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Subjection and inclusion: on Ludvig Beckman's *The Boundaries of Democracy*

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ABSTRACT

Ludvig Beckman's *The Boundaries of Democracy* offers a sophisticated account of the boundary problem, developing a version of the all-subjected principle understood to involve relations of 'de facto authority'. I explain the central claims of the book, raise some problems, and suggest some ways in which I think the account could be fruitfully further developed.

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Ludvig Beckman's new book, *The Boundaries of Democracy*, addresses the 'boundary problem': the question of who ought to be entitled to participate in collective decision-making processes.¹ This question is of great significance, since which decisions are made will vary depending on who is included. Moreover, collectively made decisions lack democratic legitimacy if they fail to include the appropriate set of agents. According to Beckman, however, 'centuries of democratic thought have as yet failed to produce a convincing answer to this question' (p. 2).

Beckman develops and defends a version of the 'all-subjected principle', which holds that the boundaries of the demos ought to be drawn according to who is subjected to binding decisions. While there exists a substantial literature on the all-subjected principle (as well as alternative principles of inclusion), Beckman offers an important contribution.² Drawing on the work of legal theorists, especially Joseph Raz and H.L. A. Hart, Beckman develops a novel and sophisticated account of what it means to be 'subjected' in the sense relevant for the boundary problem. The project, then, is to make progress on the boundary problem by drawing from a 'long-lasting issue in the philosophy of law that arguably has significant, and thus far overlooked, implications for democratic theory' (p. 5).

Beckman states his aim is 'explanative, not justificatory'. This means he does not try to motivate the all-subjected principle by critiquing alternatives; instead, the aim is to

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¹All references are to Beckman (2023), unless otherwise noted.

²Indeed, Beckman's previous work is a significant part of this literature. See (Beckman 2009; 2014).

‘render a concept’—subjection—‘more precise in order to make it fruitful with regard to the target theory’ (p. 6). This is a welcome approach, I think, for at least two reasons. First, there is already a well-developed literature critiquing other approaches to the boundary problem, especially the ‘all-affected-interests principle’. And second, illuminating the nature and significance of subjection does not seem to *require* pointing out flaws with the other principles of inclusion. The nature and significance of subjection for democratic theory is worth exploring in its own right, and as some suggest, it could be that the all-affected-interests and all-subjected principle are actually compatible, both having roles to play in democratic theory (Erman 2022) (in fact, Beckman seems somewhat open to this: although not entirely sympathetic, he does not rule out the view that the subjection is only a sufficient, but not necessary, condition for inclusion. See pp. 13–14).

The central idea of the book is that ‘the subjects of decisions made by de facto authorities should presumptively be included in the decision-making process’ (p. 14). To understand this idea, we need to clarify the meaning of ‘de facto authority’ (drawn from Raz) as well as the connected notion a ‘normative system’ (drawn from Hart’s notion of a legal system).

De facto authority involves ‘a relationship between agents such that one is entitled to make decisions that others have duties to comply with’ (p. 27). These duties of compliance are ‘content independent’, in the sense that their bindingness does not depend on what they involve, for instance, whether they are consistent with morality or prudence. Further, de facto authorities generate, in Raz’s terminology, ‘exclusionary’ reasons for action: they rule out other considerations that might count in favour acting otherwise – in the way that reasons for breaking the speed limit (*e.g.*, it will get one to work on time) are excluded by the fact that doing so is against the law. In addition, de facto authority differs from ‘naked power’ or force, such as that possessed by a gang of terrorists. De facto authorities at least *purport* or *assume* to be legitimate – to supply normative reasons for action – but they need not be so in fact (pp. 28–29).

There are two necessary and jointly sufficient conditions for de facto authority: first, that an association *professes* to legitimately create duties of compliance for its members; and second, that its members – or ‘enough’ of them—*believe* in the association’s legitimacy. ‘From the combination of claimed legitimate authority and belief in legitimate authority a particular relationship materializes between the association and its members. The association becomes a “de facto authority”’ (p. 28).³ Further, Beckman specifies that de facto authority depends on a system of rules that determine which agent(s) can bind others. ‘An entity that claims legitimate authority is a de facto authority only if validated by rules. The claim to legitimate authority is premised on rules that *confer* the normative powers that it claims to possess.’ (p. 32). These ‘power-conferring’ rules, using Hart’s terminology, are ‘secondary rules’—or ‘rules about rules’—‘that allocate the normative power to make decisions that determine the rights, duties, and other normative relationships of members’ (p. 32). In this sense, de facto authority involves a ‘normative system’ comprised of both primary and secondary rules.

³Interestingly, Raz thinks either condition is sufficient. See pp. 29–30.

It is worth noting that Beckman's notion of a 'normative system' has fewer requirements than Hart's notion of a legal system as a union of primary secondary rules.⁴ On Hart's view, the presence of *three* kinds of secondary rules – rules of change, adjudication, and recognition – are necessary for the existence of a legal system. On Beckman's view, by contrast, it appears that the only secondary rules required for the existence of a normative system are those that purport to confer legitimate authority, which are similar in function to Hart's rule of recognition (but for discussion and distinction, see pp. 56–61).

