

The Demos as a Plural Subject^{*}

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How to decide who legitimately make up ‘the people’ – or rather a people – and hence are entitled to govern themselves in their own association is a problem almost totally neglected by all the great political philosophers who write about democracy.

Robert Dahl¹

Introduction

This article offers a conceptualization of the *demos* based on a *cohesive* approach to its agency and composition inspired by Margaret Gilbert’s plural subject theory of social groups. It entails three improvements to the existing literature on collective action as applied to *demos*. First and foremost, it provides a coherent approach to disputed problems of composition (normatively deciding who should be included) and agency (the capacity to function as an actor). Second, by understanding the *demos* as a plural subject, it offers a nuanced understanding of how democratic collective agency is constituted and can be maintained in large-scale collectives. Third, it presents the normativity that is at stake in the debates on the *demos* not merely as freestanding normative theory, but as being entailed in the ontology of social structures and entities.

The academic debate on the normativity of *demos* reflects contemporary political developments (e.g., the increase in transnational regimes with governing rules that cross borders; increasing demands for inclusion by migrants, etc.) that have put democracy and the *demos* in the center of theoretical efforts and point at the need to rethink, in a normative sense, the boundaries (in the sense of inclusion and exclusion) of the *demos*. In democratic theory, the concept ‘*demos*’ is intrinsically related to democracy as a normative idea of (institutionalized) self-rule (through self-legislation) of the (free and equal) people of a political community. Most attempts to rethink the boundaries of the *demos* start from the question ‘who should be granted membership of a political community.’ For this reason,

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1 Robert Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970), 46.

current debates focus on normative principles or ideals that can be used to assess boundaries or to realize them through political agency.²

Unfortunately, attempts to provide a normative, democratic criterion of legitimacy for determining the *demos*' boundaries inevitably lead to the paradoxical situation in which the community that is to be constituted in a democratic way must be presupposed.³ This paradox, commonly referred to as the 'boundary problem,' demonstrates the difficulty of subjecting the decisions about membership of political communities to democratic procedures and criteria of legitimacy.⁴ Recent normative approaches to *demos* link its delimitation to the issue of who are influenced or subjected by the decisions of a political community. These approaches try to construe normative criteria for the delimitation or composition of the *demos* that do justice to basic ideals (freedom, equality) at the basis of democratic collective decision-making.⁵ Goodin, for example, has argued for the now widely discussed all-affected principle, based on which a *demos* could be composed in which exists a symmetrical relationship between the rulers and the ruled. It holds that all who are possibly, relevantly influenced by a rule or decision should be included in the *demos* that decides on this rule or decision. The equally popular all-subjected principle holds that all who are obliged to obey a rule or decision should be included.

It has been disputed whether a composition of the *demos* based on all-affected or all-subjected principles can be the basis of collective democratic agency. The principle fails to explain how the *demos* it composes can guide collective democratic decision-making, i.e., produce, execute, and enforce acceptable goals, rules, etcetera.⁶ In short, the existing literature on the *demos* has been too preoccupied with providing normative principles for its composition and tends to ignore its capacity for (collective) agency. Recently, a number of scholars have adopted the position that an account of *demos* must be based on both a normatively justifiable criterion for its composition *and* a clear notion of its performative (agentive)

- 2 Arash Abizadeh, 'On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem,' *American Political Science Review* 106, no. 4 (2012): 867-82; Sofia Näsström, 'The Challenge of the All-Affected Principle,' *Political Studies* 59, no. 1 (2011): 116-34.
- 3 Frederick G. Whelan, 'Democratic Theory and the Boundary Problem,' *Nomos* 25 (1983): 13-47.
- 4 Robert E. Goodin, 'Enfranchising All Affected Interests, and Its Alternatives,' *Philosophy & Public Affairs* 35, no. 1 (2007): 40-68.
- 5 Goodin, 'Enfranchising All Affected Interests'; Ben Saunders, 'Defining the Demos,' *Politics, Philosophy & Economics* 11, no. 3 (2012): 40-68; Sarah Song, 'The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State,' *International Theory* 4, no. 1 (2012): 39-68; Michael L. Frazer, 'Including the Unaffected,' *Journal of Political Philosophy* 22, no. 4 (2014): 377-95.
- 6 Abizadeh, 'On the Demos and Its Kin'; Christian List and Mathias Koenig-Archibugi, 'Can There Be a Global Demos? An Agency Based Approach,' *Philosophy and Public Affairs* 38, no. 1 (2010): 76-110; Näsström, 'The Challenge of the All-Affected Principle'; Saunders, 'Defining the Demos'; Song, 'The Boundary Problem in Democratic Theory.'

capacity.⁷ They have attempted to address this lacuna and significantly advanced our understanding of the *demos* as a collective agent.⁸ However, in contrast with their own claims, these scholars still address composition and agency as distinctly separate matters instead of treating them cohesively. This leads to uneven conceptions of *demos* in which composition and agency can lead to contradictory demands while no cues are given as to how they could be reconciled. Clearly then, the debate on the *demos* is in need of a fundamental reflection on the concepts that are used. It is insufficiently clear what a better, normative account of *demos* should consist of and notions of membership and collective agency are used without proper conceptual reflection.

The remainder of this article is structured as follows. First, I indicate gaps and problems in recent attempts to account for the composition *and* agency of the *demos* and show that these analyses do not succeed in uniting collective agency with a normatively defensible conception of the *demos*' composition. Second, from this discussion I derive a set of desiderata for theories of *demos* that claim to discuss both dimensions cohesively.

Then I proceed to discuss Margaret Gilbert's plural subject theory of social and political communities as a candidate to meet these desiderata. Gilbert understands social groups as plural subjects that are capable of collective agency and understands political communities as specific cases of social groups. Gilbert offers an account of how group agency is constituted and how it can be accounted for in large-scale political communities. Gilbert's account allows discerning the relation between a *demos* of a political community and the communities and societies which it regulates. From this relationship, criteria for inclusion can be derived.

The paper ends with a number of amendments to Gilbert's theory to back up the claim that it provides a novel and improved way for understanding the *demos* as a collective agent while, more importantly, addressing its composition and agency in a cohesive way. I argue that although Gilbert's work is not commonly associated with normative democratic theory, her framework demonstrates that normativity is entailed in the ontology of social groups and inspires improved ways of thinking about membership and composition in relation to the collective agency of the *demos*.

- 7 List and Koenig-Archibugi, 'Can There Be a Global Demos?'; Saunders, 'Defining the Demos.' Although performativity and agency are often distinguished (with performativity being a specific mode of agency: speech agency), List and Koenig-Archibugi use the two concepts interchangeably. Whenever they write 'performance' or 'performativity' they mean 'agency.' My guess is that they use 'performativity' to indicate that a *demos* has a specific *function* to perform, namely to support governance. I thank the anonymous reviewer for pointing this out.
- 8 Abizadeh, 'On the Demos and Its Kin'; Näsström, 'The Challenge of the All-Affected Principle'; Saunders, 'Defining the Demos'; Antoinette Scherz, 'The Legitimacy of the Demos: Who Should Be Included in the Demos and on What Grounds?', *Living Reviews in Democracy* 4 (2013) <http://www.livingreviews.org/lrd-2013-1>, first published May 2013, visited on 9 March 2015.; Song, 'The Boundary Problem in Democratic Theory.'

1 Defining the demos

This section demonstrates the relevance of looking at the *demos* in terms of collective intentionality and group-agency, and not only as a problem of delimitation. It shortly introduces the boundary problem and rejects solutions that rely on normative principles. These solutions cannot fully address the paradox of democratic legitimacy because they ignore an important dimension: agency. The article then turns to recent proposals that attempt to circumvent the problems that come with appeals to all-affectedness and address the *demos*' composition in relation to agency. While none of these approaches offer a satisfactory account of the *demos*, they entail promising indications for such an account. The section discusses the gaps in these accounts and ends with the description of a set of characteristics for theories attempting to treat composition and agency cohesively.

1.1 The boundary problem – a democratic paradox

The concept '*demos*' is important in the context of the democratic legitimacy of, and participation in, political power. I take the *demos* to be the political community of self-governing (through law) collectives, thereby starting with a broad and uncontroversial conception. Democratic self-legislation implies a first-person plural 'we' (*demos*) capable of collective action and, as such, presupposes self-inclusion and exclusion of others. To engage in self-legislation is to draw a boundary between the 'we' that legislates itself and all others.⁹ Fundamentally, then, conceptualizing the *demos* requires attention to its composition (normatively deciding *who* should be included) and its agency (its capacity to function as an actor).

