Articles

Between Decision and Deliberation: Political Paradox in Democratic Theory[*]

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Democracy, H.L. Mencken said, 'is the theory that the common people know what they want and deserve to get it good and hard'.[1] Mencken's rather churlish view of the people is shared by many democratic theorists, but not so his view of democracy. Democracy, it is hoped, can somehow be better than the people it aims to represent and govern. In deliberative democratic or discourse theory, the people and their preferences are not taken simply as they are.[2] Norms of legitimation and institutional safeguards of constitutionalism protect democracy's normative goods – equality, transparency, accountability – from the people who could betray them. Legitimation and constitutionalism are said to offer moral instruction, justified ideals, fair practices, and valid procedures that might guide a people and secure their claim to be fair and not merely powerful, 'democratic' and not merely majoritarian.[3]

The hope that people will be rightly guided by norms and constitutions responds to but does not completely allay the concern that deliberative democratic commitments to legitimation and constitutionalism seem to

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1 H.L. Mencken, Prejudices: second series, New York: Knopf 1920, p. 203.
2 James F. Bohman, 'Communication, Ideology, and Democratic Theory', The American Political Science Review 84 (March) 1990, p. 93-109, at p. 99-100; Iris Young, 'Justice and Communicative Democracy', in: Roger S. Gottlieb (ed.), Radical Philosophy: Tradition, Counter-tradition, Politics, Philadelphia: Temple University Press 1993, p. 129; Seyla Benhabib, 'Deliberative Rationality and Models of Democratic Legitimacy', Constellations 1 (April) 1994, p. 26-52, at p. 32.
3 Jurgen Habermas, Between Facts and Norms, (Trans.) William Rehg, Cambridge, MA: MIT Press 1996, p. 126-28; Benhabib, 'Deliberative Rationality and Models of Democratic Legitimacy', p. 34 (supra note 2).

conflict with the autonomy of the people. In the deliberative democratic literature, these commitments give rise to two paradoxes: the paradox of democratic legitimation and the paradox of constitutional democracy. These two paradoxes privilege a certain set of problems that define the deliberative project, as such: how to develop a democratic theory that can get beyond mere interests to justifiable rights and norms, how to secure fundamental rights from the forces of majoritarianism, and how to reconcile universal equality and democratic particularity?

The two prongs of the paradoxes looked at here are sometimes personified by deliberativists, who cast them as conflicts between Kant and Rousseau,[4] or as conflicts internal to each of these thinkers.[5] For deliberativists, the goal is to get the balance right. Once that is done, the paradoxes they worry about will be seen to be either false conflicts,[6] or conflicts that can be transcended through proper procedures,[7] or mitigated through practices of 'iteration' or constitutional 'tapping' that conjoin in practice the contradictory poles of the paradox.[8] Absent such efforts, it is said, absent some reasoned justification, procedure, or practice for dispelling or managing the paradox, democratic theory is unable to deliver on its normative promise and, worse yet, slides into mere decisionism.

'Decisionism' is one of the names given by deliberativists to the position of those of their critics who work in the wakes of Friedrich Nietzsche, Carl Schmitt and, sometimes, Jacques Derrida.[9] Decisionists, deliberativists argue, cannot give valid justifications for the principles they champion.[10] The power they promote is therefore arbitrary and dangerous, not significantly different from mere brute force. Deliberativist claims regarding decisionism's dangers are made easy by Schmitt, who valorized the friend-enemy distinction as the defining feature of the political, joined the Nazi party and became

