

Student name: Lisa Franke

LU number: s1737198

Philosophy, Politics and Economics

Supervisor: Dr. T. Fossen

Master's Thesis

Date: 15-06-2016

**Title: The Challenge of the Refugee Crisis on the
'Constitution of the Demos' and on Democracy**

how can we deal with the current refugee crisis in a democratic way?

Table of contents:

Introduction: the main question for this thesis	2
PART 1: The paradox and the refugee crisis	5
Chapter 1: Sharpening the main question: who belongs to the demos?	5
1.1 What is the problem in democratic theory?	
1.2 The problem applied to the refugee crisis	
PART 2: Democratic solutions to the paradox and their problems	9
Chapter 2: The ‘All Affected Interests Principle’	9
Chapter 3: The ‘All Subjected Principle’	12
Chapter 4: Democracy and the nation-state	14
4.1 Song’s critique on the principles	
4.2 Why the demos should be bounded by the state	
PART 3: Answering the main question	21
Chapter 5: Which solution would be best capable to solve the paradox and the problem of the refugee crisis?	21
Conclusion	23
Sources	24

Introduction: the main question for this thesis

Europe is currently confronted with the coming of many refugees and is trying to formulate one policy regarding the procedures for allocation of the refugees. The media are speaking of a ‘refugee crisis’. In the Netherlands in 2016, 45.446 refugees were registered in the Dutch asylum centres¹. This number is bigger than the numbers of the prior years². Dutch citizens are responding in different ways to the large influx of refugees. There are people who want to actively welcome the refugees. Some of them even start volunteering

¹ This number is based on the registration numbers collected by the COA - the Central Organisation for Asylum in the Netherlands. Link: <https://www.coa.nl/nl/over-coa/cijfers-en-jaarverslagen>, last visited on March 20, 2016

² Ibid

or participate in citizens' initiatives to help them getting a safe residency³. Others are concerned about the arrival of so many refugees. They seem to be worried about the integration of refugees in their neighbourhood, city, municipality or country, or the lack thereof. Some of these people join anti refugee movements to show their discontent.

The arrival of many refugees to Europe and the differing opinions that I have mentioned is a development that leads to a heated discussion. It also poses a challenge on democracy itself. This brings me to reflect on the following question in this thesis: *how can we deal with the current refugee crisis in a democratic way?* I will focus on the subject of democratic self-rule and what it means to be a member of a political unity. The following questions will come across: Who does legitimately belong to the demos⁴ and how should it be decided in a democratic way who belongs legitimately to the demos? I will show that the answer to this question is not as straight-forward as it might seem. Boundaries are mostly based on a contingent happening in history. This thesis will show that there are different principles to rethink the legitimacy of the demos and who should be included. It will also show that the solution that is to be chosen, depends on the view on democracy itself.

I think the challenge is as follows: on the one hand there is an already existing group of people, that together constitute the demos of a nation-state, a Democracy. These people seem to have a legitimate claim on decision-making and policy making in their territory, binding the citizens by the laws of that state. However, their policies and laws might be conflicting with the interests of others or have coercive power over other groups of people. In this thesis I will discuss how this regards refugees. A refugee, on the other hand, has to apply for asylum, go through the process of integration, to ultimately naturalize and become citizen of a country. Citizenship is in most cases the requirement to belong to a demos and to co-decide. This means that the refugee belongs to a group of people that has no equal political power to decide on issues that might affect or subject them.

If one accepts that the question of 'who belongs to the demos?' is a political question and accepts as well that this question should preferably be solved in a democratic way, then one ends up in a paradox, because it is impossible to define the demos in a democratic way. In order to do that one should first decide who can participate in deciding who belongs to the demos. This question itself requires an already constituted demos. Within democratic theory, there are some theorists occupied with this fundamental problem at the heart of democracy. Recently, it has received more attention and is discussed by some political theorists who call this paradox the "boundary problem" (Whelan, Abizadeh, Song, Näsström and others), the "problem of the constituting the demos" (Goodin, Owen and others) or the "paradox of popular indeterminacy" (Ochoa).

³ For example 'Stichting Vluchteling' (foundation for refugees), a Dutch voluntary organisation

⁴ The 'demos' is the group of people that constitutes a political unity

Within this discussion the status quo and the sovereignty of the boundaries of current nation-states is under discussion. Currently, the discussion is heading towards the direction of a 'Global Democracy' or 'Unbounded Demos' (Näsström (2003), Goodin (2007), Abizadeh (2012) and others). If we want to legitimately constitute the demos in a democratic way, a global view of the demos seems to be inevitable, argue some of the writers. The advantage is, that in the case of a global demos, all the affected interests should be equally considered. Therefore, it avoids the problem of under-inclusiveness of the demos. Two principles that try to solve the paradox in a democratic way are the 'All Interests Affected Principle' and the 'All Subjected Principle'. I will explain in chapter two and three what these principles entail.

However, the solution of the Global Democracy is also not completely unproblematic with regard to democracy and its constitutive values. Kant argued that a global democracy, or world government, would lead to "soulless despotism" (Kant 1795, 31). Sarah Song, for example, is a political theorist, who argues that nation-states do perform an essential role in protecting these constitutive values of democracy. According to her, democracy should not be viewed merely as a set of procedures for decision-making, but also as valuable of itself. She argues that (political) equality and solidarity are essential ingredients for a stable democracy and that a Global Democracy would not be able to secure any of the two. She bases her critique on theories of for example Dahl and Rousseau, amongst others, who both argued in their own ways that size does have an impact on the quality of the democratic process or democratic values.

In this thesis, I will have a closer look at the different solutions there are to try to solve the boundary problem in a democratic way. There are also solutions outside of democratic theory, for example theories of justice or theories based on territorial arguments. Since it is my aim to look at this problem within the scope of democracy I will not look at these answers to the paradox. Hereby, I accept that the problem is of a political nature and that, considering that democracy is best possible way to organise a society, it should best be solved in a democratic way.

