes in existing territory or citizenry. Before a people can govern itself democratically, there can be no democratic decision that this people – rather than some other – should govern itself. And once people govern themselves democratically, their procedures will operate on an undemocratic policy of exclusion. In short, the founding of democracy – in new states as well as in new constitutions

in existing states – is a paradox. Democracy is possible only when we do not consider its founding in the past. And when the moment of foundation cannot be forgotten – because a new state is being created here and now – war and irresolvable conflict is a permanent risk.

More specifically, it has been suggested that there is a ‘gap at the heart of democracy in the sense that “the people”—in order to constitute the legitimate source of political authority—would have to be prior to itself’¹⁰ and, moreover, that ‘democracies cannot choose the boundaries of their own membership democratically’¹¹. Further, this inability of democracy to provide for its own foundation has been seen to undermine the legitimacy even of democracies already founded: ‘however impeccable democratic decision-making may be within a given community, the outcomes are in a sense determined by the previous and inescapably undemocratic decision that defined the community in the first place.’¹² And what is more, these difficulties have been thought upon as being unavoidable: the paradox is the very ‘condition in which we find ourselves when we think and act politically’.¹³ From these points of view, hence, there is no variation in terms of democracy among different cases of founding states or constitutions: democracy is not a factor in any of them. In other words, this is the opposite position to the one inherent in the view of impositions of democracy as involving some kind of paradox, namely that states or constitutions *can* be founded in ways more or less democratic.

Beliefs in the seriousness of these contradictions or paradoxes, on the imposition and the founding of democracy respectively, are linked to each other in the following ways: If we believe that no founding of states can be democratic, this must hold also in cases when foreign powers are involved in the process. If, by contrast, we believe that the founding of new states can indeed be democratic, i.e. undertaken in some ways which avoid the difficulty captured in

the founding paradox of democratic theory, the legitimacy of imposed democracy is an open question that will depend on what a democratic founding of states actually requires. It is as a development of the latter position that I will argue in this paper that the founding of a state or constitution is democratic if agreed to by people within as well as beyond the boundaries about to be founded, and that the involvement of foreign powers in a process of democratisation can by consequence not be rejected as a contradiction in terms.

Argument and structure

Whatever obstacles that face attempts at bringing democracy to a country from the outside by force, those obstacles include neither any logical incapacity of states to emerge in ways themselves democratic nor any necessity of founding a democratic state by the powers of its future citizens alone. The more positive side of this argument has been mentioned already, namely that a democratic founding of a state – made by those subject to this foundational decision – implies the recognition of the future state boundaries by people who will reside within as well as outside of those boundaries once founded. Depending on empirical considerations of practical constraints, the implications of this principle might include, among other things, that new states should be recognised by majoritarian institutions at the global rather than at the national level; that irresolvable disputes over the distribution of people or territory among prospective states should be recovered for a decision at the global level; or that democratic interventions should be multilateral and regulated by law rather than unilateral and self-authorised. From a procedural democratic point of view the attractiveness of such positions lays in their equal respect for people in the founding of states, and in their stress of a need for a flexible and critical attitude towards the issue of what states should exist in the future. Most fundamentally, however, the principle explains how procedural democracy

is possible, rather than paradoxical, even as the founding of states and constitutions emerges as a dominating political concern.¹⁴

The structure of the paper will be as follows. In the first part I will review earlier attempts at solving the democratic paradox and will conclude that neither nationalist nor contractualist theories of self-founding are successful in this regard. Since these theories imply that democracy cannot be founded by an imposition from the outside, their rejection is a first step towards establishing that democracy can indeed be imposed from the outside. In the second part I will elaborate on a proposal of how the paradox of foundation in democratic theory can be dissolved by recognising foreign powers as an integral part of democratic politics. The critical function of this section is to reject the position that the democratic paradox is an inescapable predicament of politics and to explain why impositions of democracy from the outside of territorial boundaries (but from within global democratic procedures) are conceptually possible. In the third section I specify some implications for democratic interventions of the way in which the democratic paradox has been dissolved.

Existing attempts at solving the democratic paradox

Nationalism

A normative resource in the concept of the nation is that it captures something which can exist before and independently of the state. The question of who should participate in the making of a democratic state will then have an obvious answer: members, and only members, of the nation.¹⁵ Nationalism can therefore be invoked *both* as a solution to the founding paradox of democratic theory *and* as an explanation of why impositions of democracy from the outside of a particular nation are impossible. However, the nationalist theory of foundation only pushes

the question of the democratic paradox one step back in the chain of concepts and historical events. Rather than a paradox in the founding of democratic states we would be faced with an equivalent difficulty in the founding of nations. Is there any democratic legitimacy in the founding of a particular nation? Since the nationalist strategy for circumventing the democratic paradox consist in stipulating that the nation is historically prior to the founding of democracy, it must answer this question in the negative. But if a nation has not been democratically founded, how could it confer such legitimacy on a state? Once again we would be stuck in the difficulty of deriving democratic legitimacy either from an entity whose foundation is undemocratic, or from a democratic state which did not yet exist at the moment whose democratic legitimacy is at stake. On a closer inspection, therefore, nationalism offers no solution to the founding paradox of democratic theory and can therefore not be invoked as an explanation of why the establishment of states by foreign intervention is particularly problematic from a democratic point of view.