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4   Seyla Benhabib, Situating the Self, New York: Routledge 1992; Habermas, Between Facts and Norms, (supra note 3); Jurgen Habermas 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?,' (Trans.) William Rehg. Political Theory (29) 2001, p. 766-781.
5   Habermas, Between Facts and Norms, p. 100, cf. p. 94 and p. 767-68 (supra note 3).
6   Habermas, Between Facts and Norms, p. 83-84, p. 100, p. 461 (supra note 3); Habermas, 'Constitutional Democracy' (supra note 4).
7   Benhabib, 'Deliberative Rationality and Models of Democratic Legitimacy' (supra note 2).
8   Habermas, 'Constitutional Democracy', p. 766-81 (supra note 4); Seyla Benhabib, The Rights of Others: Aliens, Residents, Citizens, Cambridge: Cambridge University Press 2004, p. 47.
9   Jurgen Habermas, The New Conservatism, Cambridge, MA: MIT Press 1989; Jurgen Habermas, Philosophical Discourse of Modernity, Cambridge, MA: MIT Press 1990; Seyla Benhabib, 'Democracy and Difference: Reflections on the Metapolitics of Lyotard and Derrida', Journal of Political Philosophy (2) 1994, p. 1-23; William E. Scheuerman, 'Revolutions and Consititutions: Hannah Arendt's Challenge to Carl Schmitt', in: David Dyzenhaus (ed.), Law as Politics: Carl Schmitt's Critique of Liberalism, Durham, NC: Duke University Press 1998.
10   Habermas, Between Facts and Norms, p. 47 (supra note 3).

their legal jurist, and criticized Weimar in particular and liberal parliamen-
tarianism in general for producing only paralyzing, endless talk.[11]

No contemporary democratic theorists, however, embrace an unrecon-
structed Schmittian position. Some, like Chantal Mouffe, rework Schmitt
on behalf of democratic theory. Mouffe borrows from Schmitt the idea
that there is no 'necessary harmony' between liberalism and democracy:
'Schmitt makes us see how they conflict and the dangers the dominance
of liberal logic can bring to the exercise of democracy.'[12] But, rather than
follow Schmitt to his conclusion that the conflict between liberalism and
democracy is a 'contradiction that is bound to lead liberal democracy to self-
destruction', and rather than follow the deliberativists in claiming that the
conflict between liberalism and democracy is false or unnecessary, Mouffe
argues that there is here a *productive* tension that cannot be resolved but
can be exploited by articulating the two poles of the binary, which she
calls logics. The democratic logic demands that we constitute the people
by 'inscribing rights and equality into practice' and the liberal logic 'allows
us to challenge – through reference to "humanity" and the polemical use
of "human rights" – the forms of exclusion that are necessarily inscribed in
the political practice of installing those rights and defining the people (...)'.[13]
For Mouffe, perhaps the most persistent of deliberative democratic theory's
critics, the tension between liberalism and democracy 'can only be tempo-
rarily stabilized through pragmatic negotiations between political forces
which always establish the hegemony of one of them' over the other. This
hegemony is often overlooked. It is certainly not thought of as 'hegemony' by
Benhabib and Habermas, who would not refer to their recommended 'itera-
tions' and 'tappings' as merely 'pragmatic.' But, Mouffe insists, those who
overlook hegemony or fail properly to diagnose it do so because they are
fooled by its false self-presentation as a true reconciliation of the two con-
flicting logics.[14]

In place of the choice offered – deliberation or decision? – we might instead
contribute to new thinking on these issues by switching the question. We
might ask: 'What is left out of consideration by deliberativist versus decision-
ist mappings of the options by way of neo-Schmittian paradoxes that jux-
tapose binary logics or principles to each other?' In place of 'how shall we
solve or manage the paradox of democratic legitimation?', we might ask:
'what problem might the focus on that paradox be solving for deliberative
democratic theory?' Instead of 'is the paradox of constitutional democracy

11   Carl Schmitt, The Concept of the Political, Chicago: University of Chicago Press 1996.
12   Chantal Mouffe, 'Carl Schmitt and the Paradox of Liberal Democracy', in: Chantal Mouffe
      (ed.), The Challenge of Carl Schmitt, New York 1999, Verso p. 43-44.
13   Mouffe, 'Carl Schmitt and the Paradox of Liberal Democracy', p. 43-44.
14   Chantal Mouffe, The Democratic Paradox, New York: Verso 2000, p. 5.

real or illusory?', we might wonder 'why do we keep returning to this paradox? Does this paradox solve certain problems for democratic theory? If so, at what cost (if any)?'