Democratic theory answers questions concerning the legitimization and exercise of political power in terms of collective self-rule, i.e., by asking whether the members of a political community participate, in some way, in the decision-making process that generates that community's laws. Because the democratic principle of legitimacy refers directly to the very persons over whom political power is exercised, democratic theorists have to answer the question *which* individuals ought to belong to 'the people' or *demos* while taking into account the democratic principle of legitimacy. This has proven to be extremely complicated. The difficulty in constituting or defining the *demos* in democratic terms has famously been called the boundary problem.¹⁰ It concerns the normative question *who* should be included in democratic decision-making and on what grounds. Democratic self-rule – self-governance by a collective 'we' – requires that the collective in question must first be specified ('bounded') in order for it to serve as a principle of legitimacy regarding its self-rule. However, determining boundaries prior to the legitimacy of political power seems to require that the principles by which those boundaries are to be determined should be *prepolitical*. Arash Abizadeh has pointed out that any appeal to pre-political elements cannot be democratically legitimate.¹¹ A

9 Bert van Roermund, 'The Law and "we," *Ethical Perspectives: Journal of the European Ethics Network* 13, no. 3 (2006): 525-27.

10 Whelan, 'Democratic Theory and the Boundary Problem,' *passim*.

11 Abizadeh, 'On the Demos and Its Kin,' 868.

demos requires *political* – as opposed to geographical, ethnical, moral, or any other non-political – boundaries in order to establish a group that shares a political identity that can then govern itself democratically. This paradoxical situation¹² demonstrates the difficulty of subjecting the decisions about membership of political communities to democratic procedures and criteria of legitimacy.¹³

Several attempts have been made to solve the boundary problem. These attempts usually offer arguments based on all-affectedness and related principles, which value democratic legitimacy over the capacity for potent decision-making. Appeals to these principles emphasize the composition of the *demos*, but fail to consider its capacity for democratic agency.

1.2 All-affectedness not the solution

To circumvent the boundary problem, recent normative approaches try to construe criteria for the delimitation or composition of the *demos* that do justice to basic ideals (freedom, equality) at the basis of democratic collective decision-making. Goodin, for example, has argued for the now widely discussed all-affected principle, which holds that all affected by a political decision ought to be enfranchised in the political community that is responsible for that decision.¹⁴ Generalizing a bit, a *demos* would, following this principle, simply be the collection of individuals (possibly) affected by a political decision. Crucially, adherents to the all-affected principle are concerned that without taking into account the effects of democratic decisions on those who are affected by them, democratic groups are entitled to inflict injuries upon outsiders.¹⁵

The main objection raised against all-affected principles is that it leads to over-inclusion.¹⁶ Proposing the broadest possible reading of the principle (all whose interests are *possibly* affected ought to be included, which amounts to including all), Goodin considers over-inclusion less problematic than under-inclusion.¹⁷ This does not necessarily mean that any *demos* must include all (i.e., must be a global *demos*). In case of local decisions or issue-specific regimes, all-affected principles might constitute narrower *demoi*. Nevertheless, these *demoi* are usually still very large, which poses the question how such large collections of individuals who

12 Whelan, 'Democratic Theory and the Boundary Problem,' *passim*. Seyla Benhabib calls it a 'paradox of democratic legitimacy' in *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 33.

13 Goodin, 'Enfranchising All Affected Interests,' 40-68.

14 Goodin, 'Enfranchising All Affected Interests,' *passim*; Frazer, 'Including the Unaffected,' *passim*. The equally influential all-subjected principle, used by Abizadeh, holds that all who are subject to the effects of rule or decision should be included. Over the course of this article it will become clear that the all-subjected principle is equally insufficient as the all-affected principle in addressing the boundary problem because both only address the *composition* of the *demos*, not its agency. My argument will be that a satisfactory conceptualization of *demos* requires that both composition and agency are treated in a mutually cohesive way.

15 Song, 'The Boundary Problem in Democratic Theory,' 64.

16 Saunders, 'Defining the Demos,' *passim*.

17 Goodin, 'Enfranchising All Affected Interests,' 58.

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are potentially only connected by being jointly affected by a future decision might be capable of collective agency.

Theories of *demos* relying on all-affected and related principles offer no clues as to what functional characteristics a *demos* should exhibit in order to be capable of engaging in (self-)government. Proponents of all-affected principles consider democratic legitimacy to be more important than the *demos*' capacity for potent decision-making. This has caused all-affected principles to be criticized for offering an incomplete understanding of what a *demos* is, in the sense that they only account for its composition and not for its performative or agentive capacity. In principle, proponents of all-affectedness defend the unbounded *demos* thesis and argue for ever-changing political communities, depending on the issue or decision at stake. They argue that the boundaries of existing *demoi* must be realized politically over and over again, and this realization should occur in the light of the normative ideal of an unbounded *demos*. However, the all-affected principle by no means guarantees that the collection of individuals selected in specific situations will be capable of collective action. A '*demos*' selected by an all-affected criterion might be composed of a set of people so internally divided or alien towards one another that it lacks the internal cohesion necessary to develop any '*kratos*,'¹⁸ rendering it impossible to perform its basic function as a *demos*, i.e., to facilitate (self-)governance. Theories of all-affectedness thus fail to address the performative capacity of the *demos* in a systematic way.

1.3 *The demos as a collective agent?*

In a recent article, Ben Saunders attempts to define the *demos* in terms of collective agency. He does so while explicitly rejecting normative principles of composition, such as the all-affected and the all-subjected principle because 'any such principle is likely to be misguided, because it focuses on outputs rather than inputs, whereas democracy is about agency.'¹⁹ Collective democratic agency, he argues, is realized by individual parties subscribing to democratic procedures which 'allow a group to act together, as if they were a single agent, with some members getting their way and therefore imposing certain costs on other members.'²⁰ Saunders abandons questions of composition in favor of an agency-based approach.²¹

18 List and Koenig-Archibugi, 'Can There Be a Global Demos?,' 84.

19 Saunders, 'Defining the Demos,' 281.

20 Saunders, 'Defining the Demos,' 289.

21 Saunders, 'Defining the Demos,' 293-94. For reasons of space I cannot discuss Saunders arguments for abandoning composition here extensively. They boil down to two arguments. A negative argument: There are no satisfactory criteria of composition available. And an empirical argument: Usually, there is nothing voluntary about membership in political communities (e.g., we 'find' ourselves as members of states etc.). As long as the rights of outsiders are not infringed, Saunders argues, it is up to its members how a *demos* (re-)constitutes itself. Many objections can be made against these arguments, but I limit myself to the observation that we live in times in which it is increasingly relevant to think about the legitimate composition of new *demoi* (e.g., think of the EU, the rise of trans- and supra-national regimes and communities, demands for autonomy by sub-state groups, and so on).

Saunders' is, however, very reluctant to ascribe the *demos* a strong sense of collective agency. His account is strongly informed by liberal assumptions. He understands democracy as a process whereby a group of agents unites to coordinate their collective action together and he understands cooperation as consisting of individuals acting on the basis of self-interest, which must take autonomous individual agency seriously. This leads him to argue for very thin conceptions of collective action and agency. Saunders fears that strong conceptions of collective agency will cause the individual to be suppressed by the collective. Thus, on Saunders account, democracy should not involve a form of collective agency that entails a – large – loss of individual agency and autonomy, for no sensible individual would enter such a collective.²² In a revealing sentence, Saunders states that 'democracy is simply a form of pseudo-collective agency'²³ and explains that his account of the agency of a *demos* is one of pseudo-collective agency because his:

'conception of democracy does not (...) posit some collective will over and above that of individuals. Rather, it is thoroughly individualistic, but assumes that the decision procedure allows a diverse group of individuals to act in some ways as if they were a single agent.'²⁴

This thin conception of collective agency is however unwarranted and not convincing in light of recent arguments. Michael Bratman, for example, has made it his life's work to show that collective agency does not imply a commitment to some kind of ontological superstructure.²⁵ According to him, there is nothing mysterious or threatening about collective agency. It does not imply 'some fused agent' or 'some superagent consisting literally of some fusion of two agents [nor of any number of agents of minds, BL]'.²⁶ According to Bratman, the 'unity' of collective agency consists in a network of relations ('meshing plans and sub-plans') between individually acting agents. It consists in 'a state of affairs that consists primarily in attitudes (...) of the participants and interrelations between those attitudes.' Thus, a collective agent exists only insofar as autonomously acting

22 A minor loss of individual agency is, however, warranted by two reasons. There is a trade-off between having complete power over one's own life and having a share of power over larger decisions, and there are certain decisions that an individual cannot take. Saunders, 'Defining the Demos,' 288.

23 Saunders, 'Defining the Demos.'

24 Saunders, 'Defining the Demos,' 297n30.

25 Others have also argued that this fear of losing one's individual autonomy when engaging in shared agency is problematic. See, e.g., Annette Baier, 'Doing Things With Others: The Mental Commons,' in *Commonality and Particularity in Ethics*, ed. Lilli Alanen, Sara Heinämaa and Thomas Wallgren (New York: St. Martin's Press, 1997), 14-33; J. David Velleman, 'How to Share an Intention,' *Philosophy and Phenomenological Research* 57, no. 1 (1997): 29-50.