I will answer the main question by firstly creating a better understanding of what exactly the problem is in democratic theory. In the first chapter I will link the paradox to the specific case of the refugee crisis. I will also discuss the challenge this crisis poses on the nation-state. In the following chapters I will discuss different democratic answers to the paradox and their consequences. The solutions that will be discussed are: the 'All Affected Interests Principle', the 'All Subjected Principle' and the solution for democracy proposed by Sarah Song. I will review in each chapter how this solution could or could not deal with the problem of the refugee crisis. In the next chapter I will reflect on which solution of the three would best be capable to answer the question of how to deal with the current refugee crisis in a democratic way? In the conclusion, I will show that, although these solutions are promising, there is still more attention needed for the boundary problem in relation to the refugee crisis.

PART 1: The Paradox and the Refugee Crisis

In this part of the thesis I will give a more in-depth reflection on the paradox. Next it will be discussed what challenge the refugee crisis poses on this fundamental problem in democratic theory.

Chapter 1: Sharpening the question; who belongs to the demos?

1.1 What is the problem in democratic theory?

Democracy is a contested concept, but in general it is understood as “rule by the people”. David Owen writes: “Democracy may be understood, both descriptively and normatively, as a form of political governance, a way of making collectively binding decisions, in which ‘the people’ (considered collectively) governs itself through the entitlement of ‘the people’ (considered severally) to participate as political equals in the decision-making process” (Owen 2012, 130). How the ruling by the people is organised is a question that has been reflected upon frequently by many democratic theorists. Nowadays, democracy is mostly organised by ways of representative government in multi-party systems. Some theorists argue that we should transform democracy towards direct democracy or deliberative democracy. This thesis does not look much further into the question of how democracy should be organised, but looks at a more fundamental question in democratic theory, that has not been discussed so extensively yet, although there is some discussion going on lately. It is the question of: who are the people that are ruling themselves?

The question of ‘Who are the people?’ or ‘who does belong to the demos?’ is a question that has received renewed attention lately by several democratic theorists. Some theorist do call it the “boundary problem” (Whelan, Abizadeh, Song, Näsström and others), the “problem of the constituting the demos” (Goodin, Owen and others). In this thesis, I will use both terms to discuss the same problem. Why do they actually speak of a problem? When observing the world around us, one finds a world that has been divided in different nation-states, with each their own territories and boundaries. These boundaries could provide a rather straight-forward answer to the question of ‘who belongs to the demos’? The answer would be: the citizens of a state. However, these boundaries are mostly based on a contingent happening in history. Often based on wars between countries or civil wars (Espejo 2014, 470). Decisions about these boundaries did in most cases not come about in a democratic way.

Robert Goodin shows that other, seemingly, ready solutions to this problem within contractarianist⁵ thinking are also not offering a satisfying answer. If one considers the demos to be consisting of ‘all and only those persons each of whom is not rejected by any of the others as a member’, there would be many people around the world left out of the community, and thus stateless (Goodin 2007, 128). Another easy solution to the question might be to think that the demos should consist of “all and only those who are (legally) obliged or (morally) obligated to obey a body of laws ought to be entitled to membership in the demos making those laws” (Ibid, 129). However, when examining this way of constituting the demos more closely, one should conclude that it comes with its own problems. An example Goodin gives in this case is to think of the captain of a foreign ship, anchored in the harbour of a country. The captain is obliged to follow the laws of that country she is visiting, however she is not entitled to membership in the demos and the making of the laws (Ibid). Same goes for illegals living on the territory amongst others, or indeed: refugees. These examples show that the decision-making power, and the laws formulated within a political unity do affect or subject others, not belonging to the demos.

Another view to look at the problem of the constitution of the demos is advocated by Joseph Schumpeter for example. He argues that it does not matter whether the demos is constituted in a democratic way. For him democracy means to ‘make decisions in a democratic way’ (In Goodin 2007, 132). He observes that societies are usually based on certain groups making these decisions. However, a society that excludes others is not undemocratic per se. He thinks that, as long as the procedures are democratic, the society is a democracy. Robert Dahl, amongst others, does not approve of Schumpeter’s idea of democracy. He gives the following example to explain the consequences of his reasoning: “Suppose that in the [American] South, as in Rhodesia or South Africa, Black had been a preponderant majority of the population. Would Schumpeter still have said that the Southern States were ‘democratic’? If the rulers numbered 100 in a population of 100 million, would we call the rulers a demos and the system a democracy?” (Ibid).

However, Dahl’s critique is not the only consequence one could think of. When one accepts that the question of how to constitute the demos itself is a political question and one accepts that it would best be solved in a democratic way, Schumpeter’s view is far from satisfying. Goodin says, given that democratic boundaries are based on a contingency, ‘democracy is inherently founded on a fraud’ (Goodin 2007, 130). The current system of nation-states leads to arbitrariness, which is almost never a satisfying starting point for democratic theorists (Ibid). The question he asks himself is; ‘because of this inherent inconsistency, can democratic decision-making ever be completely democratic or does it contaminate democratic decision-making?’ (ibid). Obviously, Goodin does not agree with Schumpeter on his view on democracy.

⁵ “In a contractarian view, the people are understood as a cooperative venture for mutual advantage and accordingly consist of only those individuals for whom it is mutually beneficial to bind themselves to one another.” (Verschoor 2015, 391)

How to resolve this inconsistency in democratic theory? When asking this question, one finds herself trapped in the paradox that I have introduced briefly in the introduction of this thesis. In order to decide who belongs to the demos in a democratic way, one should first decide who is entitled to a vote about who belongs to the demos. This in itself is a political decision, and thus, leads to a vicious circle. Dahl explains this problem as follows: “In democratic theory, democracy is usually offered as the exclusively legitimate method of making binding decisions for a collectivity, yet brief reflection suffices to show that the boundary problem is one matter of collective decision that cannot be decided democratically.” (In Owen 2012, 130). I think it is clear that the current situation brings arbitrariness and I will show how this arbitrariness can be problematic in certain cases, for example the case of the refugees.

1.2 The Paradox applied to the case of the refugee crisis

A refugee “is a person who has escaped from their own country for political, religious, or economic reasons or because of a war”⁶. This means that their state cannot protect their basic human rights (anymore).

Therefore, they give up their membership in the state of origin to look for refuge elsewhere. The human rights of all people around the world should be protected by the Universal Declaration of Human Rights⁷.

This means that when basic human rights are at stake, she should be able to ask for asylum in a country that has signed the declaration. However, policy-making regarding laws for immigration and border control is mostly viewed as a duty and right for sovereign states. Meaning that states do have their own immigration and asylum policies. Therefore, refugees are dependent on the laws of the state where they ask for asylum.