With this shift in orientation, I work through two deliberativist treatments of the paradoxes of legitimation (Benhabib) and constitutionalism (Habermas), engage the readings of contemporary and canonical texts that give rise to them, and assess the implications for democratic theory of the deliberativist construal of them. If we loosen the grip of the deliberation versus decision binary, and dispel the power of the paradoxes analyzed here, we might think differently about democratic theory's uncomfortable yet unavoidable dependence on the unreliable even phantom agency of the 'people' who may be called into being when called on in democratic politics (when it works!) to *decide*, albeit not necessarily decisionistically, on matters of importance for their past, present, and future together.

1   The paradox of politics

The debate staked out by deliberative democrats between decisionism and deliberation can be illuminating, but the two sides together crowd out an alternative understanding of paradoxes and an alternative approach to them that may be fruitful to democratic theory. These alternatives are accessible by way of a different paradox, one more fundamental than the two aforementioned and possessed of a different structure: the paradox of politics.[15] First theorized by Rousseau, since commented on by many, and developed in more detail here, the paradox of politics confronts us neither with a conflict between two incommensurable principles or 'logics' nor with a binarily structured combat between or within Rousseau and Kant. Instead, the paradox of politics catches us in a chicken-and-egg circle that presses us to begin the work of democratic politics in *medias res*, in a terrain grounded neither in the sort of universal principled justification embraced by deliberative democrats, nor in the groundlessness of pure decision that deliberativists imagine is the only alternative.

Although the paradox of politics is sometimes referred to as a paradox of founding, it is more than that, for it is alive at every moment of political life and not just at the origins of a regime. Rousseau does at first see the problem as one of origins in the *Social Contract* (Book II, Ch. 7):

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15   Paul Ricoeur, 'The Paradox of Politics', in: William Connolly (ed.), Legitimacy and the State, New York: New York University Press 1984; also Christodoulis, who calls it an aporia, not a paradox: Emilios Christodoulidis, 'The Aporia of Sovereignty: On the Representation of the People in Constitutional Discourse', The King's College Law Journal (12) 2001/1, p. 111-33.

> 'In order for a nascent people to appreciate sound political maxims and follow the fundamental rules of statecraft, the effect would have to become the cause; the social spirit, which should be the product of the way in which the country was founded would have to preside over the founding itself; and, before the creation of the laws, men would have to be what they should become by means of those same laws.'[16]

In order for there to be a people well-formed enough for good law-making, there must be good law for how else will the people be well-formed? The problem is: where would that good law come from absent an already well-formed, virtuous people?

Rousseau is said by most commentators to have solved the chicken-and-egg problem of founding by introducing a lawgiver, a good man prior to good law, an objective or virtuous figure who can found the polity. Unfortunately, the lawgiver also aggravates the problem; he cannot just solve it, because his entry onto the scene compromises the people's autonomy or equality, which Rousseau also seeks to secure as a condition of their ability freely to will the general will.[17] As we shall see, however, the limitations of the supposed solution of the lawgiver do not matter that much because the problem exceeds the proposed solution. The lawgiver only addresses the problem of origins. But the seeming quandary of chicken-and-egg (which comes first, good people or good law?) takes off and attaches to democratic politics more generally once we see that established regimes are hardly rendered immune by their longevity to the paradoxical difficulty that Rousseau names. Every day, after all, new citizens are born, and still others immigrate into established regimes. Every day, already socialized citizens mistake, depart from, or simply differ about the commitments of democratic citizenship. Every day, democracies resocialize, recapture, or reinterpellate citizens into their political institutions and culture in ways those citizens do not freely will, nor could they. The problem that Rousseau seems to cast as a problem of founding recurs daily.

The idea that the so-called paradox of founding, the vicious circle of chicken-and-egg, exceeds the period of founding and attaches itself to politics, more broadly, is broached by the democratic theorist, William Connolly, who appreciates Rousseau's elaboration of the paradox of founding

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16 Jean-Jacques Rousseau, The Social Contract. Trans. Maurice Cranston. New York: Penguin Books 1968, Book II, Chapter 7.
17 Hilail Gildin, Rousseau's Social Contract: The Design of the Argument. Chicago: University of Chicago Press 1983, p. 67-91; Steven Johnston, Encountering Tragedy: Rousseau and the Project of Democratic Order, Ithaca: Cornell University Press 1999, p. 55; Christopher Bertram, Rousseau and The Social Contract, London: Routledge 2004, p. 128-147.

