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The "Other" Boundary Problem

Fictions of Popular Sovereignty at the State's Edge

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> The words subject and sovereign are identical correlatives, whose meaning is combined in the single word "citizen."
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> –Rousseau[1]

> Most historically established systems of identity veil the element of arbitrary conquest in the differences they create and negate.
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> –William Connolly[2]

Popular sovereignty suffers many fictions, principally regarding equality – the idea that races, ethnicities, genders, have equal voice in the demos – a moral harm that has garnered considerable scholarly attention. This focus on discrimination based on ascriptive characteristics is warranted, but overlooks another form of inequality, based on *geographical dispersion* not all parts of a territory count equally, nor do the voices of the people who live therein. In this chapter, I address these concerns through an examination of borderland dwellers – citizens of the polity who reside at the outermost territorial reaches of the state. To some degree, the fact that citizens of the borderlands do not have equal voice in the polity is not surprising. We recognize that peripheries are dominated by their centers, and state institutions often reach the peripheries but dimly – like light from a bulb lit in the capital, to borrow Benedict Anderson's propitious phrase.[3] This chapter makes a further point, that this is not simply an artifact of imperfect administration, but rather an inherent feature of the nation-state and the zero sum nature of bordering.

By approaching the problem of borders in this manner, this chapter departs from its classic treatment in political theory, via the so-called "boundary

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[1] Rousseau, *Basic Political Writings*, 196.
[2] Connolly, *Identity/Difference*, 68.
[3] Anderson, *Imagined Communities*, 19.

problem,"[4] that from the standpoint of democratic theory, borders are arbitrary and thus reveal the fault line between democracy (which asserts a bounded polity) and liberalism (which is in principle unbounded). As Frederick Whelan explains, democracy "cannot be brought to bear on the logically prior matter of the constitution of the group, the existence of which it presupposes."[5] Thus, democracy in the nation-state is an incomplete ethical project, as the border structures the lives of people on both sides, but people only have agency over decisions in their own state. Those on the outside frequently risk their lives to enter states which others, just a few miles away, consider their entitlement merely by the accident of their birth.

This chapter takes a different approach to the problem of the border – highlighting harms inherent to *inclusion*, rather than *exclusion*. Rather than considering how borderland citizens are excluded from the decision-making process of neighboring states, it asks: Can a border population really be said to be sovereign within *its own* state? On paper, peripheral citizens are identical to any others. But in fact borders often represent the interests of the (central) polity *against* its periphery. This is part of the nature of border zones, in which rights and protections are greatly restricted, making citizens at once the *subject* of security protocols, as well as their *object*. Additionally, while we commonly accept that borders forge division between polities, they also enforce uniformity within them. Through the act of bordering, those on the outside are made into barbarians; those on the inside are brought under control – or, as Sheldon Wolin puts it, they are "domesticated" to condition their loyalty.[6] As such, much state power at the border is aimed not at outsiders, but rather at the border community itself. By detailing the nature and extent of this authority, this chapter aims to identify the challenges it poses to popular sovereignty.

It unfolds as follows. The first section looks at the problem of popular sovereignty with a focus first on its conceptual grounding in equality, then how this literature fails to consider spatial and geographical dimensions of equality and pathologies of state making at the periphery. These issues are common to borders in general. The second section provides some context to this problem through an in-depth illustration of security in the US–Mexico borderlands, drawing upon evidence from fieldwork conducted from 2011 to 2014.[7] It foregrounds three features: *surveillance*, or the extensive use of physical and technological infrastructure in the borderlands; *heterogeneity*, the multiple forms of jurisdictional authority, including federal, state, and local forces, as well as their expanded powers; and *vigilance*, the increased role that citizens play in law enforcement. The third section utilizes this empirical material to identify two

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[4] Whelan, "Democratic Theory and the Boundary Problem"; Goodin, "Enfranchising All Affected Interests."

[5] Whelan, "Democratic Theory and the Boundary Problem," 40.

[6] Wolin, "Fugitive Democracy" [in *Democracy and Difference*], 33.