26 Michael E. Bratman, *Faces of Intention* (Cambridge: Cambridge University Press, 1999), 111.

individuals are engaged in a shared intention.²⁷ Thus, Saunders's fear seems unfounded. Shared agency allows people to commit to common enterprises, without it imposing a collective superstructure threatening individual autonomy. Importantly, Bratman distinguishes between 'shared action' and 'shared cooperative action,' which can be understood as the extremes on a scale of collective agency on which positions are determined based on parameters of mutual responsiveness (e.g., mutual commitment to the joint activity, mutual responsiveness to each other during the joint activity, and a commitment to mutual support for each other's roles during the joint activity). Both involve commitment to a collective intention, but only the latter requires mutual support and being involved for the same reasons. Thus, on Bratman's account, there is even space for genuinely shared agency that is not cooperative, allowing individual participants to engage in shared activities for their own reasons.²⁸ That Saunders addressed the agency of the *demos* is laudable, but his unwarranted reluctance to ascribe it anything more than 'pseudo-agency' leaves many potentially interesting implications underdeveloped.

Looking at Bratman's framework of agency in collectives, there are some clear problems that render its use for conceptualizing a *demos* as a collective agent problematic. Bratman focuses on situations of what he calls 'modest sociality,' i.e., non-hierarchical interactions between two persons who are similarly committed and where the 'designers' of the shared intentions or activities are also the

27 A shared intention entails more than two or more persons having identical intentions: it entails that two or more persons share an intention. This is the case if these persons (1) share an intention to do X together; (2) do X in mutual agreement, because of their respective intentions to do X together, and on the basis of meshing sub-plans; and (3) under conditions of mutual knowledge. Bratman, *Faces of Intention*, 121.

28 Bratman, *Faces of Intention*, 94-95; Michael E. Bratman, *Shared Agency: A Planning Theory of Acting Together* (Oxford: Oxford University Press, 2014), 37-39. See also Bert van Roermund, 'First-Person Plural Legislation: Political Reflexivity and Representation,' *Philosophical Explorations* 6, no. 3 (2003): 235-52, for an account of law as a form of collective intentionality, and Scott Shapiro, 'Massively Shared Agency,' in *Rational and Social Agency: The Philosophy of Michael Bratman*, ed. Manuel Vargas and Gideon Yaffe (Oxford: Oxford University Press, 2014), 257-93. We will see below that Gilbert's framework is explicitly designed to accommodate many of the shortcomings of Bratman's work (when it comes to political agency) indicated above, which renders it intuitively plausible as a candidate for a desirable conception of *demos*. For one, unlike Bratman, she explicitly addresses political issues such as rights, obligations, membership, and legitimate authority of collectives or associations over their members. This can partially be explained by pointing at a distinctive feature of Gilbert's work. She abandons the *singularist* assumption to which most other scholars working on collective intentionality, including Bratman, adhere. Singularism holds that intentions of whatever kind are correctly ascribable only to a given individual human being. Thus, for Bratman it is only the *content* of intentions that can be *shared*; the intentions themselves remain individual attitudes. According to Gilbert, shared intentions in some way *exist* at a collective level: they are *constituted* by individual agents, but *not reducible* to them. Shared commitment to an intention, goal, or plan establishes a fictive 'body,' a 'we' that endorses the plan expressed in the shared intention and gives each constituent part of the 'we' non-moral claim-rights with respect to the relevant behavior of the others. Shared intentions, Gilbert argues, involve non-moral normative authority structures constituted by commitments and kept in place by rights they assign to participating members to the other participants' behavior. To me this seems particularly relevant in addressing law and politics as instances of collective action.

ones who realize the design.²⁹ Shapiro has pointed out that this prevents Bratman's framework to be applicable to (1) large-scale groups and institutional practices (2) involving asymmetrical power relations (e.g., the law, *demos*) and 'alienated' members (who do not share the aims of the collective).³⁰ Shapiro shows that Bratman's theory can relatively easy be adjusted to accommodate asymmetrical authority.³¹ It can also be adjusted to address its difficulties in accommodating for shared agency in large-scale groups with high degrees of anonymity or even alienation, but only at a grave cost. If Shapiro is correct, in order to accommodate anonymity and alienation, two core elements of Bratman's theory – mutual responsiveness and mutual cooperation – must be dropped.³² On Shapiro's account then, we can have shared agency in large-scale collectives, but not shared *intentional* agency. According to Shapiro, Bratman's account falls prey to 'hypercommitment': it is too demanding on the intentionality of the agents participating in shared agency.³³ Rather, what must be shared in such cases are *plans*. On this reading, people's commitment to a shared plan (for which people may have different reasons) which was developed *for* them (potentially, but not necessarily, *by* them) and which enables them to engage in a joint activity, is what constitutes shared agency.³⁴ Shapiro's adjustment to Bratman's theory comes, however, at a cost that Bratman explicitly wants to avoid: a break in the continuity between individual and shared agency. Moreover, both Bratman and Shapiro are mostly concerned with analyzing the conditions under which collective agency and action can exist. They are not concerned with questions of composition (inclusion/exclusion) that are relevant for conceptualizing *demos*.³⁵

29 Michael E. Bratman, 'Modest Sociality and the Distinctiveness of Intention,' *Philosophical Studies* 144, no. 1 (2009): 149-65; Shapiro, 'Massively Shared Agency,' 264-65.

30 Shapiro, 'Massively Shared Agency,' 265, *passim*.

31 Shapiro, 'Massively Shared Agency,' 265-70.

32 Shapiro, 'Massively Shared Agency,' 270-76.

33 Shapiro, 'Massively Shared Agency,' 276-77. Note that Shapiro also accuses Gilbert of being too hypercommitted. This judgment seems to derive from different understandings of what it means to do something *together* (or *jointly*, as Gilbert would say). I disagree with Shapiro's assessment, but I cannot pursue this argument here.

34 Shapiro, 'Massively Shared Agency,' 280.

35 Bert van Roermund sees an advantage in Bratman's focus on non-hierarchical situations when it comes to understanding shared activity *within* a collective self – when its *composition* has already been decided upon – but also sees problems when it comes to applying Bratman's work conceptualizing the *demos*. Van Roermund is clearly right to state that, if mutual responsiveness is 'the hallmark of collective intentionality' (as Bratman thinks), it cannot solve the issue of *democratically* deciding upon the composition of collectives because it presupposes what it sets out to explain (mutuality). The boundary problem simply resurfaces: to mutually decide already presupposes the deciding collective. Van Roermund proposes a solution – inspired by Lefort and shared with Lindahl – arguing that self-inclusion of large-scale collectives requires symbolic representation, i.e., the positing of a transcendent point of view from which people can stage themselves as a whole in reference to a source of authority. See Van Roermund, 'First-Person Plural Legislation,' 235-52. In line with this criticism of Bratman, Gilbert's account seems to explain, at least implicitly, *how* group agents are formed through the creation of, and reflection upon, a (symbolic) representation of themselves as a collective.

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Christian List and Mathias Koenig-Archibugi³⁶ have also recently addressed the agency of the *demos*. They may be the first to explicitly argue that an account of *demos* must be based on both a normatively justifiable criterion for its composition *and* a clear notion of its performative capacity. And also unlike Saunders, they believe that non-pseudo collective democratic agency is possible without impairing individual freedom and autonomy. Their argument is premised on the idea that a *demos* is supposed to play a role in facilitating governance.³⁷ They call this the *performative capacity* of the *demos* and argue that it is crucial for a collection of individuals demarcated by an appropriate membership criterion that it ‘can be organized, in a democratic manner, so as to function as a state-like agent.’³⁸ This performative criterion entails an additional normative demand to a composition criterion: the *demos should* be (capable of) collective agency.³⁹ Thus, they argue, an account of the *demos* should address two interrelated questions:

- 1 The compositional question: Which collection(s) of individuals should, from a democratic perspective, be considered as candidate(s) for a *demos* for a given policy area or set of issues? In particular, what membership criterion should be employed for specifying such a collection?
- 2 The performative question: For any such collection of individuals, what functional characteristics must it exhibit in order to guide collective decision-making and to enable coordinated actions on the given set of issues?