but also criticizes him for solving it. Rousseau's solution, Connolly argues, is not simply the lawgiver over whom so much ink has been spilled but rather, more subtly, Rousseau's location of the problem in time, at the beginning of a new regime. By confining the chicken-and-egg problem to the founding period, Rousseau prevents it and the unwilled violence that resolves it (personified by the lawgiver) from spilling over into politics more generally. In sum, Rousseau casts the paradox of politics as a paradox of founding in order to reassure his readers, 'to imagine another time when it could be resolved',[18] a time when the lawgiver and all he represents would be unnecessary, and politics could be more truly free. In so doing, Rousseau leads his readers to infer that they must just somehow get through the founding, whether by way of a lawgiver's impositional guidance or if necessary by way of a more explicit violence that can produce by force that which will later come by way of education and culture. Hence his approval of the idea that people can be 'forced to be free' (Book I: 1). If they can find that much-needed bridge over what Hannah Arendt calls the founding period's 'gap' in time, the people might somehow limit to the founding period the violence that attends the paradox of politics. They might then avoid the violence that otherwise recurs daily in established regimes, in the name of law (which claims to be nonviolent by representing itself as purely self-grounding) or popular sovereignty (which claims to be nonviolent by representing itself as the true and total will of the people who are, however, not yet formed).

As it turns out, the so-called paradox of founding – the vicious circle of chicken-and-egg – is not overcome nor is it just concealed, as Connolly argues, by way of unacknowledged, foundational violence in Rousseau. It is also replayed ad infinitum in Rousseau's own text, *as the paradox of politics*. Close attention to Book II, Chapter 7, of the *Social Contract* indicates that each of Rousseau's several efforts to solve the paradox succeeds merely in moving it to another register where once again it defies resolution and inaugurates anew a contestatory politics.[19]

2   The paradox of democratic legitimation

The paradox of politics is not central to deliberative democratic theory. The problem of how to identify or generate the general will is framed, instead, as the paradox of democratic legitimation,which is described by Seyla Benhabib:

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18   William E. Connolly, The Ethos of Pluralization. Minneapolis: University of Minnesota Press 1995.
19   For the full argument on the repeated reappearance of the paradox in Rousseau, see the original article, p. 6-8.

> 'Rousseau's distinction between the 'will of all' and 'the general will', between what specific individuals under concrete circumstances believe to be in their best interest and what they would believe to be in their collective interest if they were properly enlightened, expresses the paradox of democratic legitimacy. Democratic rule, which views the will of the people as sovereign, is based upon the regulative fiction that the exercise of such sovereignty is legitimate, i.e., can be normatively justified, only insofar as such exercise of power also expresses a 'general will', that is, a collective good that is said to be equally in the interests of all.'[20]

Democracy's regulative fiction affirms the sovereignty of the people but also limits or shapes its actual manifestations by requiring that it aim toward a collective good. The regulative fiction motivates the quest for a 'moral standpoint' to guide or assess popular willing. Benhabib begins with Rousseau because she credits to him the worthwhile articulation of the paradox of democratic legitimation, but in the end she prefers Kant because Rousseau does not answer to the need for a moral standpoint.[21]

Rousseau himself makes no mention of regulative fiction, but he does seem to acknowledge the insufficiency of mere majoritarianism to democracy when he considers, in Book II, Chapter 3, of the *Social Contract*, the possibility that the general will can err. His response? The general will cannot err because if it erred it would not be the general will, it would be the mere will of all. With this distinction between the will of all (what the people will) and the general will (the option that the people should will, whether or not they actually do so), the general will seems to move from being the purely procedural outcome of a political process to being, instead, an extraprocedural outcome by which to judge the products of supposedly pure, but now apparently imperfect, procedures.