Seyla Benhabib (amongst others) is a philosopher who does pressurise the status nation-states currently still have. She argues that the nation-state’s claim on deciding whether a person belongs to their political community, and therewith do have equal political membership rights, is a decision based on the act of inclusion and exclusion and is accidental or based on power relations (Benhabib 2004, 34-35). This also means that there are people outside the demos that are currently not having any claim on equal political rights. Therefore, she claims that the Westphalian treaty of nation-states might be outdated, or at least not adequate in dealing with the human rights of all people around the world. Refugees are again a very good example to show that the Westphalian treaty is not working well and leaves some people without basic rights. (Ibid, 29)

⁶ Defenition “Refugee” given by Cambridge Online Dictionary. <http://dictionary.cambridge.org/dictionary/english/refugee>, Last accessed on 08-06-2016

⁷ Universal Declaration of Human Rights: <http://www.un.org/en/universal-declaration-human-rights/>, last accessed on 08-06-2016

Arash Abizadeh, another political philosopher writes that “The act of constituting boundaries circumscribing political rights is always an exercise of power over both insiders and outsiders that, by the very act, purports to disenfranchise the outsiders over whom power is exercised.” (Abizadeh 2012, 877). In his paper ‘*Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Borders*’ (2008) he poses the question “whether a closed border entry policy under the unilateral control of a democratic state is legitimate” (Ibid, 37). This depends on the question of ‘to whom is justification of a regime of control owed’ (Ibid). Abizadeh gives two ways of looking at this question:

1. The state sovereignty view. According to this view, the control of entry policy, immigration and naturalization, should be under the unilateral control of the state itself. Meaning that justification for this entry policy is owed to the members of the state only (Ibid).
2. The view of democratic theory of popular sovereignty. Abizadeh says that the demos within democratic theory is in principle unbounded, meaning that the regime on boundary control must be justified to the citizens of a state as well as to foreigners. He adds that this justification should then also be organised in political institutions in which both foreigners and citizens can participate. (Ibid)

Of course, it has a very big impact on the case of refugees to decide which of the two ways to follow. The first could be seen as the status quo, which leaves the refugees indeed vulnerable to the decisions of others, without having any influence on the policy-making themselves. In contrast, the second view would mean that the interests of refugees should be taken into account, when making border regime laws. This could mean that nearly everyone in the world is entitled to a vote on the decision-making about border control. Clearly, this position does at least give the refugee more perspective in deciding on their own interests. However, a question that could be asked is whether this political influence is actually making much difference? I will get back to this question in chapter four of this thesis.

I think that the case of the refugees poses important questions on the situation of nation-states claiming their unilateral right to the formulation of their border control policies. This case shows very clearly that state policies may affect or subject others, who do not have a say in the policy-making. When considering who should be entitled to a vote in this case, one gets back to the question: ‘who does belong to the demos’ and the prior question: ‘how to constitute the demos’. When saying that democracy is inherently founded on a fraud, one could consider to rethink the status quo. Can it be just and legitimate towards refugees for a demos to declare its boundaries and thereby decide who belongs to the demos and who does not? Can the group of people decide this one-sidedly? Or should it be based on a mutual democratic decision? I will continue this thesis by reviewing three ways of solving this paradox in democratic theory in a democratic way. I will argue to what extent these solution are capable of dealing with the case of the refugees.

PART 2: Democratic solutions to the paradox and their problems

In this part of the thesis I will discuss three different approaches to solve the paradox of the constitution of the demos. The first two are approaches based on the idea that the demos in the current situation is ‘under-inclusive’. It will be clear that these two approaches move in the direction of a ‘Global Demos’. The third approach is different, as it reflects in a different way on democracy and what is needed to establish a stable democratic state. I will not discuss any undemocratic answers, based on territorial or ethnic or cultural legitimations, because these are inherently not based on democratic theory, and I have already accepted that this problem should best be solved in a democratic way. For each approach, I will review how it tackles the paradox, what new problems it may bring and whether it is capable of formulating a satisfying answer to the case of the refugee crisis.

Chapter 2: The ‘All Affected Interests Principle’

In his book *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn*, Goodin writes one chapter called *Who Counts* about the question of how to constitute the demos. His answer to this question is to follow the ‘All Affected Interests Principle’. In its most generic form this principle says that “everyone who is affected by the decisions of a government should have a right to participate in that government” (Goodin 2007, 136). This principle can have far-reaching consequences, because many decisions that are taken by a government, and supposed to be binding for its citizens only, do exceed borders and affect other people as well.

There are many examples one could think of to show that (political) decisions are exceeding boundaries, and thus affect interests of people that are not included in the political unity and consequently in the decision-making process. Straight forward examples are decisions on foreign trade or legislations regarding climate. An actual example could be the Nuclear Plant situated in a Belgian City, close to the Dutch border. Dutch citizens expressed their concerns about these Nuclear Plant, because it seems to be too old to be functioning in a safe way. It is a clear example of ‘negative externalities’. This action led to the situation where the Dutch Minister visited Belgium to ask them for more safety regulations⁸. If the principle of the ‘All Affected Interests’ was to be followed, the Dutch citizens should have a say in the Belgian legislation concerning the Nuclear Plant. When considering climate legislation in general, it is probably right to conclude that, when following this principle, everyone around the world should have a vote. The participation of many countries

⁸ More information on this actual example can be found for example on: <http://nos.nl/artikel/2081442-onrust-in-nederland-over-belgische-kerncentrales.html>, last accessed on 08-06-2016

in Climate Summits may show that there is a consensus about the fact that climate change is a subject that whole world has an interest in.

In the case of the refugees, it was made clear already in the previous chapter that certain state laws and policies do affect the interests of refugees. Especially when it concerns border policies. Therefore, this principle would lead to the conclusion that refugees should have a say in the making of these policies. This would, solve the problem of ‘under-inclusiveness’ of the interests of the refugee. However, there is more to this principle. Goodin differentiates two different formulations of the principle as an answer to the question: ‘what does it mean to have one’s interests affected?’.