The problematic premises of nationalism are very much alive also in those interpretations of deliberative democracy which presume that individuals alter their preferences in view of their collective identity. While much work on deliberative democracy sets out a conception of legitimacy according to which preferences change on the basis of general principles rather than bounded collective identities, the practical relevance of collective identities is generally admitted. According to Habermas, for instance, any 'democratic community' must 'distinguish between members and non-members' and form 'a collective identity, in the sense that it interprets and realizes [democratic constitutional] principles in light of its own history and in the context of its own particular form of life'¹⁶. Since a collective identity presumes the existence of boundaries between members and non-members, a democratic theory which

suggests that legitimacy derives from the formation and realisation of preferences in view of a particular collective identity is itself unable to explain the legitimacy of those boundaries.¹⁷

Contractualism

In the vision of social contract theory, the founding of a democratic state has been seen to consist in a unanimous vote among the contracting parties. The reason for resorting to unanimous voting has typically been that majoritarian democratic procedures appear insufficient. If people are born free, why should the majority decide and force its will on the minority? The only condition under which this can be right, Rousseau argued, is that every individual has agreed to the use of majority voting “on one occasion at least”¹⁸. Because a unanimous vote guarantees that no person is forced by another, according to this argument, it implies a democratic foundation. However, adherence to unanimous voting does not address the objection that the group of people who was permitted to participate in the unanimous decision could and perhaps should have been composed in some other way – most importantly that someone who was in fact excluded should actually have been included. This would perhaps not trouble the prospective citizens of the state, all of whom must have agreed with the ways in which the people was delimited for the state to be founded in the first place, but it will be a devastating objection against the legitimacy of the state in the views of all others. People on the outside of the state will simply have little reason to accept its coming into being by a process from which they were excluded.

A more sophisticated version of the contractualist position adds to the idea of unanimous voting that of a voluntary association.¹⁹ A democratic founding of states modelled on that principle implies that all individuals are free to initiate other associations (states) than those in which they find themselves at the status quo, and that everyone is allowed to migrate to all

other associations (states) which are willing to accept him or her as a member. From the perspective of democracy as equality in power among people, this is an insufficient criterion, however. Not only does the principle of voluntary association risk leaving many people outside of all associations, but more seriously in this context it will bias the politics of foundation towards the associations which exist in status quo. Since voluntary associations are free to decline applications for membership, the conditions for changing the composition of existing voluntary associations will be set by the associations which exist already, rather than by everyone subject to the reproduction of their boundaries. That is, the principle of voluntary association has no means for addressing an objection that decisions regarding what people will be included in a particular state are themselves premised on a controversial policy of exclusion. As noted by Beitz, the normative flaws in the principle of voluntary association become visible when applied to the founding of territorial states, rather than say sport clubs or labour unions, as it will then determine people's access to natural resources and accumulated wealth.²⁰ But in any case, it is undemocratic to delimit the people through a political process which begins with the exclusion of some people. Hence the ideas of voluntary association and unanimous voting do not overcome the foundational paradox in democratic theory; and as a consequence, not observing the principle of voluntary associations – as a democratic intervention would surely not do – does not violate a successful democratic theory of political foundation.

Substantialism

What may for lack of a better term be referred to as a “substantialist” solution to the founding paradox of democratic theory consists in defending a substantive position on what people should be included in a particular state. In contrast to the nationalist and contractualist strategies, the “substantialist” position does not imply that impositions of democracy from the

outside are impossible: it makes an argument about the desired result, not about the procedures through which to get there. But as a potential solution of the democratic paradox, “substantialism” is worth considering in its own right. Different variants of the position may suggest that legitimate or democratically legitimate states should include those whose interests are potentially affected by their decisions,²¹ those whose identities have been significantly shaped by them,²² those whose inclusion contributes most to the autonomy of everyone inside and outside the boundaries,²³ or those whose inclusion creates or restores conditions for appropriate principles of justice.²⁴

“Substantialist” arguments are undoubtedly important when deciding on alternative delimitations of a people. However, as alternative solutions to the paradox of foundation in democratic theory they are all inefficient. The aim of democratic theory, as imbued in the paradox of democratic foundation, is not to identify what decision should be made, but to identify procedures for dealing with the pluralist predicament of politics that people will often disagree over what should be done, and that they will consequently have to make their decision by means of political procedures. The democratic paradox does not imply any impossibility at furnishing morally grounded views about what people should compose the citizenry of a particular state; it consists in an alleged impossibility of determining which people should make that decision in case of persisting disagreement about who should be included. The distinction is important because not only philosophers, but citizens in general, may diverge across moral positions like those listed above as well as the terms of their empirical application. A solution to the democratic paradox must therefore explain the availability of a democratic procedure for defining the people of a state, not the availability of a decision alternative that is allegedly superior to all others and which is supposed to make political procedures superfluous. To side with Habermas, in a pluralist society a convincing

solution can make no recourse to a “transparent objectivity of ultimate moral insights”²⁵ about who should in fact be included.