The fact that the general will might go one way and the will of all another could have led Rousseau to reject the idea of a general will as such, or to lose faith in the people whose willing legitimates the regime. But, Rousseau insists, 'the general will is always right and always tends toward the public utility'. The people may not see it. Their deliberations may lack 'rectitude' not because they are corrupt, the people themselves are 'never corrupted', rather they are 'often tricked', Rousseau says (Book II: 3). The goodness of the people may be beyond dispute, but it becomes increasingly clear to Rousseau that not even their goodness can guarantee their

20 Benhabib, 'Deliberative Rationality and Models of Democratic Legitimacy', p. 28-29 (supra note 2).
21 Benhabib, 'Deliberative Rationality and Models of Democratic Legitimacy', p. 30 (supra note 2).

rightness and, with the general will now operating as an external standard by which popular willing can be judged, the people may be found to be on the side of the will of all, not the general will, even if through no fault of their own. The problem is so serious that Rousseau refers only three chapters later in the *Social Contract* no longer to 'the people' but to the 'blind multitude' (Book II: 6).

In the paradox of politics, however, as in Book II, Chapter 7, the focus is on finding 'the best rules' for an emerging nation on the brink of existence as such. Here the problem is not that the people might be misled or might miscalculate in their deliberations such that they mistake a particular will for a general will. Here the problem is that the people do not yet exist as a people and so neither does a general will. The solution cannot be the right procedure or standpoint, for the people are in the untenable position of seeking to generate, as an outcome of their actions, the very general will that is supposed to motivate them into action. They lack at this juncture all the necessary conditions of communal action. Without a public, there can be no public good. The problem is clearest in the moment of founding but, as I suggested earlier, it attaches to democratic politics as such partly because the people are never so fully what they need to be (virtuous, democratic, complete) that a democracy can deny credibly that it resorts to violence, imposition, or coercion to maintain itself. In some sense that is, the 'people' are always undecidably present and absent from the scene of democracy. That is why it is always part of the point of democratic political practice to call them into being, rhetorically and materially[22] while acknowledging that such calls never fully succeed and invariably also produce remnants.

In this paradoxical moment of founding, no member of the community can yet be said to possess the needed perspective, which can only come post hoc, to form the rules or advocate for a collective good by which the people need to have already been acculturated in order to be not a 'blind multitude' but a 'people' capable of the autonomous exercise of popular sovereignty (Book II: 6). Somehow the impasse is negotiated, but its trace remains. The general will can never be really equally in everyone's interest nor really equally willed by everyone. Even if it were so fully willed, its authors nonetheless experience it as alien when it becomes a source of rule, and they are no longer only its authors but also law's subjects.[23] More to the point, given the vicissitudes of legislative processes, there is always some divergence between what people will, as authors, and what emerges as law over them,

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22   Alan Keenan, Democracy in Question: Democratic Opennessin a Time of Political Closure, Stanford, CA: Stanford University Press 2003; Steven Johnston, Encountering Tragedy (supra note 17).

23   Bonnie Honig, Democracy and the Foreigner, Princeton: Princeton University Press 2001.

as subjects.[24] Indeed, it may even be that this uncanny law, always some-what alien and perpetually reproduced as such even by democratic institu-tions, is marked by the paradox of politics itself: in that recurring paradox, again and again, the subject postulated by politics is seen as never quite the cause because also always the effect of political practice. As Peter Fitz-patrick colorfully puts it, this is a moment in which 'time runs widdershins and the present precedes itself'.[25]

In Rousseau (this is one of his great strengths as a democratic theorist), not-withstanding his aspiration for autonomous popular sovereignty, there is a sense that the people are never just heroes of their own story but always also protagonists in someone else's (represented by the would-be lawgiver), the always undecidable bearers of forces larger than themselves. One way to ease the problems marked here might be to focus less than deliberative democratic theory does on universality and the orientation toward consen-sus as conditions of politics and more on their imperfect (re)production as sociopolitical effects. This would shift the main (but not the entire) focus from proceduralism and constitutionalism toward a theorization of their remainders and toward analyses of popular orientations to those devices of (self-)rule.