As such, normative systems as Beckman understands them are quite widespread. While legal systems are paradigm cases, '[t]he United Nations is another example and so is the International Chess Federation, the local scout club, and numerous other local, national, and international associations'. (p. 4). In addition, there are informal instances, such as group of friends who agree to make decisions on some set of issues and adopt rules about who can do so authoritatively (p. 33; see also p. 132, for a similar example involving rules of etiquette). Beckman suggests that all these kinds of association involve subjection in the sense relevant for the all-subjected principle. A salutary feature of his account, he suggests, is its generality, remedying a tendency in the literature to see the 'all-subjected' principle as applying too narrowly, solely to the state.

Nonetheless, the legal systems of territorial states remain the central instances of de facto authority, and much of the book aims to advance our understanding of the nature of the subjection they involve. The book contains a rich discussion of the implications and limits of subjection to the state's authority, covering issues of extraterritorial law, universal jurisdiction, and international taxation (Ch. 6), as well as border controls, secession, and concerns about the historically contingent, morally dubious, and thus potentially illegitimate nature of existing legal systems (Chs. 7 and 8). While I cannot in the space of this short review discuss the full range of arguments and implications, I want to examine one issue which seems to me to be particularly worthy of further attention.

The issue concerns the so-called 'democratic borders argument'. Some theorists argue that foreigners who live outside any state are subjected by border controls; and as such, democratic legitimacy requires that foreigners be entitled to take part in the decision-making processes that determine those policies (Abizadeh 2008). Beckman's reply is that states do not have de facto authority over foreigners outside their territory, because states do not claim to give *exclusionary* reasons for compliance to foreigners (pp. 100–101). The thought is that it is incoherent to think that a person could be subject to exclusionary reasons for compliance both from the state in which they inhabit, as well as a foreign state:

If legal system X provides A with exclusionary reasons not to p, legal system Y cannot simultaneously provide A with exclusionary reasons not to p. Exclusionary reasons are reasons *not to act* on the basis of any other reason... This is significant as it means that a person can only be bound to comply with the authority claimed by one unique legal system. The claim to legitimate authority by the legal system intends to deny all competing claims to authority. (p. 74).

To be sure, this seems to be a good point for a wide range of claims for compliance. If the state I inhabit gives me exclusionary reasons, say, not to murder or steal, it indeed

⁴See Hart (1961), Ch. 5.

would be impossible for a foreign state to also give me exclusionary reasons to comply with the same directives.

The problem, though, is that states do not give exclusionary reasons to their members about whether and on what terms they can enter other states. As such, there seems to be no incoherence involved with a foreign state being a *de facto* authority over a non-resident *only* with regard to its claims to comply with their border controls. In general, it seems that a person can be subject to various *de facto* authorities insofar as they do not regulate the same choices. Consider, in this regard, Beckman's view that there are a range of *de facto* authorities such as the 'International Chess Federation and the local scout club.' Presumably, these associations can be *de facto* authorities alongside the legal system because they regulate different sets of choices, and thus do not provide conflicting exclusionary reasons.

Another response to democratic borders argument is to say that border controls do not subject people in the same 'life shaping' way that one's own legal system does, and so there is no claim to inclusion (Cf. Miller 2020, 5).⁵ There seems to be something plausible about this thought: claims to inclusion are conditioned by the kinds of choices that are regulated. This makes me wonder if Beckman is right to think that subjection to *any* kind of *de facto* authority generates even a *presumptive* claim to inclusion (*i.e.*, one that can be outweighed, but still exists in the first instance). Take his example of the International Chess Federation. Since this *de facto* authority regulates a fairly trivial set of choices, and because it is relatively costless to exit the association (or not join in the first place), it is not clear to me that its members have a presumptive claim to inclusion in its decision-making processes. The legal systems of territorial states, by contrast, regulate people's basic liberties, and it is very costly to exit them. The 'life shaping' and more or less inescapable nature of subjection over these choices seems to be what generates a claim to inclusion.

On this basis, I think Beckman's account might be fruitfully developed by attention to these dimensions of subjection. This could be particularly interesting in the cases of corporations and workplaces – instances of *de facto* authority that are costly to exit and regulate significant choices of their members, functioning in some ways like states (González-Ricoy 2022). Perhaps, then, the view Beckman develops might be interestingly applied to issues concerning workplace democracy. This could be a compelling way to support his idea that we should want an account of subjection that applies beyond the state, across a variety of associations.

I learned much from this book. It is clearly and carefully argued and full of interesting applications and examples. I am excited to see further developments of the account put forward and its implications for democratic theory: on the question of workplace democracy just mentioned, but also, for example, whether and how the account generates implications for the inclusion of non-human animals, children, as well as future generations.

⁵I am open to the possibility, however, that in some cases border controls might be 'life shaping', as in cases of family reunification. Thus, it could be that in those cases, a claim to inclusion is present where it is not in relation to other border controls that do not significantly affect a person's life.

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