According to List and Koenig-Archibugi then, a *demos* is more than a collection of individuals who happen to be members of a (the same) political community. This collection must also be capable of democratic agency. List and Koenig-Archibugi propose a new theoretical perspective on the *demos*, drawing from the field of group-agency – especially Philip Pettit’s account of group agents.⁴⁰ This requires an organizational structure, rules, and procedures to make decisions and to act in

36 List and Koenig-Archibugi, ‘Can There Be a Global Demos?’

37 List and Koenig-Archibugi, ‘Can There Be a Global Demos?’, 78-79.

38 List and Koenig-Archibugi, ‘Can There Be a Global Demos?’, 78

39 List and Koenig-Archibugi, ‘Can There Be a Global Demos?’, 86.

40 Pettit’s ‘subject account’ of collective intentionality does not start from an analysis of joint action or collective intentions. Pettit argues that groups can be subjects of and have intentions because they can fulfill general conditions of agency. Groups fulfill such conditions as collective units of agency whose attitudes (and intentions etc.) can be discontinuous with the attitudes (and intentions etc.) of their members. This aspect of Pettit’s thought is highly interesting for democratic theory. It provides an understanding of how the will of individuals is on the one hand constitutive of the will of the collective agent, while on the other hand the will of the collective agent might be altogether different from those of its individual participants. Another element of Pettit’s account is that intentionality requires a minimum of rationality, and that groups can have that rationality only if they collectivize reason. Requirements for collectivizing rationality are consistency, closure, completeness, but also a complex form of social organizations; an internal structure and particular a mechanism for decision-making. For a short overview of Pettit’s position see David Schweikard and Hans-Bernhard Schmid, ‘Collective Intentionality,’ in *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/collective-intentionality>, first published 13 June 2013, visited on 9 March 2015. For further reading see Philip Pettit and Christian List, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011).

a democratic way. Of particular importance are two sorts of cohesion – internal and external – that are stressed as important qualities that a *demos* must possess. External cohesion requires that ‘it is possible to ascribe to the collection of individuals in question coherent collective attitudes (particularly preferences) on the issues on which collective decisions are needed, where these attitudes are defined by a suitable democratic criterion [e.g., majority, BL].’⁴¹ Internal cohesion requires that a *demos* is ‘in sufficient meta-agreement on certain issues on which collective decisions are needed, and, if required, in sufficient substantive agreement on some relevant fundamental matters.’⁴²

List and Koenig-Archibugi’s account is interesting in its ability to answer the performativity question. Yet, their attempt to evade a one-sided focus on the *demos*’ composition in the end overemphasizes its performativity. They uncritically assume an existing criterion for the *demos*’ composition which they combine with their theory of the *demos*’ agency. This is too simplistic and causes a loss of cohesion in their theory. They underestimate the normativity of their first criterion (composition), which is evidenced in their statement that the collection of members that this criterion points out should be restricted by the demands of a second criterion: performativity. This seems contradictory. When a membership criterion is normative, the individuals it selects ought to be part of the *demos*, period. Applying a second criterion that might restrict the collection of individuals derived from the first would, from a democratic perspective, amount to the illegitimate exclusion of some who ought (by virtue of the first criterion) to be included. Taking seriously the normativity of the membership criterion that they use (all-affectedness) would entail that the performativity criterion cannot be a restriction criterion in a normative way, but at best a set of demands (qua organizational structure, unity, etc.) that must be imposed on a *demos* that is too divided. These considerations show that List and Koenig-Archibugi do not manage to satisfy the criteria for an account of the *demos* that they propose. They argue convincingly that both a membership criterion and an account of democratic agency are required. But their efforts also show, implicitly, that these must be developed in a mutually consistent way. Their insightful analysis does not succeed in uniting collective agency with a normatively defensible conception of the *demos*’ composition. Clearly then, the debate on the *demos* is in need of a fundamental reflection on the concepts that are used. It is insufficiently clear what a normative account of *demos* should consist of and notions of membership and collective agency need more conceptual reflection.

1.4 *Desiderata for a satisfactory normative account of demos*

Based on the foregoing discussion of problems and possible solutions of attempts to formulate a theory of *demos*, I propose the following desiderata for a more satisfactory conception:

41 Pettit and List, *Group Agency*, 93-94.

42 Pettit and List, *Group Agency*, 95-96.

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First, a *demos* consists of the people (the members) of a political community. A proper, normative account of the *demos* must be able to address what distinguishes a social from a political community, i.e., what makes that community political and that group of members its people.

Second, a normative membership criterion is required in order to define the collection of individuals that *should* be included in political decision-making.

Third, an account of the *demos*' agency is required. This requires more than just a collection of individuals. A *demos* must be able to function as a democratic agent, i.e., be able to fulfill its performative function in a democratic way. This means that a normative account of *demos* must be able to describe the minimum of internal and external unity that is required for it to function as a collective agent. Especially in the case of large populations, collective agency is not easily realized.

Fourth, a satisfying account of the *demos* requires that it sees its boundaries – which will, for practical reasons, always have to be drawn – as politically constituted and therefore open to revision.

Fifth, and crucially, in order to come to a satisfying normative account of *demos*, the above criteria must be accounted for in a mutually related, consistent way. My discussion of several authors above has shown that especially composition and agency should not be treated as separate issues.

2 A plural subject account of political society

I now turn to Margaret Gilbert's plural subject account of social and political communities as a candidate to meet the desiderata stated above.⁴³ Gilbert's account of social groups is an attempt to provide a general model for the description and explanation of sociality and emphasizes the normative nature of social and political entities. In her 2006 book *A Theory of Political Obligation* she explains the structure and normativity of political collectives as constituted through *joint commitment* and argues that membership in a political community is a specific case of membership in a social group.⁴⁴

Although Gilbert does not provide a complete theory of the *demos* and does not directly address questions that are raised in the discussions treated in the preceding section, her approach offers a richer account of *demos* than List and Koenig-Archibugi's account based on Pettit's theory of group agency and more 'political'

43 'Plural subject' is Gilbert's general label that applies to any group of jointly committed persons.

44 Many of the articles that Gilbert has published since the mid-1990s are presented as part of a series of studies toward a projected monograph on political obligation. *A Theory of Political Obligation* can thus be seen as the culmination of Gilbert's political thinking. I will refer extensively to this book.

cues than Bratman's theory of shared intentionality.⁴⁵ Before I develop an account of *demos* based on Gilbert's theoretical framework, I will first present an overview of its relevant basic concepts and arguments.

2.1 Social groups

Gilbert takes the analysis of small groups to reveal a basic structure common to all social groups in general and political societies in particular. She does not understand social groups as mere 'aggregates' of persons but as characterized by substantial unity. A social group is constituted whenever several individuals engage in a joint commitment, which ensures that they will exhibit collective attitudes and act together. Gilbert takes joint commitment to be a basic part of the human conceptual equipment. She understands commitment as an intentional commitment of the will.⁴⁶ A commitment binds a subject in two ways. First, the subject has sufficient reason to act in accordance with the commitment. Second, this reason has trans-temporal reach and exists until the subject has conformed to what was expressed in the commitment (or is rescinded from it).

All joint commitments are of the same form: the parties to the commitment 'jointly commit to X as a body' wherein 'X' may be substituted by intentions, goals, beliefs, attitudes, et cetera, and 'as a body' may be read as 'as a collective,' 'together,' 'as a unit,' or, fittingly, as a different modality of 'jointly' compared to its earlier appearance in the sentence.⁴⁷ Whereas the former 'jointly' might refer to an aggregate of persons who are collectively about to commit to a certain action, the latter seems to propose or *represent* that aggregate in a new guise, symbolically, as the collective that will be the agent of the action committed to. I take the structure to be thus: some individual addresses (directly or indirectly) a number of people and proposes (for any kind of reason) that there be a specific collective (consisting of a certain set of people) and that this collective engage in a certain kind of action. If (sufficient) people are convinced by the proposal they

45 For reasons for picking Gilbert over Bratman see footnote 30. Pettit's work offers no politically relevant normative membership criteria. List and Koenig-Archibugi use an 'off the shelf' membership criterion (affectedness). Gilbert's work on the other hand entails elements for thinking about group agency and for thinking about membership in agentive groups. Both are required for a satisfactory account of *demos*. Second, Gilbert focuses explicitly on the constitution, the structure, and the normativity of collectives in general and political collectives in particular. Third, Gilbert's notion of joint commitment provides a detailed explanation of how collectives are capable of self-reflection and self-referral qua unity and how they are capable of collective agency without constraining individual differences. Fourth, Gilbert focuses explicitly on political agency and on the question how such agency is constituted. Fifth and final, Gilbert takes into account specific political and normative concepts and correlates them directly to the sharing of practices with others. This sufficiently justifies the use of Gilbert's theoretical framework to approach normative questions regarding the concept '*demos*.'

46 These 'commitments of the will' do not require deliberation or forethought (although they may involve them). Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society* (Oxford: Oxford University Press, 2006), 168.