[7] For a more detailed treatment of this empirical material, see Longo, *The Politics of Borders*.

discrete fictions of popular sovereignty in the borderlands. The first pertains to governance, that authority in the borderlands is frequently unaccountable to democratic control – the fiction of uniform authorship. The second pertains to state-citizen relations, as center-driven policies are designed not in the name of peripheral citizens but against them – the fiction of equal concern. The conclusion returns to the question of popular sovereignty and borders broadly.

POPULAR SOVEREIGNTY REVISITED

Popular sovereignty is the principle that state authority derives from popular consent, usually associated with the thought of social contract thinkers like Thomas Hobbes (1588–1679), John Locke (1632–1704), and Jean-Jacques Rousseau (1712–1778). By choosing to enter into organized social cooperation with others, people surrender certain natural freedoms in return for protection against the dangers inherent to the state of nature. In doing so, they surrender natural inequality for a state of (formal) social equality, which in turn creates the conditions for a legitimate social order. The people do not necessarily draft laws or perform the tasks of government (except through elected representatives). Rather, they are sovereign because they have the final say in government decision-making, up to and including the right to depose the government and replace it with a new one. In this way, the people are sovereign, they are the "supreme authority" (as per Bodin).

   This position evolved over time. Hobbes's *Leviathan* (1651) posited what we might think of as a thin version of popular sovereignty, in which the people used their authority to name an individual (or group) as the sovereign, after which they would be broadly subservient. Locke's *Second Treatise of Government* (1690) expanded this definition to include constraints such that in the event that the sovereign was not acting in the public good they could be legitimately deposed by a popular uprising. For Locke, final judgment always rests with the people – indeed this is what gives popular sovereignty its meaning:

Who shall be Judge whether the Prince or Legislative act contrary to their Trust? … To this I reply, The People Shall be Judge … If a Controversie arise betwixt a Prince and some of the People, in a matter where the Law is silent, or doubtful, and the thing be of great Consequence, I should think the proper Umpire, in such a Case, should be the Body of the People.[8]

Rousseau took this insight farther in his *Social Contract* (1762), as sovereignty could only be manifest in the "general will" and thus all legislative power was vested in the people – an authority that derives from the social contract itself and cannot be alienated or represented. Most importantly, it is with Rousseau that popular sovereignty is most clearly linked to *equality*, which sits at the center of the principle:

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[8] Locke, *Two Treatises of Government* [2014], 427.

Every act of sovereignty (that is, every authentic act of the general will) obligates or favors all citizens equally … What is an act of sovereignty? It is not a convention between a superior and an inferior, but a convention of the body with each of its members … So long as the subjects are subordinated only to such a convention, they obey no one but their own will alone.[9]

This final formulation, in which legitimate rule is simply the expression of the people – and all the people *equally* – most captures the spirit of the term as it is understood today. The exercise of popular sovereignty is the only way political union can retain legitimacy, and the people are only sovereign if they are equal and active in articulating the general will.

That equality plays a central role in popular sovereignty is now sacrosanct – indeed it gives democracy its principle normative value. This is never clearer than in the writing of Robert Dahl, for whom democracy and equality are essentially coterminous, as democracy derives from what he calls "the logic of equality."[10] Similar statements abound in contemporary political theory, as when Dworkin argues that "No government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance."[11] It is also central to debates about deliberative democracy, which requires what Joshua Cohen calls "*manifest equality* among citizens,"[12] as it is this that engenders conditions such that the "unforced force" of the better argument can prevail (Habermas).[13]

With this broad frame in mind, this chapter is interested specifically in the underexplored question of geographical dispersion.[14] Popular sovereignty is only meaningful if it extends (equally) across a state's entire territory. But there is reason to doubt whether this supposition holds. Indeed, for most of human history it was assumed that political control did not – and *could not* – extend evenly across the land, especially along the periphery. Rather, this was something to be achieved incrementally through policies of assimilation, co-optation, and control. In ancient Rome, the frontier lands were filled with disloyal subjects, including nomads, thieves, and tax-dodgers, so the center took great pains to cultivate their allegiance. Indeed, one of the principle functions of early walling systems was "to divide the barbarians beyond from the barbarians within, who were in the process of becoming Roman."[15] In the Chinese empires too, boundaries were not simply designed to keep people out,

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[9] Rousseau, *Basic Political Writings*, 158.

[10] Dahl, *On Democracy*, 10.

[11] Dworkin, *Sovereign Virtue*, 1.