A human principle of democratic foundation

When the boundaries of a state are about to be decided, the first option is to make the decision at a political level which is agreeable to people within and beyond the boundaries about to be decided. This can be a national level, a regional level, or some other territorial level.

However, if there is a permanent division on who should make the decision, the only remaining possibility is to identify a political procedure whose democratic legitimacy is safe from objections that the procedure operates on an illegitimate policy of exclusion. The decision must then be made democratically at the global level. The founding of territorially delimited states is ultimately an issue for humanity as a whole.²⁶

More specifically, a state is founded in accordance with democratic principles if the foundational decision is made by people who will live within as well as beyond the boundaries once founded and if each individual has the same opportunity to influence such politics of foundation. This position – which I will refer to as “the human principle of democratic foundation” – has both constructive and destructive implications. Its destructive contribution consists in an emphasised denial of the legitimacy of territorially delimited states founded by their citizens alone. We should retain from the review of earlier attempts at overcoming the paradox of foundation that a state founded by a particular nation or a voluntary association does not originate in a democratic decision. But as I will argue that the human principle of democratic foundation is successful, this conclusion does not point to a necessary limitation in democratic theory but rather to a violation of democracy in practice which could indeed be rectified. The constructive contribution of the principle, on the other

hand, is an explanation of why democracy is a potential reality rather than a necessarily unrealisable dream. Put simply, democracy is possible because the paradox of democracy does not arise under the circumstance identified in the human principle of democratic foundation. Let me explain the sense in which this is the case.

If humanity as a whole is equally included in the foundational decisions of territorially delimited states, there is no political exclusion on the basis of which these foundational decisions can be contested. The individuals who are excluded from the political procedures of a particular state, and who may therefore contest and undermine the legitimacy of a foundational decision made by the internal procedures of this state, will, under the human principle of democratic foundation, be included in the foundational political process and for that reason capable of voicing their concerns. At work in this argument is a critical difference between the world on the one hand and particular states on the other: while there are many states in which people may or may not live, as well as many people who may or may not live within a single state, there is only one world within which all people must live. Of course, this difference can be challenged on the extreme assumption that the world is limited to a particular, territorially delimited, state.²⁷ If there is no world outside one's own state, there are no human beings other than one's co-citizens. But recognising this theoretical possibility does not affect the line of argument pursued here. Under the patently absurd assumption that the world is limited to a particular, territorially delimited state, the foundation of democracy by the members of this particular state would not lead on to any paradox in the first place. More importantly, the suggested difference between the world and particular states helps us to specify the domains within which the democratic paradox does and does not arise. The paradox arises when the founders are grouped under a concept of which there are many

instances. It does not arise when the founders are grouped under a concept of which there is a single instance only.

Another presumption in the human principle of democratic foundation is that the boundaries of humanity are empirically uncontroversial: whether an entity should be classified as a human being is contested only in rare and politically marginal cases. This is an empirical observation, not an intervention in the controversy over the possibility and appropriateness of defining man.²⁸ It is simply a matter of fact that humans are capable of recognising other humans as being precisely that. This is illustrated perhaps most forcefully by our ability to recognise human beings even when we think they behave in a “non-human” way. For instance, we do not face any difficulties in deciding which out of the following four disasters that may be prosecuted for crimes against humanity: Hermann Göring, Cancer, HIV, and Omar Al Bashir. This point, that humans are capable of recognising other humans as being precisely that, one may notice, is not denied even by such an outrageous critic of the concept of humanity in political theory as Carl Schmitt.²⁹ A main objection of his would be that the human principle of democratic foundation fails to recognise the necessity in politics of conflicts of life and death. But that conclusion is unproblematic for democrats who think that absence of such conflicts are worth striving for even if the aim is never completely attained.

Moreover, in comparison with alternative human categories such as particular nations or social classes, humanity has the advantage of being prior in a historic as well as a personal sense. If we were to treat social classes or particular nations as the natural basis for a historically situated foundation of a state, the legitimacy of those states could be challenged on the basis of a commitment to humanity which existed before the foundation of those states, while humanity could not be equivalently challenged on the basis of classes or nations.³⁰ Most

importantly, however, humanity as a whole does not produce a boundary problem equivalent to that of other foundational categories. Even the most related ontological domains beyond mankind – which in addition to animals and plants might perhaps be conceived of as including, for instance, angels, gods, UFOs, and self-operating units of artificial intelligence – do not include entities which can themselves engage in political contestation. Human beings may have moral obligations to take non-human interests into consideration, but in relation to the human principle of democratic foundation we are not primarily concerned with moral responsibility but with the procedural issue of who are in fact able to participate in politics. And in that respect human beings are unique. Hence the human principle of democratic foundation would appear to imply a more sustainable theory of political legitimacy than any other foundational category.

A main object of the human principle of democratic foundation is to explain how we may conceive of procedural democracy while not being captured in paradoxes. To examine more closely whether the principle is able to attain this aim, let us investigate how it relates to the most serious objections raised in the previous section against – in order – the nationalist, the contractualist, and the substantialist attempts at solving the paradox of foundation in democratic theory.