47 Gilbert, *A Theory of Political Obligation*, 137. A more formal definition runs: 'A and B (and ...) (or those with feature F) constitute a plural subject (by definition) if and only if they are jointly committed to doing something as a body – in a broad sense of "do"' (145).

might commit (a) to carry out the proposed action (b) *as* the proposed collective.⁴⁸ From the perspective of the committing individuals, this is the creation of a *first person plural subject* or, in common parlance, a *we*. Importantly, the *unity* of this 'we' must first be *represented* before the required *mutuality* or *jointness* can come about. Presumably, the newly constituted 'we' can and must be re-stated and re-affirmed through (speech) acts by its participating members for it to be a sustainable identity. Likewise, it can be challenged or even corroded by claims and statements uttered by aspiring members or hostile others. And it is important to realize that the whole structure of putting forth such representations and having people understand them and agree or disagree with their content already presupposes a level of commonality that precedes explicit acting together and shared agency.⁴⁹

Gilbert offers three conditions (to be broadly interpreted) that must be met for a collection of individuals to constitute a social group. First, each individual must manifest his or her willingness and readiness to constitute with the others a plural subject with a certain goal. *Only* when *each* has done so is the foundation laid for each individual to act in his capacity as the constituent of a plural subject of the relevant goal.⁵⁰ Second, the fact that all would-be parties express their willingness must be out in the open between them and all must be aware that this is so.⁵¹ Third, the commitment must include a reference to the proposed collective as the bearer of the action. The creation of a plural subject is not an act of the individual parties *as individuals*, but of them together *as a body*, as 'the body comprising (...) them.'⁵²

48 This interpretation is inspired by the work of Bert van Roermund and Hans Lindahl on first-person plural agency. See Bert van Roermund, 'First Person Plural Legislature'; Hans Lindahl, 'Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood,' in *The Paradox of Constitutionalism*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2008), 9-24.

49 The whole 'joint commitment' idea already presupposes a lot of commonality. To different degrees it presupposes shared language, culture, habits, expectations, value judgments, and so on. A person proposing a joint commitment and representing a collective agent should therefore be a good judge of the existing social situation. To use a blunt example: If I were to propose (in Dutch) to the Queen of England that she and I were to *jointly* take a dive in Mar-a-Lago *together*, as a single body, this proposal would probably not even register with her. There would either not be sufficient joint commitments already in place, or I would be breaking so many of them that there would be no common ground, no mutual understanding, that could sustain my proposal and render it intelligible to its addressee(s). John Searle demonstrates a similar concern with his constant references to 'background conditions.' Gilbert never mentions it explicitly, but she seems to rely on similar assumptions. We will see below that she repeatedly states that 'commitments' can come about in subtle, implicit manners, e.g., through gestures or semi-conscious actions. I take this to refer to some form of background understanding. This background understanding is in most cases not universal but bound to local conditions. Of course, it is also not fixed but rather contingent.

50 Margaret Gilbert, *On Social Facts* (New York: Routledge, 1989), 204.

51 Gilbert, *A Theory of Political Obligation*, 103n14, 121. 'Aware' is used as conscious, but not necessarily reflectively so.

52 Margaret Gilbert, 'Walking Together: A Paradigmatic Social Phenomenon,' *Midwest Studies In Philosophy* 15, no. 1 (1990): 8.

With this description of the basic concepts of joint commitment, social group, and plural subject in hand, I turn to Gilbert's account of the substantial unity that characterizes social groups. I treat unity in detail because of its relevance for both agency (unity allows a social group to function as a collective agent) *and* the normativity of membership, which will return in my account of *demos*.

2.2 Four aspects of unity

The unity of a social group is constituted by its constitutive joint commitment, which creates a commitment of the whole of which each participant is co-author and to which each participant is subject. This unity is characterized by four different elements.

The *first* aspect of unity concerns a *concurrence condition* or *mutuality condition*. This crucial condition holds that a joint commitment can only be entered, altered, or rescinded when all parties agree to do so under conditions of mutual knowledge. I take this condition to indicate a certain democratic quality that is inherent in the constitution of any social group. As Gilbert writes, 'no one party [to the joint commitment] is in a position unilaterally to decide on the details of a joint action.'⁵³ Similarly, no single party is in a position to unilaterally terminate the joint commitment. The parties must make it clear to one another, either verbally or by means of other behavior, that each is ready to endorse, alter, or rescind the detail in question or the joint commitment as a whole. This involves specific expressive behavior consisting of an expression of *readiness* and *willingness* under *conditions of mutual knowledge*.⁵⁴ Individuals must understand the implications of entering the commitment, i.e., they should be aware that certain normative consequences will follow if they express their readiness to commit. Their expressions of readiness to be jointly committed must also be common knowledge to all, which requires that they are 'at some level known and in that sense perceived by the parties.'⁵⁵ This does not necessarily imply conscious knowledge or explicit expressions; social groups may be founded by explicit agreement, but also by people demonstrating their willingness by 'falling into' practices without objecting. One act may suffice to become jointly committed, but it may also involve a process that extends over time.

The *second* aspect of unity concerns the way in which the *normative structure* that is imposed through joint commitment 'binds' the parties involved through certain restrictions of behavior, norms, guidelines, and values. Being party to and subject of a unifying commitment to do something *mandates* a particular kind of action,

53 Gilbert, *A Theory of Political Obligation*, 106-15, 164.

54 The exact meaning of willingness is unclear. Individuals can enter a joint commitment deliberately, but also through implicit suggestions to act together, through gestures (inviting someone to dance), or through habituation. One might object that tacit consent is often not enough, especially regarding political communities. However, the point is not that one, according to Gilbert's framework, could easily renounce one's citizenship, but rather that, as long as a group does not institutionalize demands qua entry or exit, implicit expressions of willingness can be enough to constitute group membership.

55 Gilbert, *A Theory of Political Obligation*, 168-69.

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i.e., action that helps further the espoused goal. An individual thus committed ought to prefer that kind of action over any action recommended by his particular inclinations or self-interest.⁵⁶ Bonds do not always apply to all group members. In some cases, all parties are required to express certain behavior in order to pursue the common goal. For example, when Zebedeus and Zanzibar jointly commit to go for a walk together, Zanzibar cannot delegate to a third person his relevant actions and decisions in order to satisfy the joint commitment to Zebedeus, nor *vice versa*. To some extent, the members of a society need not even have 'common goals.' For example, a plural subject could be constituted by the joint commitment to institutionalize a set of procedures to govern a particular territory. The 'common goal' then becomes upholding those procedures, through which all become 'bonded.' These procedures could be so as to allow for a wide variety of new and unforeseen goals that are not necessarily the goals of the members as a body.

The *third* aspect of unity is a *special standing* that group members have towards one another. The normative structure effectuated by a joint commitment gives members a distinctive and special standing regarding the behavior of other members.⁵⁷ It is a standing to make demands and utter rebukes to fellow group members regarding their behavior, as far as this is related to the goals espoused as a body. The standing is distinctive in the sense that it is purely a function of the joint commitment.⁵⁸ It is special 'in the sense of being a standing that is not shared by people generally' and thus does not apply to people outside the shared practice.

The *fourth* aspect of unity is the use of the *first person plural pronoun 'we'* to refer to the social group. Whether or not an individual complies with the course of action prescribed by the joint commitment it becomes 'our' business, since it is constitutive of the way 'we' do things.⁵⁹ Thus, the unity of a plural subject is evidenced by the fact that they are usually referred to by participants with the collective first person plural 'we.'⁶⁰

2.3 *The demands of membership*

Recall that becoming a member of a social group requires certain communicative behavior: an expression of readiness and willingness that is publicly known by all would-be members to jointly commit, under conditions of common knowledge, *as a body*, to espouse a specific goal (or to hold a certain attitude, belief, etc.). The qualifier 'as a body' places heavy demands on the individuals that are committed. To jointly commit to do X jointly requires complex coordination of behavior. This

56 Gilbert, *A Theory of Political Obligation*, 171.

57 Gilbert, *A Theory of Political Obligation*, 104.

58 One might have moral reasons to act against a joint commitment to which one is party, but still remain obliged to act according to it in a political sense. Gilbert explicitly wants to detach moral from political obligations and reasons. Gilbert, *A Theory of Political Obligation*, 169.

59 Note that a joint commitment differs from mere sameness of opinions, judgments, or commitments in that it changes the standing of the parties in relation to each other whereas the latter do not.

60 Gilbert, *A Theory of Political Obligation*, 168.

might give rise to the fear of too much homogeneity and of societies in which individuals completely submit their will to ‘the whole.’ However, such fears are unnecessary. Take the following joint commitment: ‘the parties are jointly committed together to constitute, as far as is possible, a single body that believes democracy is the best form of government.’⁶¹ This commitment implies that:

‘When [members] encounter one another, they will conform to their commitment by saying things that imply that democracy is the best form of government (...). They will not publicly agree with anyone, from the group or from outside it, who speaks ill of democracy. To all intents and purposes, they will function as would the several “mouths” of a single person with the belief in question.’⁶²

The ‘single body’ that is constituted by the joint commitment is not a body of persons (something with a plurality of members that each, individually, believe what the body believes). A joint commitment to believe such-and-such does not require the parties to *individually* believe such-and-such. A joint commitment creates a situation in which individuals willingly become obliged to uphold certain ideas, attitudes, institutions, and the like *together*, as a collective body. Yet, ‘[n]one of the individuals in question is that body. It is reasonable, then, to deny that their personal beliefs are in question.’⁶³ Thus, being part of a plural subject does not prevent that members have individual autonomy of thought or action (in a certain sense). As long as members express, in a minimal sense, the behavior required by their being part of the joint commitment, they may hold individual opinions that are completely opposite to the opinion that can be ascribed to the plural subject.⁶⁴ Similarly, reasons for partaking in a joint commitment do not have to align with a member’s private beliefs and convictions, nor do those reasons have to be the same for all parties.