The first formulation is: the ‘All Actually Affected Interests Principle’. This principle entails that “the decision-making body should include all interests that are actually affected by the actual decision”. (Goodin 2007, 137). Although this might be the more common formulation of the principle, it does not come without it’s own problems. To decide whose interests are actually affected by a decision, one first needs to review what the decision is and whose interests it has affected. This decision, in turn, depends on who has been able to co-decide. David Owen shows this problem in a schematic way:

The principle is as follows: “(P) All whose interests are actually affected by a decision should have their interests impartially taken into account in the decision-making process” (Owen 2012, 131). But that brings the following problem:

1. “Whose interests are actually affected by any decision depends on what the decision turns out to be.
2. What the decisions actually turn out to be depends, in turn, upon whose interests are impartially taken into account in the making of the decision.

Hence,

3. The ‘all actually affected interests’ principle is unable to tell us whose interests are to be impartially taken into account in the making of the decision until after that very decision has been decided”. (Ibid).

This shows that when one follows this specific formulation of the principle, one ends up in a new paradoxical trap. Similar regarding the case of the refugees, it can only be decided whether their interests are affected and should be impartially taken into consideration, when the decision has been made already. Therefore, Goodin rejects this formulation of the principle.

The second formulation is the ‘All Possibly Affected Interests Principle’. Goodin asks the question what it means for someone to have her interests affected and concludes that, in considering someone’s interests one should not only review the actual decision taken but also other possible decision outcomes. Moreover, he concludes that one’s interests are not only affected by an actual decision that has been made, but also by the fact that one has not been able to co-decide. She could not choose “any of the alternative courses of action that could have been chosen” (Goodin 2007, 139-140), meaning that people are not only affected by an actual decision, but also by the fact that other decisions have not been made. “And you are rightly said to be

‘affected’, not merely by what the consequences of that decision actually turn out to be but also by what the consequences could have turned out to be”. (Ibid, 139). If this statement is accepted, the conclusion will most likely be that ‘virtually everyone in the world has a say about virtually everything’(Ibid, 141). This means that this principle has a radical extensive character and moves into the direction of a ‘global demos’. The upshot, however, is that the paradox is solved in a democratic way. The demos is extended in such a way that everyone is granted with the power to govern themselves.

There is also critique on this principle. Some people are not (completely) comfortable with the conclusion that virtually everyone has a say on virtually everything. This possibly ‘over-inclusive’ character of the principle could lead to new problems. What does it mean for political participation when shared in a global demos? Suppose that people do vote or make political decisions on the basis of their (rational) self-interests, what would it mean if people gain participation on decisions which do in the end not affect their interests. If one takes this premise for granted, it would mean that people do vote on a random basis (Ibid, 138).

However, Goodin writes that when there is a large number of people voting randomly, and we suppose that they do this more or less equally across all opinions, this does not radically affect the outcome of the decision-making process (Ibid, 142). Although Goodin tries to show that there is no problem, it is imaginable that it feels counter-intuitive for citizens of a country to grant foreigners with an equally weighted vote on decision-making within their territory. Similar has it shown in Europe that some people respond with discontent to the situation of new people coming to their countries.

To mitigate the critique on the radical extensive scope of the principle, Goodin offers four different clauses to principle. I will discuss these four clauses briefly.

1. The all and only those whose interests are affected principle

The aim is to enfranchise ‘all and only those’ who are actually affected. Goodin argues that it is difficult to decide whose interests are actually affected by a decision (Ibid, 142). Moreover, even if this clause is added to the principle, there are still many people entitled to a vote, while at the same time there is a risk of under-inclusiveness. He writes: “If the purpose of the ‘all affected interests’ principle is to ensure protection of all affected interests, there is no need to add the ‘and only’ clause. On the contrary, if we want to be sure of protecting ‘all affected interests’, we have good reason to err on the side of over-inclusiveness - with the expansionary effects on membership in the demos noted above” (Ibid, 144).

2. The all probably affected interests principle

The difficulty with this second clause is that there needs to be someone in charge who can decide whose interests are ‘probably affected’. This is already based on political decisions. Moreover, the principle keeps on being highly expansionary (Ibid, 145).

3. Limiting the decisional power of the demos

This clause says that we should weigh the urgency of the decision at stake. For example the colour of the wallpaper in my room should not be a political decision, but rather one I make myself. This example is obvious, but Goodin is referring to the “privity privileges of a firm” for example. His final conclusion, however, is that the demos would be “debarred from making barely any decision in the end” (Ibid, 147).

4. *Deliberative Democracy*

The fourth and final solution he brings to the table is the ‘deliberative democrats view’ on democracy. “Older models always saw the first task in their application as specification of the boundaries of a political community. Deliberation and communication, in contrast, can cope with fluid boundaries, and the production of outcomes across boundaries. For we can now look for democracy in the character of political interaction, without worrying about whether or not it is confined particular territorial entities” (Ibid, 148). This means that instead of extending the demos to include all the possibly affected interests, deliberationists would extend the conversation, to have them included. And, contrary to voting, conversation can be held across borders. However, a common critique on the deliberationists view on democracy is that it is not feasible. Having everyone to talk is not efficient and in such big groups impossible. But, says Goodin, “to say that everyone in the world is conversationally enfranchised is not to say that each and every one of them will necessarily exercise that franchise”. (Ibid, 49). Some people will simply say nothing or have others talking for them. Moreover, this is a more general critique, because on the scale of a country this would also not be feasible (Ibid).

I think Goodin’s conclusion is that it is more important to save the demos from the ‘under-inclusive’ character it currently has, than to linger on more practical issues of how to establish a demos that does account for all the interests that are affected.

Chapter Three: The ‘All Subjected Principle’

A second democratic solution to the boundary problem is the ‘All Subjected Principle’ (also known as the ‘Coercion Principle’). Arash Abizadeh is one of the defenders of this principle, therefore, I will mostly discuss his arguments. He bases his argumentation on the concept of ‘democratic legitimacy’ and says that democracy itself offers a solution to the paradox. “Democratic theory *does* furnish a basis for answering the boundary problem, via a constitutive condition of the democratic ideal of self-rule and its corresponding principle of legitimacy: 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). Consequently, Abizadeh says that political power within a democracy can only be legitimate if everyone who is subjected by it does have an equal right to political participation. He writes: “the exercise of political power is

legitimate only insofar as it is actually justified by and to the very people over whom it is exercised, in the manner consistent with the view that everyone is equal and autonomous” (Abizadeh 2008, 41).