For Benhabib though, we are still faced with the problem that defines democracy: when faced with distinguishing general from particular wills, true lawgivers from pretenders, or properly durable institutions from those that are falsely so, popular sovereignty must be exercised not in a deci-sionistic fashion that takes its bearings from mere, aggregate preferences but on the basis of a commitment to deliberative procedures that gener-ate outcomes that pass the test of a moral standpoint of universalizability. The material conditions of successful general willing called for by Rousseau (defined and sheltered territory, small population, relative equality, civic religion) are, from Benhabib's perspective, simply not a substitute for such a standard, nor for that matter are they relevant to us in late modernity. Caught up in the search for an independent normative standard to which Rousseau was not himself committed, conceiving of the paradox as a binary conflict not a vicious circle, and seeking a solution to the paradox rather than a diagnosis of it, Benhabib concludes that the people need the miss-ing moral standpoint that Rousseau never provided in order to mark out a procedural path and cut short the spiral of paradox into which Rousseau supposedly falls. In quest of this standard, Benhabib turns to Kant.

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24 Habermas, Between Facts and Norms, p. 354-59 (supra note 3).
25 Peter Fitzpatrick, Modernism and the Grounds of Law, Cambridge: Cambridge University Press 2001, p. 74.

Why didn't Rousseau make this move? Perhaps Rousseau wanted to impart a different understanding of politics, one that takes its bearings from the real human world as we find it ('taking men as they are and laws as they might be', he says at the outset of his *Social Contract*), with its plural, conflicting aspirations and vicious circles, and not from a regulative ideal, fictional or otherwise. Rousseau is a theorist of political culture, not of universality.[26] But he is not therefore irrelevant to us now. Quite the contrary. His material conditions of popular sovereignty may be impractical in our late modern world, but they remain instructive. It is as true for us as it was in his day that under conditions of radical inequality it is difficult to generate, identify, string together, and fight for public goods and against narrow factionalisms. Instead of addressing the problems of politics by way of a principle or a regulative ideal or fiction, Rousseau illustrates for us, time and again, the mutual inhabitation of general and particular will, people and blind multitude, lawgiver and charlatan, properly durable institutions and those stabilized by force. These are not binary paradoxes and they are not soluble by philosophical inquiry; indeed, they are often generated by philosophical inquiries, which tend to harden tensions into hypostatized, polar alternatives. What is lost by way of such polarisation? The fecundity of undecidability, a trait that suggests that our cherished ideals – law, the people, general will, deliberation – are implicated in that to which deliberative democratic theory opposes them: violence, multitude, the will of all, decision.

Thus, we return to the question with which we began: what problem might the paradox of democratic legitimation be solving for democratic theory? The paradox of democratic legitimation is a paradox much-beloved by democratic theorists who worry about mere majoritarianism (which is to say, it is beloved in some form by nearly all democratic theorists). Unlike the paradox of politics, the paradox of democratic legitimation seems soluble and its supposed solution – a moral or juridical standpoint of universalizability, or the rule of law – underlines the waywardness of the people (their multitudinous character) and their need for legal or procedural institutions that are cast by contrast as merely stabilizing or enabling, not themselves wild or impositional. The paradox of democratic legitimation focuses our attention on law's regulative powers, specifically on the need to direct the energies of the people which are assumed to be independent of law rather than partly its products. The paradox of politics, by contrast, calls attention to law's formative powers, its never fully willed role in processes of subject-formation, and the need, therefore, in a democracy, periodically

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26 Habermas, 'Constitutional Democracy', p. 768 (supra note 4).

or regularly to subject law to democratization by way of amendment, augmentation, or nullification.

Amendment, augmentation, or nullification are all forms of re-founding which, as such, call the (not necessarily blind) multitude forth out of the people or manifest 'the people themselves'[27] acting in resistance to or in popular support of the institutions that form them. These re-foundings respond to the paradox of politics. But they may also cast us once again into that paradox, leaving us with no firm criteria or ground from which to distinguish with confidence the will of all and general will, multitude and people, because the perspective from which to do so and the identities at stake are themselves in question or in (re)formation. Thus, if the paradox of democratic legitimation takes the place of the paradox of politics in Benhabib's considerations,[28] that is because the former paradox, not the latter, allows us to take for granted the distinction by which it is supposedly troubled, the distinction between general will and will of all, while also rescuing law and proceduralism from implication in the phenomena they are entrusted to constitute and regulate. That is part of the point and attraction of the paradox of democratic legitimation.