Nationalism

The human principle of democratic foundation is based on a pre-democratic category, namely humanity as whole. But humanity has not been founded in a democratic way, it may be objected. So why would the founding of states be democratic because willed by the whole of humanity? The founding of states on the basis of humanity as whole is democratic because – in contrast to states founded on the basis of other categories – it operates without any

exclusion of particular people. At the level of humanity there is hence no democratic complication, in the form of unjustified exclusion, involved in the idea of a people constituting their own global state or territorially delimited states. Moreover, an inclusion of all humans in the politics of foundation is democratic in the sense that it provides as many people as possible with opportunities to influence this particular issue. Hence the founding of democracy on the basis of humanity is democratic not only in the sense that it is possible, rather than paradoxical, but also in the sense that it accords with an idea which is routinely employed for the identification of democratic politics in states already constituted.

Contractualism

Here the question concerns whether the bias towards existing communities identified in the theory of voluntary association can be avoided. The more precise difficulty of contractualism was found to consist in the democratically arbitrary requirement that even a majority of individuals might realise their preferred political communities only if they are allowed, capable and willing to migrate among alternative associations, and that the terms of such migration would in any case be decided by the associations which exist in status quo. If the world functioned on the basis of the human principle of democratic foundation, however, these undemocratic conditions for a political opposition against the delimitation of existing associations would not exist. A sufficiently large number of individuals (let the precise quantitative interpretation of this term remain unspecified for the moment) who would like to be part of an association whose present territory they are not willing or allowed to enter may simply retain or revoke their consent to the founding of this association (state).

Substantialism

That the human principle of democratic foundation is essentially procedural rather than substantial is confirmed by its being consistent with a variety of preferences on what states should exist. No restrictions are made as to whether states should be small or large, overlapping or mutually exclusive, constructed for the aims of peace and security rather than national community, inclusive of all potentially affected interests rather than inclusive of they whose cooperation is most productive for all; and so on. Hence these and many other ethical grounds for preferring one structure of states rather than another remain open for contestation while observing the principle suggested here. While there is a moral basis even for the human principle of democratic foundation, its appeal is based on procedural non-exclusion and stretches beyond particular conceptions of preferred outcomes.

Imposed democracy revisited

In light of the previous discussion, the main question is no longer whether the founding of new states can be democratic or whether people other than prospective citizens may contribute to their foundation. By rejecting notions which imply that democracy cannot be contributed to by foreign powers (nationalism and contractualism), and by defending a notion implying such contributions can exist (the human principle of democratic foundation), both questions have been answered in the affirmative. I would like to conclude this article then by drawing attention to some further issues which arise when the human principle of democratic foundation is applied to the politics of foundation, and especially to the politics of democratic interventions. I begin with the question of how large a portion of humanity must agree to the founding or continual existence of a state or constitution for its foundation to be democratically legitimate.

Recall the Rousseauian position, cited above, that the establishment of a social contract must be agreed to by each individual to whom the contract will apply. While this position yields an extremely strong negative right against states which some people cannot accept, it also erodes the positive right of people to found the states they actually want. In democratic politics we need to strike a balance between such alternatives, in the sense that neither the negative nor the positive right should be favoured by the decision-making procedure itself. Democracy is a system where, in case of persistent disagreement among people, the outcome is determined by the quantity of votes distributed equally to all individuals rather than by the quality of particular voting-alternatives. Because majoritarian procedures are maximally neutral among decision-alternatives,³¹ the application of majoritarian procedures would then have a *prima facie* justification not only within existing states, but even in their foundation. Of course, there is much more to procedural democracy than a general inclination towards majoritarian procedures. Democratic concerns with individual, economic, constitutional, and cultural rights have all spurred large literatures of their own. But let me proceed here without nuancing the concept of democracy in such ways in order to get on with an issue considered much less often: What is it that majoritarian procedures at the global level must be able to decide for the founding of states to be democratic?

The paradox of democratic foundation, as presented above, refers primarily to a difficulty in the founding of the people rather than in the founding of political institutions. May we then infer that global majoritarian procedures should, on the basis of the human principle of democratic foundation, be confined to the establishment of boundaries among people while leaving issues of political institutions be decided at lower territorial levels? One reason why this cannot generally be the case is that the global authority over the delimitation of peoples would then be effectively off set. To let a territorially bounded state exclude say women or

ethnic minorities from political procedures would obviously undermine the earlier global decision which included these groups in the first place. Hence the global authority over the drawing of territorial boundaries implies a further global authority over issues of inclusion and exclusion within territorially bounded states.