This principle, like the ‘All Interests Affected Principle’, does have a radical expansionary effect on the demos. The demos would include fairly everyone, leading towards a global demos. Abizadeh calls this the ‘unbounded demos’. According to him it is incorrect to think that political communities should necessarily be bounded by state boundaries, and thus must exclude some individuals from membership. Political communities do not need the exclusion of others. This is based on the idea that in order to establish a political unity, one first needs a demarcated group of people to decide over whom power will be exercised and therewith, whom is entitled to co-decision. Abizadeh says that the view that the demos should be inherently based on a bounded unity rests on a mistaken reading of the principle of democratic legitimacy. “On this account, the will of the people must be prepolitically constituted because might cannot by itself make right: thus, the exercise of political power must find its legitimating principle in something prior to itself. But to speak of a collective will at all, the people must have some corporate existence; and for its will to be the legitimating source, rather than outcome, of political power, this corporate people must exist by virtue of some quality specified prior to, or independently of, the exercise of political power. Thus, on this mistaken reading, democratic legitimacy presupposes a prepolitically constituted, bounded, corporate people (whose will legitimates the exercise of political power). The upshot is that democratic theory itself cannot generate an answer to who the people is; it presupposes an answer. This is the source of incoherence.” (Abizadeh 2008, 47).

Abizadeh bases the idea of the ‘demos unbounded’ on the abandonment of the idea that the demos should be prepolitically constituted. Instead democratic legitimacy entails the view that “political power is legitimate only insofar as its exercise is mutually justified by and to those subject to it, in a manner consistent with their freedom and equality” (Ibid, 48). This means that this principle is capable of finding a democratic solution for the boundary problem. “the reach of its principle of legitimation extends as far as practices of mutual justification can go, which is to say that the demos is in principle unbounded.” (Ibid).

This has implications for the case of the refugees. When accepting this principle, one should also accept that ‘the drawing and control’ of boundaries must be justified to the citizens of a state as well as to foreigners (Ibid). This means that the refugees are entitled to have a say about the border regimes and asylum laws they are subjected to. One could even think that a border regimes of a country do already have coercive power over foreigners from the moment that they decide to migrate to the country. In the case of the refugees, migration is not a choice and they are subjected to asylum laws of the countries of refuge.

Similar to the principle discussed in the previous chapter, the idea of an unbounded demos could lead to the radical idea of a global demos. Therefore, most likely, Abizadeh can expect similar critique as Goodin

received. However, he argues that contrary to the ‘All Interests Affected Principle’, the ‘All Subjected Principle’ has a legitimate option to escape from this radical conclusion. Boundaries and the making of laws regarding borders could be left to sovereign states in the case that everyone agrees with the decision to leave it up to the state (Ibid). However, this option might be legitimate in theory, in a more practical sense it is probably untenable, because it entails not only the citizens of a country to consent to its boundaries, but also all other people around the world.

Although the outcome of the two principles might be more or less the similar, this last argument does show an important difference between the ‘All Subjected Principle’ and the ‘All Interests Affected Principle’. Abizadeh says that according to the ‘All Interests Affected Principle’, the demos must include all those whose legitimate, fundamental interests are affected by the exercise of political power. According to him there is no intrinsic connection between effects on one’s interests in general and a right of democratic say. “The latter principle is constitutive of neither democratic self-rule nor democratic legitimacy: there is no intrinsic connection between effects on one’s interests in general and a right of democratic say.” (Abizadeh 2012, 878). Abizadeh shows, that if one has to choose between these two principles, the ‘All Subjected Interests’ principle would be better for solving the boundary problem. In reference to the refugees, it is clear that refugees should legitimately have a say in the demos, to which they are subjected.

Chapter Four: Democracy and the Role of the Nation-State

In this chapter, I will discuss a completely different take on the problem of the constitution of the demos. Sarah Song argues that the ‘All Affected Interests Principle’ and the ‘All Subjected Principle’ are not capable of solving the paradox in a democratic way. The move in the direction of a global demos or an ‘unbounded demos’ does not lead to a satisfying democratic solution, because democracy should not be seen as a set of procedures only (Song 2012, 39). Song says that democracy also consists of substantive values and principles. Two important conditions for democracy are: 1. (political) equality, and 2. solidarity. She is worried that both these underlying values could get corrupted in case the principle of ‘All Affected Interests’ or ‘All Subjected’ are followed. In this chapter, I will focus on her view on democracy and her arguments of why the principles would not advance a stable democracy. Then, I will review the consequences of her view on democracy for the case of the refugees.

4.1 Song’s critique on the principles

Song claims that the demos should necessarily be bounded by the state, because she thinks that the nation-state is capable of:

1. Securing the constitutive conditions of democracy;
2. Serving as the primary site of solidarity conducive to democratic participation;
3. Establishing clear links between representative and their constituents (Song 2012, 39).

As seen in the previous chapter the 'All Affected Interests' and the 'All Subjected' principles do have a radical expansionary impact on the scope of the demos. Both conclude that due to the fact that many decisions affect or subject many people, virtually everyone has an (equal) say in virtually everything. Decision-making does not stay within the boundaries or territory of the nation-state. It becomes clear that the three political theorists have radically different ideas. I will discuss Song's critique on both principles.

The 'All Affected Interests Principle'

To quickly repeat the core idea of this principle: anyone whose interests are affected by a decision should have a voice in the making of that decision. Song writes that Goodin bites the bullet and is willing to accept that according to the principle the demos is radically expanded towards a global level (Ibid, 49). Her first point of critique regards the fact that the 'All Interests Actually Affected' does lead to a new vicious circle. This was already rebutted by Goodin, who suggested to use the 'All Possibly Affected Interests Principle'. Therefore I think this point of critique is not viable.

Secondly, she argues that the principle would need the following reformulation: The interests affected should be 'weighed proportionally'. She means to say that people have different stakes at different decisions. This idea states that one's stake should correspond to one's actual influence on a decision. This means that one's influence should be relative to one's stake. According to this additional clause, a basic interests should have high stakes. "Power should be distributed in proportion to people's stakes in the decision under consideration". (Ibid, 49)

Unfortunately, the solution offered in the second point does not overcome the problem completely. It leads to the following problematic question: who should decide who's interests are affected and what is one's stake exactly? How to distribute the power and who decides about that? Another far-reaching consequence could be that foreigners, that are not belonging to the demos, get a higher stake in a decision-making than the current demos would get. If one looks at the refugee crisis, for example, it could be argued that the refugee should get a higher stake in decisions about their rights for asylum, because these decision do actually affect their basic human interests (safety, shelter, food & beverages etc). Song mentions an example of Latin Americans who would receive a greater stake in the trade decisions between Latin America and North America, that are to be made in the United States of America. The interest of the Latin Americans would be influenced more (Ibid, 49). When one accepts the status quo, sovereignty of the nation-state, these consequences would definitely be far-reaching and counter-intuitive.