2.4 Large-scale social groups, societies

I now turn to Gilbert’s analysis of large-scale social groups, which is at the basis of her description of political societies. Societies⁶⁵ are large-scale social groups (plural subjects) characterized by *inclusiveness*, *impersonality*, *anonymity*, and *hierarchy*.⁶⁶ A plural subject is *inclusive* if smaller plural subjects are constituted by sub-

61 Gilbert, *A Theory of Political Obligation*, 137.

62 Gilbert, *A Theory of Political Obligation*.

63 Gilbert, *A Theory of Political Obligation*.

64 This also shows that Saunders’ fear that anything stronger than ‘pseudo-collective agency’ would threaten individual freedom is unwarranted.

65 Societies are also distinguished from other types of social groups by the fact that the joint commitment that constitutes them is a joint commitment to a social rule. Not all social rules are rules of governance. Examples include etiquette, fashion, and so on. Gilbert, *A Theory of Political Obligation*, 168, 180-81, 198.

66 Gilbert, *A Theory of Political Obligation*, 173.

sets of its members.⁶⁷ A plural subject involves a degree of *impersonality* if a particular member fails to know a particular other member personally.⁶⁸ A plural subject involves a degree of *anonymity* when particular members do not even know that certain other members exist as individuals.⁶⁹ A society is hierarchical if one can differentiate within it different levels of authority and power.⁷⁰ *Impersonality*, *anonymity*, and *hierarchy* require that a slight amendment be made to the account of social groups as presented above.

These amendments all relate to *mutuality*. Recall the concurrence condition introduced above, indicating a certain democratic quality inherent in joint commitments and the plural subjects constituted by them. Can this condition be met in the case of large-scale, inclusive plural subjects that are characterized by impersonality and anonymity? Gilbert argues that this requires that we can describe at least one process by means of which there can be common knowledge in the population of the fact that the members of the population have expressed their readiness to be jointly committed in some way.⁷¹ Thus, the concurrence condition can be met if (a) all members of the population express their readiness to participate in the relevant joint commitment with all other members of the population, and (b) this is common knowledge. This can be realized in many ways, for example through voting procedures or representational structures, but also through opinion-formation over an extended period of time. Media may play an important role in the development of readiness that is not expressed in actual agreement.⁷²

2.5 Basic versus non-basic joint commitments

An especially relevant distinction for an account of *demos* in terms of plural subject theory is between basic and non-basic cases of joint commitment. This distinction goes a long way in explaining agency in large-scale collectives. In *basic cases*, a joint commitment to do something as a body is formed by virtue of the parties' expressions of readiness to be jointly committed to do that thing as a body. In cases of *non-basic* – or *derived* – joint commitments, parties express their readiness to be jointly committed to goals that can or will be derived from a prior joint commitment.⁷³ People can be jointly committed to espouse goals as a body that are specified by a particular procedure or a representative decision-maker to which they are already jointly committed. Take, for example, the members of a

67 A society is an inclusive plural subject because it contains many smaller plural subjects composed of people who are also members of that society. Think for example of smaller plural subjects such as sports clubs, universities, groups of friends, interest groups, etc.

68 Gilbert, *A Theory of Political Obligation*, 174.

69 Gilbert, *A Theory of Political Obligation*.

70 Gilbert, *A Theory of Political Obligation*, 98-99.

71 Gilbert calls knowledge of this kind 'population common knowledge': common knowledge between people considered by those involved as members of a population individuated by means of a certain general description (such as: all people living in territory X). Only those members of the population who have the mental capacity to meet such conditions are implied. Gilbert, *A Theory of Political Obligation*, 175.

72 Gilbert, *A Theory of Political Obligation*, 175-79.

73 Gilbert, *A Theory of Political Obligation*, 140-41.

household who jointly commit to let dad ‘rule the kitchen.’ This may involve reacting to unforeseen events. This, in turn, may lead to members of the basic joint commitment becoming jointly committed to non-basic commitments, the implications of which they could not be aware of beforehand. This way, many non-basic commitments (of which the parties may not be aware yet) may emerge from one basic commitment.⁷⁴

2.6 From social groups to political societies

Gilbert accounts for political communities by further amplifying her account of social groups. These amplifications enable her to argue that when it comes to political communities, a joint commitment of ‘the people’ is taken to underlie whichever kind of rule is in place.⁷⁵ In other words, that the source of political authority, *in every case*, lies with *the people*.

Political societies are societies with differentiated political institutions or institutions of governance. These institutions all fall under the broad term ‘governing rules’ which, roughly, are meant to settle matters that need to be settled for the peaceful progress of life and are required for the maintenance of social order.⁷⁶ Gilbert distinguishes three forms of political societies, each of which is characterized by its own kind of institutions. These institutions are described in terms of basic and non-basic social rules. Thus, Gilbert distinguishes three forms of political society with three corresponding kinds of non-basic rules. The latter are, ascending in complexity: governing rules, rules stipulating some person’s or body’s ruling capacity, and rules of governance (or constitutional rules).⁷⁷ A population P has a social rule, argues Gilbert, ‘if and only if the members of P jointly accept a requirement of the following form: members of P are to perform action A in circumstances C.’⁷⁸ In line with my earlier remarks about representation and the constitution of a first person plural *we*, I take Gilbert to mean that a population has a social rule if members of P are jointly committed *as a body* (‘jointly’) to the fact that *they* (‘we’) are to perform action A in circumstances C. In more common parlance: a population has a social rule if *the people as a whole* rules over *itself as a whole*.

Social rules should be understood as the rules *of* a given population, i.e., as ‘their’ rules, to which *they* feel visibly bound and which *they* feel obliged to uphold amongst *themselves*. The plural subject account explains the authority of rules in a community and how they ground a standing for its members to meet transgressions of those rules with punitive pressure.⁷⁹ Therefore, Gilbert incorporates a foundational joint commitment into her account of social rules and believes that ‘an account of social rules (...) can help [understand] “ground-level” governing

74 Gilbert, *A Theory of Political Obligation*, 141n25.

75 Gilbert, *A Theory of Political Obligation*, 297.

76 Gilbert, *A Theory of Political Obligation*, 186-87.

77 Gilbert, *A Theory of Political Obligation*, ch. 9.

78 Gilbert, *A Theory of Political Obligation*, 197.

79 Gilbert, *A Theory of Political Obligation*, 195.

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rules [and] other social rules that are constitutive of political societies as well.⁸⁰ Participation in a joint commitment to accept as a body a social rule does not require full-blown acceptance of that social rule – at least not as an individual person. The normative structures that come with joint commitments may generate *individual commitments* that are not *personal commitments*. Relevant is that *we* require that *we* are all to act according to the social rule and that this requirement is constituted by a joint commitment to do so as a body. With this account, we can understand political institutions as being constituted by joint commitments. It suggests that any rule can be legitimate, as long as its legitimacy continues to be acknowledged in the actions and communications of the people that are at its basis, i.e., the people that jointly committed to it. In other words: on this account, any kind of rule can be instituted (and can always be rescinded), but it is always instituted by popular sovereignty, i.e., in a certain sense democratically.⁸¹ It seems that self-rule is present in the ontology of social groups and thus in political communities of any kind.

Gilbert's framework suggests that the people (as a whole) are, ontologically speaking, at the basis of political institutions in a fundamental way. Whenever a social group of already jointly committed people (a social group or society) commits to a set of differentiated institutions of governance, we should understand the social group *as a whole* to express readiness and willingness to commit itself to the idea of self-governance through political institutions. The people constituting this political society subject themselves to a newly erected normative framework – the political institutions – that endows them with certain rights and obligations. The social group as whole belongs to the foundational commitment to institute a political society and as such, all of its members have a primordial right or authority to set rules. The point here is that *all members of the social group* have a right of political participation. Often, their foundational commitment is exactly to institute what we might call 'rule generating rules,' i.e., a legislative (and simultaneously an executive) body. These may then decide (and enforce) additional rules, for example on which subset of the group gets a right in setting new rules, on policies about gaining access to the society, et cetera. However, in some cases those who have committed themselves (the social group or society) to political rule (the political community) have *excluded themselves* from participation in or access to the political community. They have created a paradoxical difference between rulers and ruled. However, since all these rules are *derived*, they gain their legitimacy from that initial joint commitment to self-governance through a set of political institutions in the first place. According to the account of *demos* that shines through in Gilbert's work, most democratic contestation is about attempts to bridge the gap between the right to political participation every member of a political society has by virtue of being a constitutive member, and his or her rights (and hence access to political participation) as defined by a set of derived rules that has developed over time.

80 Gilbert, *A Theory of Political Obligation*, 197.

81 'Democratically' here does not mean instituted through conventional democratic institutions.