[12] Cohen, "Deliberation and Democratic Legitimacy," 89.

[13] Habermas, *Between Facts and Norms*, 306.

[14] Spatial logics were not discussed by the early social contract theorists. In the modern political philosophy canon, it only really emerges in Alexis de Tocqueville's *Democracy in America*, in his discussion of administrative decentralization and the New England townships – a structural (and spatial) feature of US democracy that made it a ripe domain for equality.

[15] Luttwak, *Grand Strategy of the Roman Empire*, 78.

but also to command fealty (and tax revenue) from far-flung subjects.[16] The same can be said for early modern states, where kings and their emissaries would voyage to the far reaches of their dominion and host lavish festivals designed to foment cultural identification with the center.[17]

It was only beginning in the eighteenth and nineteenth centuries with the rise of centralized forms of administration that states could reliably administer laws across their whole territories. It was at this point that boundaries came to be thought of as tools for cultivating likeness – for "taming" or *domesticating* local populations[18] – achieved through military power and political education. This use of central power in the periphery is in no way limited to the west. Describing the southeast Asian highlands, James C. Scott explains how centrist attempts at reining in the periphery were enacted by "establishing armed border posts, moving loyal populations to the frontier and relocating or driving away 'disloyal' populations, clearing frontier lands for sedentary agriculture, building roads to the borders, and registering hitherto fugitive peoples."[19] It would be no stretch to suggest that such state power in the periphery is a form of internal *colonization*.

Thinking about the domestication of the periphery in this way highlights a more general problem with our fixation on so-called Westphalian sovereignty – which asserts a clear distinction between territorially bounded states – as this rubric papers over and renders invisible the distinction between center and periphery *within* polities. Indeed, the original challenge of statehood was to achieve homogenization within, not merely (and simplistically) to negate the world without. That this conception of power poses a challenge to popular sovereignty is immediately evident. Whereas popular sovereignty takes egalitarianism as its basis – it regards people as *equal* citizens – homogenization campaigns do not operate in this way. Rather than beginning with equal concern for all citizens and thus respecting their difference, they are designed to shape citizens until they are "made equal." To whatever degree states treat peripheral peoples equally is thus based in part on the success of these campaigns – reflecting the weakness of the concept, as here the *fiction* of popular sovereignty generates and precedes the *fact*.

State efforts to subjugate their own peripheries are infrequently discussed in political theory except obliquely in debates over the *moment of founding*, or what Connolly calls the "paradox of origins,"[20] that the inceptions of democracies are never themselves democratic. Moments of founding frequently engender a colonial kind of violence, especially at the periphery. The link between the violence of founding and colonization is forged explicitly by Derrida:

[16] Lattimore, *Inner Asian Frontiers*, 239–40.
[17] Sahlins, *Boundaries*, 27.
[18] Wolin, "Fugitive Democracy" [in *Democracy and Difference*], 32–33.
[19] Scott, *Seeing Like a State*, 19.
[20] Connolly, *Identity/Difference*.

All nation-states are born and found themselves in violence … [The moment of found-ing] is anterior to the law or legitimacy which it founds. It is thus outside the law, and violent by that fact … Before the modern forms of what is called "colonialism," all States [have] their origin in an aggression of the colonial type. This foundational vio-lence is not only forgotten. The foundation is made in order to hide it; by its essence it tends to organize amnesia.[21]

Borders are physical spaces at which this unfreedom is not only forged but also maintained, as those originary exclusions are recreated daily through security and nation building tactics, even once the democratic experiment has begun. State authority in the borderlands is essential to this project of nation building, in ways not merely oblique to democratic processes, but also parasitic on them. This is the point from which the remainder of the chapter departs.