The 'All Subjected Principle'

The coercion principle said that: those subject to the coercive power of a state should have an equal say in how that power is exercised. This principle triggers the need for a justification that a person is really bound by or subject to the collective decisions of a political unity, and it not simply affected by it (Ibid, 50).

Therefore, this principle is directed at a person's autonomy. She quotes Blake when he says: "In the case of autonomy-infringing state action, what needs to be established is the justice of institutions and laws, and this might be established by asking whether any person whose autonomy is invaded could reasonably reject the state's interference" (Ibid, 51). The conclusion should be that a person who is subject to coercive power of a state must have the opportunity to participate in the law-making or to be represented in the political process of determining how power is to be exercised.

This means that also the coercion principle has a radical inclusionary scope. Song proposes to acknowledge that there are different degrees of coercion to solve this problem (Ibid, 52). I wanted to mention once more the example of the refugee, who is still in her original country, but about to search for refuge in another country. I have concluded already that the refugee is, in this example, coerced by the Country's policies regarding immigration. However, Song argues, one can easily differentiate different degrees of coercive power. Inhabitants of a state are mostly subject to a greater coercion by that state. Actually, they are subjected to the entire legal system (Ibid). In this example, the refugee is so-far only subjected to the asylum laws or other laws regarding immigrants and refugees. Moreover, citizens of the state are subject to the power of a state whether they want it or not. Immigrants can avoid the coercion in their state by the act of immigration itself. However, this last argument is not applicable to the case of refugees. Although, one could argue that there is (in theory) a chance to choose where to seek asylum, and thus the coercive power one is subjected to, they are usually not free. Their act of leaving their country is out of humanitarian reasons and thus they are mostly left to the hospitality of the receiving country. Song, thus, suggests that the migrants could be entitled to some voice, but not equal to the original citizens of the nation-state.

4.2. Why the demos should be bounded by the state

When trying to limit the radical scope of the demos, by narrowing it down to the group that is really affected or subjected to a specific decision, one runs into another problem: this group varies from decision to decision. This results in unstable boundaries of the demos or constantly changing boundaries. This has the radical implication that nearly every decision requires a different constituency of voters (Ibid, 56). The following problems are distinguished by Song:

1. There is the practical difficulty of assessing who will have interests affected or who will be coerced by any particular decision.

2. How should political equality be pursued in this case? (she calls this the normative dimension of democracy). When demos are changing, what would equality look like? Although, Goodin and Abizadeh agree to the value of (political) equality, they do not acknowledge the challenge for establishing equality when the demos are constantly changing. (Ibid)
3. Expanding the demos in such a radical way would make it more difficult to vote in an informed way about transnational issues. (Ibid)
4. When (political) associations are smaller, the individual's sense of political effectiveness will rise. Song refers to Dahl when saying: "An association large enough to include all affected interests may be so huge that not even a faint approximation to equal participation is possible." (Ibid, 57)

Therefore, she argues that nation-states should not be replaced by changing demos, following the proposed principles. As already mentioned, democracy should not be viewed as a method for decision-making only. I will discuss two values she considers to be of such a great importance, and which are probably not protected in a global demos.

Equality

The first constitutive value of democracy is (political) equality. "The fundamental moral presumption of democracy is that no person is intrinsically superior to another - that each person is of equal moral worth. In other words, democracy requires equality in the sense that democracy constitutively demands equality as one of its parts." (Ibid, 43). Democracy is a collective decision-making process among equals. She bases this conclusion on the theories of Dahl and De Tocqueville (Ibid). Political equality requires the following ingredients:

1. The protection of certain equal rights and liberties (e.g.: equal voting rights or the right to run and the liberty to express one's ideas);
2. Ensuring the equal worth of these rights and liberties by providing equal opportunities for political influence;
3. Solidarity as instrumental role for the realisation of political equality (Ibid, 44).

However, her idea of equality does not focus on political equality only. She argues that in order to realise equality, there is equality needed on more levels, such as:

1. Resources: one's opportunity to influence the political process should not be determined by the social position and natural endowments one is born with. (Ibid, 43)
2. Access to knowledge: policy specialists and interests groups dominate complex policy discussions and decision-making processes. Complexity in public policies makes it difficult and sometime impossible for 'ordinary citizens' to understand them sufficiently in order to discern where their interests lie. Knowledge about public policies should be accessible to all. (Ibid, 46)
3. Motivation: those who care more about politics should not have a greater voice. Time, though, is a scarce and fixed resource and different people make different assessments of how much time they would like to

spend on politics. Dahl says that: “usually those who are willing to spend more time on politics gain a greater influence” (Ibid). This should preferably not be the case.

The question that remains is: equality amongst who? Song thinks that a global political community would definitely not be better at preserving political equality.

Solidarity

The second condition for democracy is solidarity. This is an ‘instrumental condition’ for democracy. She is quoting Andrew Mason, who says that “a community is a group of people who share a range of values, a way of life, identify with the group and its practices, and mutually recognise each other as members of that group’ (Ibid, 46). The members of a community share a sense of solidarity. “Solidarity consists of mutual concern: people give each others’ interests some non instrumental weight in their practical reasoning. Solidarity might be forged through a shared history, shared culture, and/or shared values” (Ibid).

Solidarity is an important condition for democracy, because of the following reasons:

1. When it comes to deliberation, people must make an effort to listen to each other and understand one another. They must be willing to moderate their claim to find common ground on which to base political decisions. According to Song, this cannot be reached when people are just chasing their own self-interests. It requires something extra: ‘a willingness to have one’s opinions be influenced and revised within deliberation with each other’ (Ibid: 46). She refers to Miller who argues that the basis for solidarity does not necessarily require to share one culture or history. “It can be secured by a common allegiance to a set of values or principles or a shared commitment to diverse ways of belonging” (Ibid). Thus, solidarity is needed to ensure ‘the stability of the legitimacy of a demos’ (Ibid).
2. Solidarity is also integral to the pursuit of the greatest economical equality, which in its turn is linked to the value of equality that has just been discussed.