This derived principle sets considerable limits on the range of constitutional alternatives over which territorially limited states can be allowed to have final control in accordance with procedural democratic theory. However, the room for democratic constitutional choice is not completely eliminated at lower territorial levels. One example is the choice between alternative institutional models of democracy, such as parliamentary and presidential systems; proportional and majoritarian elections; centralist and federal states; direct and indirect participation; small and large public sectors. As long as all alternatives realise democracy to a satisfactory degree, there is no reason to decide on these alternatives by an incontestably inclusive procedure. The paradox of foundation identifies an inability of democratic procedures to yield legitimate results only in cases when some people are in fact politically excluded. Another example of democratic constitutional choice at lower political levels is the division of one state into smaller units than the one established by global procedures, or the merging of two states into one. If the people within a democratic state would agree to divide themselves into several peoples of several states, or the people of two states would like to merge into one, the democratic legitimacy of the new boundaries would not necessarily presuppose a decision by the global majority. Again, the paradox of democracy does not identify any illegitimate decision in cases when people on both sides of a territorial boundary agree with the drawing of that boundary. However, should the new boundaries for some reason be contested from the outside, the democratic solution will consist in referring the decision either to a level which people on both sides of the boundary can agree on, or to the

level where no one is excluded and the paradox of foundation does not exist, i.e. the level of humanity as a whole

We have then identified some limitations in the global foundational authority: the establishment of new constitutions is a global authority only in relation to undemocratic states, and the establishment of new states is a global authority only in relation to states whose boundaries are internally or externally contested. Moreover, if a decisive majority of global democracy (which does not exist today though it may exist in the future) were not to be activated by a particular contestation of a constitution or a state boundary, we would have to conclude that the global majority had given its consent to the existing order. Furthermore, people and their governments will often be uninterested in the founding of a particular state, perhaps because of geographic or cultural distance. In such cases people will of course have their right to voluntarily abstain from participating in the global politics of foundation. Hence there is no reason to expect, or to fear, a global foundational decision followed by democratic interventions in response to just any complaint about existing constitutions or state boundaries.

Still, the concept of the global foundational authority is sufficiently permissive of democratic interventions for it to confront politically controversial questions. What implications do the political views of people in existing authoritarian states have for the possibility of foreign interventions to contribute to the founding of democratic constitutions in those states? In putting the question this way, I want to bracket the issue of whether the boundaries of the state are contested from the outside and focus instead on internal factors. Let me consider a few different cases.

Suppose that an authoritarian minority succeeds to exclude a pro-democracy majority from the state's political procedures. Can we conceive of a foreign intervention, which contributes to the political inclusion of the pro-democracy majority, as part of a democratic procedure of founding a new constitution? In light of the paradox of foundation the answer appears to be yes. Consider for the sake of the argument the opposite position, namely that the state in question has a democratic right not to be interfered with. Defending this position within a procedural democratic theory would necessitate an assumption that the people of the state consists of the pro-autocracy minority alone, not the pro-autocracy minority *and* the pro-democracy majority together. Otherwise the pro-autocracy minority would simply be outvoted in case the people made a choice between democracy and autocracy. However, because there is also a pro-democracy majority, this policy of exclusion would be contested. This disagreement in turn activates the paradox of foundation, which implies that there is no procedural solution to the conflict within the boundaries of the state in question. The procedural legitimacy available in this case stems from the foundational decision of the state, and *that* decision can be democratic only if undertaken at the global level.³² Hence the conflict between the pro-autocracy minority and the pro-democracy majority must be settled within a global democratic procedure. Of course, this does not make all interventions from the outside democratically legitimate, and it does surely not make democracy the only legitimate reason for action. However, it confirms that foreign democratic interventions can be part of a democratic procedure for establishing a new constitution.

The conclusion is not so different when an authoritarian regime is supported by a majority while opposed by a pro-democracy minority. In this case it does not favour democracy to insist that the constitution should be democratically decided within the state. The majority would then simply vote for autocracy. Moreover, the pro-autocracy majority's rejection of

democracy need in this case not rely on any vulnerable assumption that the people of the state consists only of the pro-autocrats themselves. In this case autocracy will be sustained even if there is no discrimination between members of the pro-democracy minority and the pro-autocracy majority. However, these considerations do not affect the possibilities to justify democratic interventions from the outside. An intervention-friendly pro-democracy minority may (just like an intervention-friendly pro-democracy majority) appeal to the fact that democratically legitimate state boundaries presuppose a global democratic decision, and then rely on the derived principle that the global democratic decision must not be obstructed by denying people access to political power even within existing territorial boundaries. Hence it is consistent with procedural democracy to undertake democratic interventions even in countries where a majority supports autocracy.³³

But this may seem like a Pandora's Box. Does the human principle of democratic foundation allow democratic interventions even in states where there is no demand for it at all? The question is far from politically irrelevant. Even in an autocratic state where there is a pro-democracy opposition, the people may in general prefer autocracy to such democracy as come with foreign intervention. In particular in countries which have recently fought for and won their independence from colonial powers, or in countries subject to international domination of some other sort, it should come as no surprise if people set a higher value on their national sovereignty than on their individual liberty and democracy. However, the underlying ethos of the human principle of democratic foundation suggests that democratic interventions should *not* be undertaken in such cases. Recall that this principle was constructed for the purpose of finding a way around the paradox of foundation. The foundational paradox, for its part, gets politically significant only when there is disagreement about where boundaries should be drawn or what constitutions should be established. But when there is no such disagreement in

the first place, there is no good reason to apply the human principle of democratic foundation. In fact, it would be inconsistent with the conceptual and normative justification of this principle, i.e. to establish a common ground for the making of collective decisions, to require the promulgation of such foreign interventions as would in fact create disagreement and activate the paradox of foundation. At least in theory, therefore, there is a clear limit on how far the human principle of democratic foundation should lend itself to justification of democratic interventions: interventions should not be undertaken if they create disagreement over constitutions or boundaries in cases where there is no disagreement in the first place.