SECURITY IN THE US–MEXICO BORDERLANDS

Borderlands are diverse spaces. They are all peripheral, but the distance from the center varies greatly (both in terms of scale and significance). They all abut a national boundary, where one sovereign jurisdiction ends and another begins, but their physical manifestations differ – some have walls or fences, some sim-ple stone markers, others are not demarcated at all. Some harbor a mix of national groupings with varied degrees of loyalty to the center, while others are relatively homogenous. The point of this chapter is not to reduce borderlands to any specific common feature, other than their sheer geographical location beside a border, a fact which in itself stipulates a special relationship vis-à-vis sovereignty. The broad questions raised by the borderlands were treated above; hereafter, the chapter will zoom in on the US–Mexico border. This empirical example is not meant to be representative in any way, although of course many of the features discussed here are endemic to border areas world-wide.[22] Rather, the objective of this discussion is to provide an in-depth look at the challenges inherent to popular sovereignty when situated in a particular context. The empirical material is thus insight generative, exposing cracks in the conceptual foundation that may be invisible when viewed from afar.[23]

This chapter will focus on one particular feature of contemporary border secu-rity policy in the United States: the move to make borders increasingly wide and zone-like with border security installations that extend far inland of the border itself. This way of thinking was institutionalized by the Border Patrol's 2012–2016 National Strategy, which moved away from simply guarding the line and toward "widening" and "segmenting risk" at the border. Far from the simple

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[21] Derrida, "On Forgiveness," 57.
[22] I develop this point at length in Longo, *Politics of Borders.*
[23] For an explication of this method of using empirical and specifically ethnographic research – sometimes referred to as research with an "ethnographic sensibility" – for the purpose of advanc-ing arguments in political theory, see e.g., Longo and Zacka, "Political Theory in an Ethnographic Key," and Zacka et al., "Political Theory with an Ethnographic Sensibility."

wall, this policy is designed around *sprawl*. As one official explained it: "The wider we make our borders … the more effective we are going to be."[24] This strategic language aligns with my personal experiences doing fieldwork in the borderlands, observing security installations that extend inland from the borderline, including with checkpoints – often well developed, border-like institutions, many miles into US soil – and camera and light towers that dot the horizon in every direction. In what follows, I synthesize these field notes into three features of security in the borderlands – what I call *surveillance*, *heterogeneity*, and *vigilance*.

Surveillance

Nearly all states embrace technologies of surveillance of some sort at their borders, although the quality and sophistication of this infrastructure varies greatly. In the United States, these technologies have evolved markedly over the last few decades, as have their function and design. In particular, there is an increased awareness in US circles that for borders to be effective, they cannot merely be "tall," they must also be "wide" and "layered." But what does this entail and how does it implicate citizens of the borderlands? At its most basic, this means widening the actual borderline, that is, extending the border's "horizontal footprint" inland. There are several means of using technology and tactical infrastructure to widen the border. For example, one can thicken the physical line with ground sensors – seismic, magnetic, or infrared – mostly placed within a half mile from the border, but in some cases extended as far as 50–100 miles inland. Such sensors enable the Border Patrol to react immediately to "sensor hits" with the deployment of officers. As one Customs and Border Protection (CBP) official explained it, sensors act as a "trip-wire."[25]

Technology companies are perpetually designing new sensor systems. One technology developer explains that the "idea is to create a seismic zone along the border."[26] Another offers perimeter fencing with "buried cable detection systems," which complement fencing by providing an invisible "detection field" to protect a perimeter covertly with "software-controlled zoning."[27] Other sensors can be spread throughout the border area – like landmines – creating a zone of detection at intervals beneath the earth.[28] These technologies contribute to the widening of border spaces, offering a vastly different type of functionality than contemporary border walls and fences. As these technologies are covert, they are aimed at detection, not deterrence; they attempt to expand the border rather than define it.

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[24] Gilbert, "Cooperative Efforts between Mexico, Canada and the U.S. in Law Enforcement and Prosecution."
[25] Padilla, *Investing in Proven Technologies*.
[26] King, "Filling a Need."
[27] Southwest Microwave Advertisement, "Integrated Perimeter Security Solutions."
[28] Senstar, "The Trusted Choice for Perimeter Security Technology & Products."