Size and Stability

The main argument Song is bringing to the table is that a global demos would not be successful at securing the values of equality and solidarity. She refers to Rousseau who remarked that “the demos should not be too large to be capable of being well-governed, not too small to be capable of preserving itself on its own” (Ibid, 46). There is an important connection between size and solidarity: ‘the more the social bond extends, the looser it becomes and in general a small state is proportionally stronger than a large one’ (Ibid, 55). She gives two arguments. The first is that governing over great distances becomes more difficult. The second is that people are likely to have less affection for a political leader they are never seeing. She tries to prove these arguments by giving some empirical evidence of voter turnouts. The evidence shows that relatively small countries, such as Malta, show a higher voter turnout (Ibid). An explanation could be that people think their vote is more meaningful and decisive in a smaller political unit. Another explanation might be that in smaller

countries there are fewer votes needed for each elected member, which makes it easier for the candidate to mobilise the vote (Ibid). However, she does not discuss the relation of size and stability and voter turnouts when it comes to even smaller political unities, within the nation-state. In the Netherlands, for example, voter turnouts are considerably lower in municipalities than on state level.

When it comes to a global demos, Song also raises some concerns for stability. This brings one back to the arguments about the 'changing demoi'. When following-up on the 'All Affected Interests' or 'All Subjected' principle, the demoi might be constantly changing. This consequence of the principles do have a negative effect on the stability of the demos (Ibid, 56).

By now it is clear that Song argues that boundaries are necessary and that a demos should never become too large. It is important though that she has additional arguments of why it is important to keep the sovereignty of the nation-state. She does not just want to protect the status quo, but gives the following arguments:

1. State as primary instrument for securing the substantive rights and freedom, constitutive of democracy. Although, nation-states and their boundaries are historically contingent, Song thinks that it is a morally relevant fact that the modern state is the primary instrument for securing these substantive rights. "The institutions of the modern state serve legislative, executive, and judicial functions necessary for the creation and maintenance of the system of rights. The nation-state meets the demands for political equality, equal rights of political participation and freedom of expression as well as the material conditions that ensure equal opportunities to exercise these rights and liberties" (Ibid).

However, I think this argument is untenable, because it is possible to think of other local ways for protecting these substantive rights. For example, it could be organised in smaller political unities, such as cities, local communities or alike. Moreover, when applied to refugees, there is still the problem of 'under-inclusiveness' or the lack of a right to have rights.

2. The nation-state as a site for solidarity and trust

She quotes Tilly when he says: "trust consists of placing valued outcomes at risk to others malfeasance, mistakes or failures." (Ibid, 56). Trust is when people take these risks. I do highly doubt whether it is true that the nation-states fulfils the task of being a site for trust and solidarity. Again, it is reasonable to think that this can be organised in smaller units and that refugees' rights can also be protected in smaller political unities.

3. Democratic representatives must be accountable to a specified demos.

As Benhabib says: "democratic laws require closure precisely because democratic representation must be accountable to a specific group. Territorial representatives know they are acting on behalf of the citizens in their state". (In Song, 59). This would surely be a challenge on a global scale, however Abizadeh has shown that accountability can be applied on the unbounded demos.

Song asks the question: which problem do we actually want to solve? I think this is an important question when it comes to giving an answer on the question of how to approach the migrant-crisis in a democratic way. If one follows Song's argument, a global democracy is not able to catch the constitutive values for a

stable democracy. It would rather lead to tyranny and a (global) democratic deficit (Ibid, 61). She concludes: “Technology and systems of representative democracy can mitigate some of the worries, as they have within large territorial states. But the sheer size of the global demos, as well as the staggering diversity of languages, religions and cultures in the world, makes it much more challenging to meet the conditions of democracy.” (Ibid, 62). Regarding the case of the refugees, her theory offers no ready solution.

PART THREE: Answering the main question

In this part of the thesis, the main question asked in this thesis: *how can we deal with the current refugee crisis in a democratic way?*, will be discussed.

Chapter Five: Which solution would be best capable to solve the paradox and the problem of the refugee crisis?

So far, three democratic answers have been discussed regarding the ‘boundary problem’ or the problem of ‘constituting the demos’. It has also been discussed how these solutions offer a proper response to the challenge of the refugee crisis. In this chapter the three solutions will be compared and reviewed again regarding the case of the refugees.

The ‘All Interests Affected’ and the ‘All Subjected’ principles are capable of solving the paradox in a democratic way. Moreover, the principles offer a solution to the case of the refugees. Both principles would include the participation of refugees within the demos. When comparing the two principles, one has to conclude that they come to a similar conclusion following different lines of argumentation. Both principles move in the direction of a global demos, including everyone whose interests are affected or is subjected to decision-making. Although the conclusion seems similar, I think the ‘All Subjected’ principle makes the stronger argument, because it is based on the concept of popular sovereignty, and thus democratic legitimacy.

Although these principles are capable of dealing with both the paradox as well as the case of the refugees, they mostly reflect on the refugees’ perspective. The account of the people forming an original demos making a claim to decision-making regarding their ‘own territory’, that I have introduced in the introduction of this thesis is little exposed. However, when staying within the scope of democratic theory, one has to conclude that a legitimate claim on decision-making by the original demos on their territory is untenable, because of the illegitimate power they perform over others outside the demos.

When reviewing Song’s idea on democracy, the nation-state as protector of democratic values, does get new importance. She argued that the nation-state has a very important role in guaranteeing the stability of a democracy. The principles would lead to an unstable and too large demos, which begs on the quality of political equality and solidarity within the demos. When reviewing these arguments, one could argue that the perspective of the people forming the original demos does need more consideration.

I think it is too much asking to choose side on this issue, but I would like to provide some additional solutions proposed by Song of how to deal with the case of the refugees in a democratic way. Of course she

does acknowledge that “globalization challenges key assumptions of much canonical democratic theory – in particular, the assumption of a ‘symmetry’ or ‘congruence’ between political ‘decision-makers’ and ‘decision-takers’”(Song 2012, 62). These global power asymmetries have moved theorists to introduce the ‘All Interests Affected’ and ‘All Subjected’ principles. Song wants to avoid their radical consequences on the demos. She aligns with the proponents of world federalism who argue that state authority should be “shifted ‘upwards’ to larger, more encompassing decision-making units or ‘downwards’ to more local units on the basis of affected interests” (Ibid, 63). Basically she pleads for more cooperation on ‘cross-border’ issues (Ibid).