Thus, Benhabib paves the way to a kind of constitutionalism that serves as the moral standpoint's proxy in the human world of politics. And with that we arrive at a second paradox, also taken to be binary in structure: the paradox of constitutional democracy.

3 The paradox of constitutional democracy

The problem of how to secure good general will in the absence of antecedent good law by way of which good willing is shaped is seen by some as soluble by way of constitutionalism. A constitution limits the damage that can be done by a poorly directed, confused, or wanton people by taking some things, like human rights, off the agenda. But constitutionalism, on this account, seems to take the place of Rousseau's awkward lawgiver (as he is traditionally understood) and to betray democratic ideals. Why should the people whose will legitimates the regime be bound by something they have not themselves willed? The paradox of constitutional democracy seems to restage the paradox of democratic legitimation. Have we simply traded in one paradox for another?

Yes and no. As we shall see, this new paradox does replay many of the issues at work in the paradox of democratic legitimation. Instead of will of all versus general will, we have popular sovereignty versus constitutional-

27   Larry D. Kramer, The People Themselves, Oxford: Oxford University Press 2004.
28   Benhabib, 'Deliberative Rationality and Models of Democratic Legitimacy' (supra note 2).

ism. However, there are important differences between the two paradoxes. In the translation of one into the other, something does change.

In the paradox of constitutional democracy literature, the problem that for Rousseau occurred synchronically at the founding and forever after (that which the law presupposes as its cause can only be produced by it as its effect) unfolds diachronically. In place of the present tense problem of (un)justifiable constraints on popular sovereignty that daily affect the people's relation to itself as both ruler and ruled (the paradox of politics), we get the rather different problem of constitutional democracy and its limits from the past on popular sovereignty in the present. Recasting the conflict in this way divides the ruled (the people) and ruler (law, the founders, or the constitution) and restages the paradox of politics as a generational divide, a problem articulated most memorably by Thomas Jefferson when he asked: 'Should the dead have rights?'

Thus, the paradox of constitutional democracy externalizes the conflict that the paradox of democratic legitimation, notwithstanding its flaws, subtly put at democracy's heart. The unwilled, constraining element of rule is now identified not with democracy, per se, but with the constitution which may be right or necessary, and the paradox is now not internal to democracy (which seeks impossibly to combine will of all and general will, rule and freedom); rather, it is a feature of one kind of democracy, *constitutional* democracy, which impossibly but necessarily combines written constraint with free popular sovereignty and then derives its legitimation from that impossible, tense combination. The result? We have come full circle, for we are left with the implication often, albeit erroneously, attributed to Rousseau: that a really, unmediated, unwritten, and unconstrained democratic regime could experience – simultaneously and without conflict or paradox – *both* freedom and rule, both general will and will of all, law-rule and self-rule. The implication here is that were it not for constitutionalism, we could have democracy. This attractive implication is surely one of the reasons the paradox of constitutional democracy commands more scholarly attention than the paradox of politics.

However, because democracy is, or threatens always to be, in effect, a self-consuming artifact (those wayward, multitudinous people, again, on whom everything democratic depends but by whom everything democratic is threatened), democracy is said nonetheless to require the order and constraint of constitutionalism. We cannot have democracy *with* constitutionalism, and we cannot have democracy with*out* constitutionalism, either. Some democratic theorists see in this impossibility the plight and promise of democracy as such, a form of rule and freedom that forever

seeks and rejects efforts to ground itself in something outside of itself.[29] But for most deliberative and liberal democrats, this dynamic represents a new paradox, one generated by constitutionalism's dissolution of the paradox of democratic legitimation. That new paradox, the paradox of constitutional democracy, immediately slouches toward its own solution by temporalizing the conflict, plotting the conflict between freedom and rule as one that occurs in time. Instead of the synchronic paradox of politics (in which will of all and general will may be mutually inhabited), and instead of the paradox of democratic legitimation's difficulty of securing general will over will of all, we now have the still difficult but far less knotty problem of how to find freedom in relation to a past we are stuck with and did not author.