An alternate way to thicken the line is through cameras and radars, extending the observation and detection range of the border. As a local police chief on the US–Mexico border explained to me: "It's a net, basically. You are creating a new visual net, and then having a response to that net."[29] New camera and radar systems serve as "the eyes of the border patrol agents,"[30] controlled remotely from a command center, and can be positioned to look inward from the border, mimicking the sensors, and are often covert. One technology company boasts developing "remote decoys" and "artificial rocks" which can be speckled throughout the border area to create an invisible surveillance zone.[31] In addition to fixed sites, cameras and radars operate via ultralight aircraft, unmanned aerial vehicles, and radar balloons. As one Department and Homeland Security (DHS) technology expert explains it, the goal is to have a "tiered air surveillance system" that coordinates the many different types of air surveillance units which "can provide eyes almost around the clock."[32]

Taking this inland net concept a step further are checkpoints, which recreate the border inland. These checkpoints – or "choke-points," as they are sometimes called in the industry – allow the state to monitor internal smuggling corridors.[33] Former Chief of Border Patrol Michael Fisher explains that checkpoints are part of a layered approach that "extends our zone of security," and enables control not just at, but also "between borders."[34] Checkpoints are also "contact points" where Border Patrol has direct access to individuals, thereby facilitating the capture of biometric data (usually from fingerprints or irises). This is essential for Border Patrol, whose mission is now to "identify, not just catch." This latter feature has created a real stir in local border communities – a matter immediately palpable to anyone doing observation-based fieldwork in the region. Many borderland citizens feel unfairly targeted by these expansive and discriminatory protocols, leading to frequent protests and demonstrations against CBP.[35] Given the rhetoric of "choking" and "catching," of "eyes" and "nets," it is easy to see how local citizens might feel disenfranchised, even by policies and practices putatively designed for their protection.

Heterogeneity

Borderlands commonly feature multiple kinds of authority, usually both federal and local law enforcement, and sometimes also the military. In the United States, border areas can increasingly be seen as discrete regions, due to the integration

[29] Jeffrey Scott Kirkham, Nogales police chief. Personal interview, Nogales, AZ, March 20, 2012.
[30] Padilla, "Investing in Proven Technologies."
[31] RECONYX, "Wireless Remote Trigger & Illuminator."
[32] John Appleby, Homeland Security Advanced Research Projects Agency, Science & Technology Directorate, DHS. Personal interview, Washington, DC, May 17, 2012.
[33] Bonner, "Perspectives on Border Security."
[34] Fisher, "Testimony of Michael J. Fisher," 2; Fisher, "Securing Ports of Entry."
[35] Nowrasteh and Eddington, "How Effective Is Border Security?"

of different actors and agencies – both within the federal government as well as between federal, state, and local forces – often with expanded powers. This broad integration strategy is referred to by US security officials as a "whole of government" approach to border security. Each component warrants address.

Beginning with intra-federal integration, there is increasingly an understanding in the federal government that effective risk prevention at the border begins with information sharing. This may seem self-evident, but historically there has been little to no information sharing between agencies in the United States – a fact made manifest nationally by the inability of first responders (mostly fire and police) to communicate on 9/11. This move toward intra- and inter-agency sharing at the border was first codified in the 2012–2016 Border Patrol agenda. The primary means of sharing is through the integration of Border Patrol with federal intelligence entities, often co-located at fusion centers on-site at the border. As a former head of CBP explains: "We have seen a level of sharing of information, certainly within the federal community, law enforcement and intelligence community, like we have never seen before."[36]

The second move has been toward coordination between local and federal forces. This shift in thinking is also derived from 9/11 and the linking together of the two great threats facing the polity – illegal immigration and terrorism – thereby collapsing much of the distinction between local and federal responsibilities as they pertain to border control. Beginning in 2009, the federal government encouraged state and local officials to make decisions over immigration at the border, because the federal government had "not enough money and too few beds," to handle border issues on their own.[37] Similarly, former DHS Secretary Janet Napolitano advocated federal-state and federal-local sharing on border-related terrorism concerns: "Our goal is to give that front line of law enforcement the tools they need to confront and to disrupt terrorist threats."[38]

This intra-agency cooperation has led to the decentralization of DHS – a significant institutional change reflecting these new priorities. Whereas in the past the idea was to have a central knowledge bank, which circulated information to the perimeter, the plan now is to have CBP officials fan out into the border community.[39] From the federal perspective this type of collaboration is imperative. After all, in most border communities, the individuals most able to understand threats and observe suspicious activities are local officials, not federal ones. From the vantage of border governance, the benefits of this decentered model are self-evident. But this expanded federal presence takes a toll on the citizenry. The different profiles and capacities of these myriad

[36] Bonner, "Terrorism and Transnational Criminal Organizations."
[37] Quoted in McCarter, "287(G) Vital to Immigration Reform."
[38] Quoted in McCarter, "Napolitano Outlines DHS Priorities for 2010."
[39] Chavez, "2012–2016 Border Patrol Strategic Plan."

authority structures naturally generate a feeling of confusion and insecurity among citizens – there are a lot of different uniforms scattered throughout the borderlands – amplified by the heightened security rhetoric of the border zone.