3 The demos as a plural subject

In this concluding section I present an account of the *demos* (of political communities) on the basis of the conceptual framework discussed above. This account offers a new perspective on the questions concerning the *demos* that were raised in the first section. It follows the sequence of the criteria summarized there.

3.1 Distinguishing between social and political communities

Recall that the concept *demos* usually denotes ‘the political people’ of a community, i.e., the people who have ‘a say.’ The political, in Gilbert’s framework, simply is the way in which the social organizes and governs itself. Following Gilbert’s account, rule is only legitimate if it is constituted by a joint commitment by the people for themselves and it only remains legitimate as long as it is continuously reaffirmed in the constitutive people’s communicative actions.⁸² This legitimation does not rest on normative theories or procedures, but on the communicative practices of the people that have constituted the rule in question. The political thus occurs in and around the act of jointly committing, i.e., in mutually expressing readiness and willingness to espouse political institutions (broadly understood). Of course, the relevant issue is *who* should participate in the political. Gilbert’s emphasis on conditions of concurrence and mutuality suggest that *all* members of a given society are, in a very basic way, also the members of its political community, at least in the sense that they all are (and must be) understood to be party to the joint commitment that is constitutive of that political community. In this sense, the social and political community have the same extension.

A plural subject account of political community holds that the social people (in the sense of the ‘social community,’ i.e., a complex group of interacting people and groups) constitute a political community (i.e., a specific subgroup of people involved – broadly speaking – in the decision-making about the goals and laws of the first group of people) when they jointly commit to uphold as a body a particular set of institutions of governance which they consider theirs. I propose to call the social community the *basic demos*. In its joint commitment to govern itself through political and legal institutions, the *basic demos* enacts a *political community* or *political demos*. The latter is the differentiated plural subject that decides on community rules and consists only of those individuals that actually have the right to participate – that ‘have a say’ – in the decisions about the rules and institutions of the society of which it is the *political demos*. Importantly, the people who are part of the political community are also part of the social community. A political community usually assigns particular statuses to society’s members and formalizes their relations. People may or may not agree with the way in which their position in society is formalized. Groups who are excluded from the franchise may for example strongly disagree.

82 Gilbert, *A Theory of Political Obligation*, 180.

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The social community or *basic demos* is thus the constitutive group *committing to* (and thus constituting) the joint commitment in which its political institutions are espoused as goals, values, attitudes collectively to achieve. Depending on the contents of the basic joint commitment to institute political rule, members of the *basic demos* may become excluded or they may become excluded in a later stage by decisions of the *political demos* they have produced and committed themselves to. Similarly, aspiring members may be rejected access to the social community (the *basic demos*), or its political community (*political demos*).

Democracy, understood as collective self-rule, demands that the *political demos* consisting of people participating in the creation of rules, the orientation of the community, and the regulation of forms of interaction between the people should themselves be part of the social community. Moreover, they should let themselves be oriented by all those to whom the rules they fabricate apply. Because the social community consists of the *basic demos* that legitimized the political rule to which they themselves have committed, it retains the right to adjust the composition and distribution of rights of the *political demos*, a right that should be institutionalized in the rules that govern the composition and competences of the political institutions. However, can joint commitment also function as a normative membership criterion of the *basic demos*?

3.2 A normative membership criterion

Gilbert's theory offers clues for a normative justification of the demarcation that takes place between members of the *demos* and non-members. We must in this respect distinguish between an 'ontological' membership criterion that covers what membership of social groups means, and a normative membership criterion for determining who should be member of the basic *demos* and/or political community. That is, we must distinguish between membership of a *demos* as a *political act* consisting of an expression of readiness and willingness and the *normative justification* for membership (or exclusion from it).

First and foremost, the plural subject account demonstrates that normativity is present in the ontology of the social domain, as part of the social structure of social and political communities. Whenever people jointly commit, a normative structure comes about that generates a special, normative relation between these people. This normativity persists in and influences processes within plural subjects (societies). These can formulate, through and by their *political demoi*, their own – derived – normative requirements in addition to those present in their original, basic commitment. While aspiring members are always required to commit to the original basic commitment that is already in place – which, if the social community recognizes a willingness on the side of the aspiring member and is mutually responsive to it, should be sufficient to grant aspiring members membership⁸³ – a political community may come up with all kinds of normative demands and criteria for (aspiring) members, or they may refuse to include any

83 Of course, this will usually be mediated by legal procedures etc., which will usually, particularly in a functioning democracy, be a reflection of society's expressed stance towards aspiring members.

new members at all. All this, however, is not normativity in the sense of a normative democratic theory. Plural subject theory provides no ‘independent’ normative criteria by which it could be determined who should and who should not be allowed to participate in particular plural subjects. In this sense, Gilbert’s model only seems to facilitate membership criteria put forth by the members of existing political communities. It seems to offer no philosophically justified normative membership criterion that can provide external justification to the factual demarcations of social groups and political communities. Yet, I believe that Gilbert’s framework shows that there are normative criteria immanent in the relationship between the social and the political community. Unfortunately, her theory merely reflects these criteria and does not develop a normative theory based on this relationship. It does, fortunately, offer clues and keynotes for such a theory.

I take Gilbert’s framework to demonstrate that *if* a person is a member of a social group, they have, by virtue of their membership of the *basic demos*, a *right* to participate in that social group’s political community (*political demos*). If this right is denied to them, by virtue of that same membership, they have a standing to demand inclusion in the *political demos*. Thus, the relevant question becomes primarily *who* can claim inclusion in the social community, and only secondarily how one can become part of that social community’s political community. If one is included in the former, one has a standing to claim inclusion in its political community, *even* if existing derived rules ordain one’s exclusion. Let me explain. An interesting facet of the joint commitment model is that it explains that the source of political authority in every case lies with ‘the people.’ Whatever the kind of government, the important point is that it lacks the authority required to rule if the population that it rules does not actively endorse that rule as *theirs*.⁸⁴ Recall that Gilbert understands the *basic demos* to consist of all parties to the joint commitment that institutes political institutions. The mutuality (concurrence) that is required implies that *all* members of a given society are *also* the members of its *basic demos*. I interpret this in the sense that they have a right to not only be part of the *basic demos* that institutes the political community, but also to be part of the political community itself because that is the only way in which they can remain the constitutive force of the political community once there is a differentiated political community in place. This, in turn, means that at a fundamental level all members of society have an equal standing to make demands and utter rebukes to the political institutions of their society because they are to be understood as resulting from *their* joint commitment. Ultimately, ‘the people’ can always rescind that commitment.

3.3 Agency and internal and external cohesion

Recall that the demos, in order to be able to act as a democratic collective agent, must have the capacity to be organized in a democratic manner, so that it can have attitudes and can act so as to pursue those attitudes. This requires a certain democratic organizational structure (rules, procedures, and conventions) by

84 Gilbert, *A Theory of Political Obligation*, 214.

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which the individuals that constitute the *demos* coordinate their decision-making and take actions as a collective. Gilbert's plural subject account offers a fundamental account of collective agency that goes beyond what List and Koenig-Archibugi offer. The plural subject theory shows that collective agency starts at the level of persons who start acting together. The conditions that must be met in order for a collection of individuals to be able to espouse, as a common goal, attitude, belief, et cetera, ensure that to become a social group is to become a plural subject, i.e., a collective capable of agency. Thus, any social group is capable of state-like agency. Plural subjects are collective bodies that are organized internally, that possess unity, reflexivity, can express their beliefs, desires, et cetera, and are *capable* of political organization. It is through political organization that the agency of a large-scale collective, i.e., a political community, is accounted for. Social and political institutions are the organs that provide the capacity for this kind of agency. Joint commitment plays a role in accounting for both agency and normativity at the ontological level of social groups and structures. By means of creating a political body and expressing commitment to it, it also accounts for the agency and normativity at the level of societies and political societies.

Taking up the categories of List and Koenig-Archibugi, a bit more detail can be provided. Gilbert's concurrence criterion, amplified for large-scale social groups, ensures that they meet the requirement of external cohesion. It lays the basis for an understanding of participation and interaction of individuals in a shared public sphere (deliberation) and for institutionalization of collective decision-making procedures, resulting in the formation of coherent, collective attitudes. Adapted to fit large-scale collectives, Gilbert's theory provides room for individual freedom of thought and action while meta-agreements *and* substantive agreements on fundamental issues can still be sustained. Meta-agreement requires that a set of individuals agrees on how to conceptualize a particular issue within a shared cognitive or normative space, while not necessarily agreeing on it substantively. Since a joint commitment allows individuals to have different attitudes, opinions, and preferences than those of the plural subject it constitutes, to be a member of a plural subject in a sense *is* to be in a meta-agreement. Again, the normative structure that comes with a joint commitment is essential. Individuals will of course have and retain personal preferences, but as soon as they enter a joint commitment to solve issues a certain way, they are obliged to act accordingly.