Whether this normative conclusion can in turn be extended, so as to imply that democratic interventions should be abstained from whenever they create *more* disagreement than they solve, is a substantive issue which will itself have to be decided within democratic procedures.

Conclusion

I have suggested in this paper that there is no such thing as a paradox of democratic foundations. The counter-position, that there is a genuine and inescapable foundational paradox, derives from the perhaps realist but conceptually and normatively misleading position that we must necessarily exclude some people at the foundational moment of democratic states and constitutions. The truth is that we need not exclude anyone. This observation contradicts not only the view of democracy as being based on a paradox, but also nationalist and contractualist theories of legitimate foundations of states and constitutions. These theories fail precisely because their concepts of legitimate foundations arbitrarily exclude particular groups of people. In opposition to all of these positions, I have developed an alternative principle of democratic foundation which puts no limitations on human inclusion whatsoever. The core of

this principle is that a state is founded in accordance with democracy if the foundational decision is made by people who will live within as well as beyond the boundaries once founded (ultimately involving humanity as a whole) and if each individual has the same opportunity to influence such politics of foundation.

The human principle of democratic foundation may provide little news for cosmopolitan democratic theorists. In this tradition the subject to which political decisions should be justified has typically been construed precisely as the whole humanity. The issue of democratic interventions from the outside, however, appears to have confronted cosmopolitan political theory with a particularly difficult problem. Theorists who are otherwise concerned with rights and principled judgments have found it necessary to stress “to a greater extent than is usual, the consequentialist character of the ethics of intervention. It makes a difference whether we think that an intervention will do more good than harm.”³⁴ Or, it has been difficult to see how an intervention in support of a pro-democracy insurgency “can be addressed other than by examining the urgency of the interests at stake in relation to the costs of interference and its probability of success. Once again, it seems that the justifiability of interference to support the democratic reformers should be faced as a free-standing issue in political ethics in which the values that interference may achieve are compared with the costs and risks of making the attempt.”³⁵

In response to these perceived difficulties in reaching categorical conclusions about the justifiability of democratic interventions, and in response to political pluralism in general, I have examined the conceptual possibilities within procedural democratic theory to accommodate decisions on democratic intervention. In contrast then to authors suggesting that democratic interventions are themselves undemocratic because of how they are decided and

carried out,³⁶ it follows from my argument that democratic interventions can be part of a global democratic process of founding new states and constitutions. The practical lesson which can be learned from this paper is therefore not about advocating or opposing democratic interventions in particular cases, but that the possibility of democratic intervention is premised on a democratisation of world politics.

Is it at all reasonable to assume that world politics can be rendered more democratic?

Research on democracy and global civil society has long suggested that democratisation is realistic and to some extent already underway in processes which establish self-organised and self-empowered groups of citizens – e.g. labour unions, NGOs, private funds, etc. – as legitimate and influential actors in global governance.³⁷ More recently it has been established that this kind of actors are increasingly gaining opportunities for participation in the policy-making processes of international organisations such as UN, EU, WTO, IMF and the World Bank.³⁸ Against this background there is little ground for sweeping predictions about the necessary absence of democracy in world politics.

On the contrary, this trend in global governance makes it worthwhile to consider ways in which the human principle of democratic foundation could be approximated in politics practice. A limited proposal would be to reform the politics of international recognition, so that new states are established as subjects in international law by democratic decisions within global institutions rather than unilaterally by individual states. A more demanding reform would be to subordinate democratic interventions to international law and to decide on them multilaterally rather than unilaterally. An even greater challenge would be to decide on political conflicts over territory and/or population either at whatever political level that the conflicting parties can agree on, or at the global level where the paradox of foundation does

not arise and boundary decisions can be made democratically. If we want democracy in practice, there are good reasons for examining the feasibility and normative implications of such reforms.

¹ E.g., F.G. Whelan, 'Prologue: Democratic Theory and the Boundary Problem' in *Liberal Democracy*, R.J Pennock and J.W. Chapman, eds. (New York: New York University Press, 1983), p. 41 *et passim*; Frank I. Michelman, *Brennan & Democracy*, (Ewing, Princeton University Press, 1999), 33-42; Chantal Mouffe, *The Democratic Paradox* (London and New York: Verso, 2000), p. 43-45; Sofia Näsström, 'What Globalization Overshadows', *Political Theory* vol. 31 (2003), no. 6, p. 808; Sheila Benhabib, *Another Cosmopolitanism* (Oxford and New York: Oxford University Press, 2006), p. 35; Marc G. Doucet, 'The Democratic Paradox and Cosmopolitan Democracy', *Millennium*, vol. 34 (2005), no. 1: pp. 137-55; Bonnie Honig, 'Between Decision and Deliberation: Political Paradox in Democratic Theory', *American Political Science Review*, vol. 101 (2007), no. 1, p. 2-3. The formulation of the paradox cited most often is the one by Jean Jacques Rousseau, *On The Social Contract* (Minneola/New York: Dover Publications [1765] 2003), p. 27.