Indeed, beyond the heterogeneous nature of this authority is the expansiveness of its powers. Legally, the border zone is defined as up to 100 miles from the border, a broad territory that includes as many as 200 million US citizens and in which certain constitutional rights protections don't apply – such as Fourth Amendment protections against search and seizure. This renders citizens not simply vulnerable to many kinds of state authorities, but overwhelmingly powerful ones – famously ICE, or Immigration and Customs Enforcement, which has perhaps the most nebulous and expansive authority in the borderlands. The ramification for such authority on the lives of citizens within this geographical area are discussed below.

Vigilance

Another mainstay of border regions worldwide is the incorporation of civilians into law enforcement. In the United States, there is a lengthy history of state-civilian relationship at the border – most notably among ranchers whose land abuts the line. However, Border Patrol is now cultivating an evermore vigilant border community, especially vis-à-vis terrorism. This is embodied by the strategic move away from involving local border communities simply through "public relations" to a thicker entanglement called "community engagement."[40] This is because practitioners increasingly believe that the local community is the most reliable source of information:

> We used to think information came from government sources, shared down to the agent … [But] the agent has more information than anyone in Washington DC. [And] the local community actually has more information than the border patrol agents … So you have gone from a top down [logic] – "information starts in DC and goes out to the agents at the border" – to this idea where border patrol agents have to interact with the community, engage with the community, and win over the community.[41]

Border Patrol has put forth a number of programs to this effect. For example, Operation Detour and Drug Demand Reduction Outreach are schooling programs that educate students about the dangers inherent to the borderlands. These programs are not only preventative in nature, but also train students to react in ways that assist Border Patrol if they do learn about or get entangled with transborder crime. In addition, Border Patrol engages in what they call "community and stakeholder outreach,"[42] in which a federal liaison forges relations with local community leaders encouraging them to provide

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[40] Fisher, "Securing Ports of Entry."
[41] Shiffman, "Patrolling the Border."
[42] "2012–2016 Border Patrol National Strategy," 20–21.

information and assistance to Border Patrol, and promising stealthy assistance in return.

This "community engagement" also exists on the level of technological advancement – with new capabilities being developed so that individuals can enact their own self-governance. The most widely known of these campaigns is DHS' "If You See Something, Say Something," a slogan disseminated nation-wide. But in the borderlands this pressure is more targeted and technologically advanced, increasingly enabled by apps, funded by the federal government. One example of this is the company Town Compass LLC, who made a most wanted terrorist database freely available for download. This software allows vigilant citizens to directly contact the FBI with information as "first respond-ers," forging communication channels directly between local communities and the police.[43] DHS itself has developed a First Responder Support Tools (FiRST) app for smartphones.

There is a veritable echo chamber within CBP about how vigilant communi-ties are the most effective line of defense against the ills of the border – illegal immigration, drug smuggling, terrorism. Their vision is one in which border communities are not merely a source of information for the federal govern-ment, but are actually self-policing – even at the cost of pitting certain parts of the community against others, a division that inevitably cleaves along racial and ethnic lines. Potential ramifications of this strategy are considered below.

FICTIONS OF POPULAR SOVEREIGNTY IN THE BORDERLANDS

Borderlands are complex spaces, with many actors and structures of control. What significance does this have for popular sovereignty practically or theoret-ically? The opening section of this chapter decried the lack of critical attention paid to the question of geography in writings on popular sovereignty broadly; the previous section provided an in-depth illustration of the problem through a study of security policy in the US–Mexico borderlands. This section draws on this material to advance two claims that trouble the concept of popular sovereignty as it is manifest in the borderlands – what I refer to here as *fictions*, demarcating the space between how the concept is perceived and articulated in common usage (its narrative purchase) versus how it actually obtains in lived practice.[44] The first claim is that the nature and form of border author-ity makes it frequently unaccountable to democratic control – what I call the fiction of uniform authorship. The second is that border security policies are designed not only in the name of peripheral citizens but also against them – the fiction of equal concern.