3.4 *The boundary problem again*

Recall that the boundary problem concerns the normative question *who* should take part in the democratic decision-making process and on what grounds. Based on my interpretation of Gilbert's framework, I will now discuss the boundary

problem in terms of the normative democratic ideas of composition, performativity, and political revisability.⁸⁵

By understanding both *basic demos* and political community (*political demos*) as constituted by joint commitment I introduced a way of conceptualizing the composition and performance of the *demos* in a consistent way. In Gilbert's framework, group membership and group agency are directly related to one another. To be a member of a social group is to be a member of a collective agent. This, however, is not a theoretically separate normativity of membership. The latter seemed absent in Gilbert's framework, but I have argued that it can be distilled from it and that it can be fruitfully connected to existing normative conceptions of engaging with non-members. The main democratic problem is that there always appear to be people who are illegitimately excluded from political participation. From Gilbert's plural subject theory, we derived that as long as there is a joint commitment underlying (or can reasonably be assumed to underlie) the rule in place, there is always already a form of self-legislation implied. However, this is not the whole issue; exclusion from the political community, both within the society and with respect to people external to it, may still occur. Within the society, every person must be understood to be a party to the foundational joint commitment that institutes its rule. This indicates that every claim to self-governance (every claim for – more – democratic inclusion) should be understood as a rightful attempt to close the gap between the participation that is granted to the *claiming individual or group* by derived rules that have been created over time on the one hand, and the participation to which they have a right by virtue of being party to the original joint commitment on the other. The latter often becomes concealed, whereas the former is often made explicit in the political domain and can therefore be contested. This contestation could be understood as recourse to a more fundamental right which, as a matter of principle, every member possesses.

85 As one of the anonymous reviewers pointed out, there seems to be some overlap between the plural-subject based approach to the boundary problem and approaches that fall under the umbrella of 'practice based arguments' / 'practice dependent theory' as developed by, e.g., Andrea Sangiovanni ('Justice and the Priority of Politics to Morality,' *The Journal of Political Philosophy* 16, no. 2 [2008]: 137-64). Both approaches stand with one leg in political reality and with the other in normative theory. Practice-dependency arguments seem however to focus on the epistemological dimension of people's shared understanding of the functional role of certain practices in relation to normative (moral) principles. Practice-dependence is ultimately about the aptness of normative principles for regulating a practice given that practice's functional role *as understood by its participants*. If we take the 'delimiting the *demos*' to be a practice, this article has argued against purely normative approaches to that practice (e.g., approaches relying on normative principles of composition). Instead, it has argued that conceptualizing the practice requires attention to both a normative and an 'agentive' dimension, with the latter being at least partially *functionally* determined by the understanding of the functional role of the practice by its practitioners (a *demos*' function is to allow self-government). It has focused on a (social) ontological (instead of an epistemic) dimension of this practice and fleshed out the normative implications of this ontology. These suggested the validity of certain normative principles (e.g., popular sovereignty, equality). But these did not arise, as the adherents of practice-dependency would have it, from the *shared practice*, but from the underlying structures *enabling* such a thing as a shared practice in the first place.

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Thus, the normativity of membership is present at the level of the social-ontological structure of group formation, and it is present – derived – at other levels of societies in the form of criteria regarding which members should be granted participation in the political community and which outsiders qualify as potential members. Regarding the normative composition of the *demos*, we can now distinguish between the normative-theoretical issue – who *ought* to be included in a given *demos* – and the factual normativity that is entailed in the ontology of political communities and their constitution. The latter is described as something that occurs in the ontological structure of group formation. The former revolves around the question which members of that society *should* have a say in its politics, and around the question which non-members are allowed entrance and on what grounds. Political communities will inevitably take decisions that influence affected outsiders (who are not party to the joint commitment). It is unclear whether the central issue in recent debates on how to justify such decision-making can be treated *within* Gilbert's framework. Nevertheless, using Gilbert's framework to conceptualize the *demos* adds some important insights to these debates. For example: it adds that inclusion in a *political* community is dependent upon inclusion in the *social* community underlying that political community. This allows us to say a bit more about inclusion in a *demos* and its agency than we can on the basis of Abizadeh's framework. According to Gilbert's framework, inclusion in a *social* community, which occurs in everyday communicative interaction, may already give non-members a standing to demand inclusion – in whatever form – in the *political demos*. This still leaves open problems, such as what if the social community turns a blind eye to those aspiring to social inclusion? The case of refugees might be exemplary. On Gilbert's model, once refugees are 'in,' for example if they are housed in an asylum center and interact and cooperate with a number of local individuals and organizations, they attain a social status and become part of the (or several) social communities (plural subjects) that are regulated and governed by the *political community*, which, based on democratic principles and principles derived from Gilbert's plural subject theory, would give them a standing to make demands and utter rebukes and have their voice heard by the political community. In reality, this is very often not recognized as such.

It might appear unsatisfactory that no stronger normative membership criterion can be provided. Perhaps there is a way to spell out the implications of the 'ontological' normativity of Gilbert's account a bit stronger. Recall that at a basic level, the plural subject theory suggests that both *during* the establishment of a political society and once a political society is in place, all internally affected should have a more or less equal say because the legitimacy of the system of rule depends on their communicative agreement to it. Moreover, we saw that exclusion (through laws) of those (originally) included in the *basic demos* could give rise to claims of inclusion by those now disenfranchised *on the basis of their being affected by rules that they could no longer consider their own*. Without too much of a stress of the imagination, we may find here a link to Habermas's discourse principle which states that rules are only valid if all those affected by them could have accepted

them in rational discourse.⁸⁶ Of course, the discourse principle is *moral*, whereas Gilbert's rights and standings are *non-moral* and we might say *political*. But Habermas also developed a *political* derivative of the discourse principle which restricts its scope to community-internal discussion: 'only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted.'⁸⁷ Like Gilbert's framework, these principles express a commitment to a fundamental equality between people, without disregarding the existence of existing and local political communities. While Habermas's principles are not meant as compositional criteria, this might not be problematic at all. We might interpret them as indicating that existing communities have a *moral duty* to engage in fair and rational communication with affected outsiders, without having to grant them membership by virtue of their affectedness. Instead, affectedness becomes a ground for inclusion in *communicative processes*, which, if fairly designed, institutionalized, and legally entrenched, could lead to a reflexive process of law-making in which communities seek a balance between their own interests and those of affected aliens who, indirectly, receive a legal standing with respect to communities of which they are not members. This is not meant as an exhaustive treatment of this possibility, but merely as an indication of a possible way to develop the implications of the plural subject approach to existing normative democratic theories.

To conclude this part regarding membership: because group formation is modeled on joint commitment, the boundaries of membership of any group can be understood as the result of a political decision (even if they are factually constituted by metaphysical facts or appeals to pre-political notions – in such cases the decision not to change those boundaries is political). In any case, we can distinguish between the initial members of a community and later revisions of the collective body. Those individuals that are party to the original joint commitment and to the society upholding that fundamental joint commitment – the *basic demos* – are the members of the political society it constitutes.⁸⁸ They may, or may not, arrange how others (children, strangers, outsiders) are treated as parts of the social entity. These others are not members of the political society. Or, better put, in a certain sense they are part of the joint commitment (they may have openly expressed their willingness to join the joint commitment), but they have not been *formally recognized* as members. They may express the desire to become formally recognized members of the political society. This requires that they become acknowledged participants in the joint commitment that constitutes the society in question. In a second step, they should then also become party in the derived joint commitment that constitutes the political community of that society. Within the political community there may (should) exist procedures for both admissions. The initial members may have anticipated such events by institutionalizing a set of procedures, arrangements, et cetera, to deal with the exigencies of

86 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1996), 107.

87 Habermas, *Between Facts and Norms*, 110.

88 Habermas, *Between Facts and Norms*, 239.

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the included and excluded, in order to regulate the admission of new members or they may have not. My considerations of the normativity implied in the ontology of social groups have revealed, however, that if such procedures are (perceived as) lacking or are non-existent, non-members have a standing to challenge the status-quo and demand inclusion. Such demands for inclusion *ought* to be taken seriously by existing *demoi*. The relevant point of the conception of *demoi* put forth here is that it conceptualizes any *demoi* as always already bounded (in terms of a joint commitment) *and* is also compatible with the idea that it is normatively unbounded.

Hence, the plural subject account of *demoi* shows that normative compositional criteria such as Abizadeh's unbounded *demoi* or the all-affected principle are conceptual normative ideals that *should* guide the political decision-making of existing *demoi*, who *should* continuously reflect on and revise their own delimitation by sole virtue of their being constituted through joint commitment. This approach to membership and collective agency does not *solve* the boundary problem. Neither does it make the boundary problem *disappear*. But although the boundary problem *cannot* disappear because a purely democratic constitution of the *demoi* is impossible, the ontology of plural subjects strongly suggests that communities *should* offer non-members the opportunity to participate in the continuous re-evaluation of (the boundaries of) their community.