Song offers three additional responses to the paradox. The first is to, through international treaties, minimize a state’s impact on foreigners. This leads to a kind of ‘self-limitation’ in state’s sovereign power (Ibid, 64). This option could establish stronger international cooperation and consequently also more and stronger democratic state around the world. Another implication for refugees could be that states work more closely together on the protection of human rights around the world, enforcing for example the Universal Declaration of Human Rights. A second response is to give affected or coerced foreigners some representation within the state and its decision-making. She refers for example to Philippe Schmitter’s scheme of ‘reciprocal representation’ (1997) “in which two states accord each other a number of seats in their respective national legislatures with the right to speak and possibly also the right to vote on certain issues. This might involve, for instance, British parliamentarians having seats and voting rights on relevant issues in the French national assembly and vice versa with the aim of addressing an array of actual and potential cross-border issues.” (Ibid). For the case of the refugees, this could mean that they are represented on at least the creation of asylum policies. A remaining issue however, is that refugees cannot be represented by their own governments, therefore this representation should be organised in different ways. When looking at the Dutch society for example, one could argue that this option partly met already. There are certain organisations lobbying for the interests of refugees. However, these organisations do not offer proper representation in the decision-making process. The third and last response she offers is to establish a ‘deliberative forum’. She quotes Saward when writing: “The transnational deliberative forum would involve bringing together a randomly selected sample of citizens from different countries impacted by some cross-border issue to deliberate and learn about the reasons of others affected/coerced by the policies in question” (Ibid, 65). Since this options provides mostly with informed insights and does not have direct influence on the decision-making itself, it would fall short in satisfying the ‘All Affected Interests’ and ‘All Subjected’ principles (Ibid). However, for the case of the refugees, it could provide citizens of democratic state receiving the refugees with a better understanding about the issue.

Conclusion

In this thesis I have reviewed different solutions to the question of *how can we deal with the current refugee crisis in a democratic way?* I aimed to show that the current refugee crisis poses fundamental questions on democracy and the status quo of nation states. On one hand, the status quo enfranchises citizens of a country to make democratic, collectively binding decisions over their own territory. Therewith also decisions regarding border regimes. On the other hand, refugees are forced to leave their own country in search of refuge elsewhere. They are dependent on the laws and coercive power of state, without having a say in the making of those laws. Is this situation tenable within democratic theory?

When addressing this question, I have shown that it is linked to a more fundamental problem within democratic theory; the paradox of the 'Constitution of the Demos' or the 'Boundary Problem'. I have reviewed different solutions to solve the paradox and a democratic way and also their response to the case of the refugees. Although the first two principles that have been discussed, seem to be best capable of tackling the paradox and as well giving an answer to the case of the refugees, the principles come with their own possible problems. They are heading towards a global demos or changing demoi in order to enfranchise all people affected or subjected. Song showed that these principles are possibly not capable of establishing a stable, sizeable democracy. Therefore, she argues that the demos should be bounded by the nation-state. Although Song gives a democratic answer to the paradox, she does not completely resolve it, but bases her theory partly on a contingency (she offers some amendments, to make it less arbitrary). Moreover, she does not provide a satisfying solution for the case of the refugees.

It is difficult to say which answer, in the end, is best capable of solving the paradox and formulating an answer to the case of the refugees, while as well being practically achievable. I think I should conclude this thesis by saying that the question is still in need of some extra attention. In any case, there are some promising solutions, that could form the starting point to make the situation of both the refugees and the original demos more democratic and legitimate.

Sources:

Abizadeh, A. (2008). Democratic Theory and Border Coercion. No Right to Unilaterally Control Your Own Borders. McGill University, Montreal, Quebec, Canada. *Sage Publication, Inc. Political Theory, Vol. 36, No. 1 (Feb., 2008), pp. 37-65*

Abizadeh, A. (2012). On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem. *American Political Science Review 106, no. 04: 867–82.*

Benhabib, S. (2004). *The Rights of Others. Aliens, Residents and Citizens.* Cambridge University Press.

Espejo, P. O. (2014). “People, Territory, and Legitimacy in Democratic States.” *American Journal of Political Science 58, no. 2 (2014): 466–78*

Goodin, R. E. (2008). *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn.* Oxford: Oxford University Press.

Kant, I. (1795). ‘*Perpetual Peace*’. *A Philosophical Sketch.* Shapco Printing, Inc. Minneapolis. Minnesota.

Näsström, S. (2011). “The Challenge of the All Affected Principle.” *Political Studies 59(1): 116–34.*

Owen, D. (2012). Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem. *Politics and International Relations, University of Southampton, Southampton, UK. Vol. 5, No. 3, 2012, pp. 129 - 152.*

Owen, D. (2011) Transnational Citizenship and the Democratic State: Modes of membership and Voting Rights. *Critical Review of International Social and Political Philosophy, 14:5, 641-663.*

Song, S. (2012). “The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State.” *International Theory 4(1): 39–68.*

Verschoor, M. (2015) The Quest for The Legitimacy of the People. A Contractarian Approach. *Politics, Philosophy & Economics 2015, Vol. 14(4) 391–428*

Whelan, Frederick G. (1983). Prologue: Democratic Theory and the Boundary Problem. *In Nomos 25, Liberal Democracy eds. New York: New York University Press, 13 - 47.*

Internet sources:

Cambridge Online Dictionary. <http://dictionary.cambridge.org/dictionary/english/refugee>, Last accessed on June 8, 2016

Centraal orgaan opvang asielzoekers (COA). <https://www.coa.nl/nl/over-coa/cijfers-en-jaarverslagen>, last accessed on March 20, 2016

Nederlandse Omroep Stichting (NOS). <http://nos.nl/artikel/2081442-onrust-in-nederland-over-belgische-kerncentrales.html>, last accessed on June 8, 2016

Website of United Nations. Universal Declaration of Human Rights: <http://www.un.org/en/universal-declaration-human-rights/>, last accessed on June 8, 2016