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[43] Quoted in Leggiere, "Beyond the One-Way Alert," 11.
[44] The link between narrative and practice in the study of popular sovereignty is treated exten-sively by Rogers Smith, Chapter 15, in this volume.

The Fiction of Uniform Authorship: Authority in the Peripheral State

In theory, democratic processes generate laws that state authorities subsequently enforce. This is the conceptual core of popular sovereignty – that we live under laws of which we are the author. But like any political principle, the gap between theory and practice is considerable. The argument leveled here is that in the borderlands this claim of popular sovereignty is largely fictitious, because while citizens do author laws, this authorship is uniform across the polity. This is in part due to the nature and structure of authority in the borderlands, where numerous overlapping actors frequently come to make law, rather than simply enforce it. Consequently, the citizens of the borderlands who are subject to those laws cannot be said to enjoy sovereign authority over them. They are *subjects* to the law, not *sovereigns* – falling short of the definition of democratic citizenship laid out by Rousseau in the epigraph.

The fact that numerous and overlapping authority structures frequently take authority into their own hands is part of the nature of the border, a place of constant emergency, where crises arrive unannounced. This is sometimes called *personalized authority*, exemplified by ICE, and their immense discretionary power to address matters of national defense deep into US soil. There are numerous reasons for why such individual police discretion might be justified, pursuant to the logic of security. But such reasons are not necessarily democratic. Indeed, traditionally personalized authority is thought to work in contravention of the law and the democratic process by which it is established. It is a hallmark of the modern, liberal democratic state that everyday politics does not have face-to-face violence, but rather the depersonalization of political power – filtered through legal processes, for example. We need look no further than the classic voices of the canon for strong statements to this effect. For example, Locke writes: "*Where-ever Law ends, Tyranny begins* … Exceeding the Bounds of Authority is no more a Right in a great, than a petty Officer; no more justifiable in a King, than a Constable."[45] Certainly, when security officials endeavor to make the law, democratic processes are circumvented.

Concerns about the undemocratic character of police discretion is not new to political theory. For example, Hannah Arendt remarked that the rise of stateless peoples in Europe after World War I engendered conditions through which police discretion took weight over state laws. The police, she writes:

had received authority to act on its own, to rule directly over people … it was no longer an instrument to carry out and enforce the law, but had become a ruling authority independent of government.[46]

[45] Locke, *Two Treatises* [2014], 400–401.
[46] Arendt, *The Origins of Totalitarianism*, 288.

In this case, what transpired was violence, lawlessness, and "illegal acts" by the police in the name of the state.[47] Certainly, the circumstances described in the US borderlands are different; but in either case, the authority in question is not democratically accountable to the people subject to its rules.

This point is worth unpacking, as it speaks directly to the problem of sovereignty writ large. Following Schmitt, sovereign is he who *decides on the exception*:

> It is precisely the exception that makes relevant the subject of sovereignty … The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case … The precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited.[48]

In some sense police discretion in the borderlands is the ultimate sovereign act. After all, the border is a sphere of constant judgment about matters essential to the state; where the exception arrives constantly at the doorstep of the state and border guards (or state or local police) react to a case that could not have been anticipated.

The deficit generated in terms of popular sovereignty is immediately manifest: If the police are making sovereign decisions in the borderlands, the democratic process by which the law was ordained is not. Indeed, Schmitt predicted as much, that in the state of exception, the law would lose its value and state authority would expand. "What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes."[49] Obviously in the borderlands we are dealing with a more circumscribed example. But as far as local citizens are concerned, as much as they live under the law of their own design, they also live in a space where legal practices are reduced in scope, and in which rights protections shrink away or do not apply.

This problem is especially acute with regard to citizen engagement, and the increased state dependence on citizens for law enforcement. There is a thin line between *vigilance* and *vigilantism* – transgressed famously by the "Minutemen" of Arizona, who militarized self-policing. When citizens undertake the role of law enforcers, it clearly exacerbates problems of uniform authorship – in this rubric, some citizens act as law enforcers, against others, targeted as criminals. Moreover, such divisions nearly all fall along racial lines – thereby feeding back into concerns of ascriptive bias with which this chapter began. If equality is the *sine qua non* of democracy – and popular sovereignty, which is its normative core – then the challenge to the principle is clear. The further problem, of the adjudication of self/other in the borderlands, is expanded upon below.