² E.g. *The International Dimensions of Democratization. Europe and the Americas*, Laurence Whitehead, ed. (Oxford: Oxford University Press, 1998); Dobbins, James et al. *America's role in nation-building: From Japan to Iraq* (Santa Monica: Rand, 2003); Jeffrey Pickering and Mark Peceny, 'Forging Democracy at Gunpoint', *International Studies Quarterly* 50 (2006), no. 3: 539-560; Bruce Bueno de Mesquita and George W. Downs, 'Intervention and Democracy', *International Organization*, vol. 60 (2006), no. 3: 627-649; Anna K. Jarstad and Timothy D. Sisk (eds.) *From war to democracy: dilemmas of peacebuilding* (Cambridge: Cambridge University Press, 2008); Andrew J. Enterline and Michael J. Greig "Perfect

Storms?: Political Instability in Imposed Polities and the Futures”, *Journal of Conflict Resolution*, vol. 52 (2008), no. 6: 880-915

³ For critiques against democratic interventions which rely more exclusively on normative reasoning, see e.g. Amitai Etzioni *Security First. For a Muscular, Moral Foreign Policy* (New Haven: Yale University Press, 2007) or Michael Walzer, “On Promoting Democracy” *Ethics & International Affairs*, vol. 22 (2008), no. 4: pp. 351-55. For earlier examples, see Immanuel Kant, ‘Perpetual Peace: A philosophical Sketch’, *Political Writings* (Cambridge: Cambridge University Press, [1795] 2007), p. 96 or John Stuart Mill, ‘A few words on non-intervention’, in *Essays on Politics and Culture*, ed. Gertrude Himmelfarb, (Gloucester: Peter Smith [1959] 1973), pp. 195-246.

⁴ David Beetham, ‘Can Democracy be Imposed by Force? The Case of Iraq’ Paper presented at ... // anonymised for the review process //. For a less elaborated example, see Anthony Lang ‘Democracy cannot be imposed by force’ *Carnegie Council*, no. 3, 2006. Available at http://www.cceia.org/resources/ethics_online/5405.html. Accessed 2009-03-27.

⁵ Daniele Archibugi, *The Global Commonwealth of Citizens* (Princeton and Oxford: Princeton University Press, 2008) p. 224, (my emph.). See also John Dryzek, “Transnational Democracy in an Insecure World”, *International Political Science Review*, vol. 27, no. 2, p. 103.

⁶ Jacques Barzun, ‘Is democratic theory of export?’, *Sixth Morgenthau Memorial Lecture on Ethics & Foreign Policy* (Carnegie Council, 1986). Available at http://www.cceia.org/media/268_barzun.pdf. Accessed 2009-03-27.

⁷ although that could be denied as well, for instance on the basis of John Stuart Mill’s argument that sustainable freedom must be fought for and earned; see his ‘A few words on non-intervention’.

⁸ E.g. John Locke, *Two Treatises of Government*. (New Haven and London: Yale University Press, [1690] 2003), 142; Robert Nozick *Anarchy, state, and Utopia* (Oxford: Blackwell, 1974), Ch. 10; Habermas 1996: 124-26 *et passim*).

⁹ While the founders perceived of themselves as republicans rather than democrats their formulation has since then been appropriated in explicitly *democratic* political theory, for instance by Bruce Ackerman, *We the People*, vol. 1-2 (Cambridge, Mass: Harvard, 1991). For other theories of democratic constituent power, see Andreas Kalyvas, *Democracy and the Politics of the Extraordinary* (Cambridge: Cambridge University Press, 2008).

¹⁰ Näsström, 'What globalization overshadows', 808.

¹¹ Benhabib, *Another cosmopolitanism*, 35.

¹² Whelan, 'Prologue: Democratic Theory and the Boundary Problem', 41.

¹³ Honig, 'Between decision and deliberation', 2.

¹⁴ The solution to the democratic paradox proposed here could be further justified in more substantive terms. For instance, to include people on both sides of a boundary in the politics of foundation is likely to maximise the autonomy of individuals with regard to issues of political foundation. In this article, however, I will remain true to the procedural theory of democracy to which the paradox of foundation poses a more fundamental problem than it does to say a substantive theory of democratic rights. This focus of my argument notwithstanding, there should be no illusion that democratic procedures can solve all conflicts over substantive issues. Just as we may turn to collective procedures for making decisions in case of substantive disagreements among individuals, we may turn to substantive considerations and anti-collective individual actions, e.g. crime and civil disobedience, when we disagree about what collective procedures are right. Hence my argument in this paper is about pushing the boundaries for what issues can be decided within democratic procedures, and not about overcoming the problem of political conflict.