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[47] Derrida also comments on police taking the law into their hands after World War I: "The police became omnipresent … once they undertake to *make the law*, instead of simply contenting themselves with applying it and seeing it observed" (*On Cosmopolitanism and Forgiveness*, 14).

[48] Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 6–7.

[49] Ibid, 12.

The Fiction of Equal Concern: State Building and the Peripheral Subject

Moving past the structure of authority in the borderlands, another problem arises given the purposes and objectives of that authority. In fact, it turns out to be not simply a question of law, but also of security more broadly. In the borderlands – in the United States and elsewhere – the peripheral subject is *conditioned* by security. Of course, this is true for all citizens to some degree or another. But there is something specific about the borderlands dweller as opposed to citizens in general. Because they are situated at a border, peripheral peoples are not trusted and so they are disciplined; consequently, as much as security is aimed at their protection, it is also aimed at their control. They are both the *subject* and *object* of security, once again troubling the conception of democratic citizenship postulated by Rousseau – what I call the fiction of equal concern.

The core of this problem derives from central control of the periphery – a relationship stipulated above as akin to a kind of internal colonization. Even without extensive security policies and practices, the border is a site of central presence and iconography – with flags, uniforms, songs, and so on. These ostentatious displays of national identity are designed to make clear to outsiders the awesome power of the state, but they are also targeted at borderland dwellers to command their loyalty – such policies are as much designed to remind locals of who they *are*, as it is to tell outsiders who they *aren't*. Security policies augment this agenda by asserting direct central control over the periphery and its subjects. In the United States, this assertion of power in the borderlands is embodied by some of the moves within CBP described above, such as the decentralization of CBP, the relocation of federal authority to the border, and the appropriation of local law enforcement into asymmetrical power relations with federal agents.

This coercive federal power in the borderlands has the effect of turning (generic) citizens into (peripheral) subjects – singling them out as not-quite-trusted, as the *demos*' most *distant self*. This point has immense conceptual purchase, as it helps us avoid a central problem in how we think about borders – discussed above as the Westphalian imaginary – which is that on one side of the line is a *self*, taken to be homogenous, and on the other side of the line is an *other*, taken to be equally homogeneous. However, at the border, national identities are not so distinct. They are to each the "other" but they are not foreign, they are neighbors. In the language of us/them, *they* are as much *of* the periphery as are *we*. Thus, identities at the border are intimately intertwined – with two peripheral peoples proximate to each other, and frequently loyal both toward each other as well as their respective centers. As far as citizens are concerned, such heterogeneous identity is perhaps part of the bounty of living by the border; for the state it represents a threat. It is no wonder that the security apparatus targets these individuals for surveillance, community infiltration, and control.

Peripheral subjects are no less citizens, at least on paper. But the specific citizen-sovereign relationship these security policies and practices engender bears little resemblance to the theoretical principles that the original social contract theorists espoused. The lives of borderland citizens are structured and contained by security practices, often designed over and against their own interests. This puts these peripheral subjects into a double bind. They are structurally insecure (by dint of being at the border), what we might call the *external* problem of security. But they are also insecure by dint of the colonizing center, the *internal* problem of security. Thus vis-à-vis security, borderland citizens face categorically different conditions than other peoples throughout the territory of the state.

The idea that state security is designed for everyone equally – that we are all subjects of equal state concern – is clearly a fiction.

CONCLUSION

Popular sovereignty in the borderlands is embattled. This chapter illustrated this through the example of security policy along the US–Mexico border. But beyond this specific illustration, this chapter makes a broader point about the international state system and the nation-state as such. Because of the nature of borders, where threats come from the outside and local identities are heterogenous and intertwined, citizens in peripheral spaces suffer specific harms vis-à-vis the authorities of the central state – what I call the "other" boundary problem. This is true at all borders, even if the specific circumstances vary. In so far as this is true, bounded states by their nature have a popular sovereignty deficit at their periphery – a normative problem evermore urgent given the expanse of border security protocols worldwide.