¹⁵ For different varieties of the argument, see Emmanuel-Joseph Sieyès, ‘What is the Third Estate?’, *Political writings* (Indianapolis: Hackett, [ca 1788-] 2003), p. 136-37; Roger Smith, ‘The principle of constituted identities and the obligation to include’, *Ethics & Global Politics* vol. 1 (2008), no. 3, p. 139-41; cf. Bernhard Yack ‘Popular Sovereignty and Nationalism’, *Political Theory* vol. 29 (2001), no. 4, p. 519, 531-32;

¹⁶ Jürgen Habermas, *The postnational constellation: political essays* (Cambridge: Polity, 2001), 107.

¹⁷ For a contribution to deliberative democratic theory which is clearly not susceptible to this objection, see Francis Cheneval, ‘The People in Deliberative Democracy’, in Smantha Besson, José Luis Martí and Verena Seiler (eds), *Deliberative Democracy and its Discontents* (Hamshire/Burlington: Ashgate, 2006), pp. 159-179.

¹⁸ Rousseau, *On the social contract*, 8. See also, e.g., John Locke, *Two Treatises of Government* (New Haven and London: Yale University Press, [1690] 2003), 141-42.

¹⁹ E.g. Locke, *Two Treatises of Government*, 141-42; Robert Nozick, *Anarchy, State and Utopia* (Oxford : Blackwell, cop., 1974), Ch. 10; Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (Cambridge, Mass: The MIT Press, 1996), 124-26 *et passim*.

²⁰ Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979) p. 109.

²¹ Robert E. Goodin, ‘Enfranchising All Affected Interests, And its Alternatives’, *Philosophy and Public Affairs* 35 (2007), no. 1: 40-68.

²² Smith, ‘The principle of constituted identities and the obligation to include’.

²³ Hans Agné, ‘A Dogma of Democratic Theory and Globalization: Why Politics Need not Include Everyone it Affects’, *European Journal of International Relations* vol. 12 (2006), no. 3: 433-458.

²⁴ Beitz, *Political Theory and International Relations*, p. 112.

²⁵ Jürgen Habermas, "Constitutional Democracy: A Paradoxical Union of Contradictory Principles", *Political Theory*, vol. 29 (2001), no 26, p. 774.

²⁶ For a similar conclusion reached on the basis of different arguments, see Jens Bartelson, 'Globalizing the democratic community', *Ethics & Global Politics*, Vol. 1, No. 4 (2008): 159-73. According to Bartelson the "paradox of democratic legitimacy" is premised on (unjustified) assumptions that "a political community has to be *bounded* and based on *consent* in order for democratic legitimacy to be possible." (p. 169, ital. in orig.)

²⁷ Jan Aart Scholte believes this assumption has some historical validity. See his *Globalisation: A critical introduction* (Houndmills: Palgrave Macmillan, 2005), p. 64-65.

²⁸ Hannah Arendt, *The Human Condition* (Chicago and London: University of Chicago Press, 1998), p. 181.

²⁹ Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago and London, University of Chicago Press [1932] 2007), p. 53-58.

³⁰ In relation to political foundation in the sense of an ongoing process rather than a discrete event in historic time the same argument would construe humanity as a prior category in a personal sense: in order to be a member of a class or a nation you must first be a human, but not vice-versa.

³¹ E.g. Kenneth O. May, 'A Set of Independent, Necessary, and Sufficient Conditions for Simple Majority Decision', in *Rational Man and Irrational Society?*, Brian Barry and Russell Hardin, eds. (Beverly Hills, CA: Sage Publications, [1952] 1982); Robert A. Dahl, *A preface to Democratic Theory* (London and Chicago: The University of Chicago Press, 1956).

³² or some other political level on which both parties to the conflict can agree to decide – but in this case it is not likely that there is such a level

³³ The pro-autocracy majority may ask what justice procedural democracy provide for them, and the answer would be that members of this majority may either abstain from participation in democratic procedures within the original state, or contest the boundaries of this state and demand secession under global authority. If the pro-autocracy majority should insist that procedural democratic theory imply that it is the majority of the state which should decide the content of the constitution, it need to be pointed out for them that democracy does not provide any right unilaterally to decide that other people should follow their rule. Democracy is a procedure for making decisions together, including decisions about who should be involved in the making of decisions.

³⁴ Michael W. Doyle, "The New Interventionism", in Thomas W. Pogge (ed.) *Global Justice*, (Malden/Oxford/Victoria: Blackwell Publishing, 2001), p. 222.

³⁵ Charles R. Beitz, "Human Rights as a Common Concern", *American Political Science Review*, vol. 95 (2001), no. 2, p. 279.

³⁶ See footnotes 4 and 5.

³⁷ E.g. Scholte, Jan Aart "Reconstructing Contemporary Democracy", *Indiana Journal of Global Legal Studies*, vol. 15 (2008), no. 1, p. 335-40.

³⁸ Jens Steffek, Claudia Kissling and Patrizia Nanz (eds.), *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?* (Houndmills and New York: Palgrave Macmillan, 2008), p. 24-28.

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