Those who map the so-called paradox of constitutional democracy as a tension between past and present generations assume that governance across temporal distance is similar to governance across spatial distance in that both are alien to their subjects and impositional in nature. The analogy between time and space, temporal and geographic alienness, was deployed to good effect by Jefferson, who worried that an enduring constitution would (really, *should*) be experienced by subsequent generations as a foreign imposition. Noah Webster shared the concern and memorably metaphorized the temporal imposition in the clearest, spatial terms:

> 'The very attempt', he warned, 'to make perpetual constitutions, is the assumption of the right to control the opinions of future generations: and to legislate for those over whom we have as little authority as we have over a nation in Asia.'[30]

Because the passage of time is held to be responsible for the alienness of the law, Webster subtly implies that the people in the present might experience without conflict both freedom and rule. Indeed, it implies that the founders enjoyed that very experience, since the only expressed worry is about later generations, not the current one. Second, those who reject the space-time analogy deployed by Jefferson and Webster do so by embedding temporal distance in national time. They point out that the founders may have

29 Hannah Arendt, On Revolution, New York: Penguin Books 1963; Claude Lefort, Democracy and Political Theory, (Trans.) David Macey, Minneapolis: University of Minnesota Press 1988; Connolly, The Ethos of Pluralization (supra note 17); Jacques Ranciere, Dis-agreement: Politics and Philosophy, (Trans.) Julie Rose, Minneapolis: University of Minnesota Press 1999; Keenan, Democracy in Question (supra note 22); Patchen Markell, 'The Rule of the People: Arendt, Archê, and Democracy', American Political Science Review (100) 2006, p. 1-14.

30 1787. Quoted in: Jed Rubenfeld, Freedom and Time: A Theory of Constitutional Self-Government, New Haven: Yale University Press 2001, p. 22.

lived a long time ago, but they are *our* founders. Any lingering sense of uncanniness of those who come before to those who come later is papered over by talk of beneficiaries and heirs, fathers and sons, or intergenerational community.[31] Habermas himself seems to do this when he notes the responsibility of each 'generation' to fulfill the promise of constitutional democracy.

In his 2001 essay, 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?', Habermas intervenes in the constitutional democracy debates with the aim of showing that deliberative democratic theory is untroubled by their conundra. He rejects the idea that constitutional democracy represents a struggle between past and present. For him, constitutional democracy models the appropriate relationship of considerations of right (constitutionalism) to considerations of will (democracy). Deliberative democratic theory, he says, is committed to a view of these as mutually implicated. The problem of a possible conflict between them is unique to modern constitutional democracies because they have two distinct sources of legitimation, the rule of law and popular sovereignty: 'This duality raises the question of how the democratic principle and constitutionalism are related', he explains.[32] But that question is answerable. The two principles are 'co-original', Habermas says, meaning that they are of equal conceptual import; neither is prior to the other. He differs from Mouffe. The two principles are not antagonists in need of articulation; they are always already 'co-implicated'. The act of co-legislation itself postulates the rights and equalities entrenched by constitutionalism. Thus, each depends on the other, and the rights that issue from each – public and private rights, taken together as basic rights – 'are constitutive for the process of self-legislation', a kind of autonomy in which rule and freedom are experienced together.[33]

Although he attends to the paradox of constitutional democracy, the term *paradox* does not come up frequently in Habermas's writings. Nonetheless, in *Between Facts and Norms*, Habermas theorises what Patchen Markell refers to as 'the constitutive tension of law and politics', one that needs 'to be negotiated by citizens, not transcended by the theorist'.[34] Similarly, in the essay examined here, Habermas turns to practice to aid theory in charting a way out of the paradox of constitutional democracy. Along the way, though, he runs right into the paradox of politics.

31 Rubenfeld, Freedom and Time (supra note 30).
32 Habermas, 'Constitutional Democracy', p. 766 (supra note 4).
33 Habermas, 'Constitutional Democracy', p. 774 (supra note 4).
34 Patchen Markell, 'Making Affect Safe for Democracy? On "Constitutional Patriotism"', Political Theory (28) 2000, p. 38-63, at p. 45-46; Habermas, Between Facts and Norms, p. 680 (supra note 3).

The problem arises in Habermas' 'Constitutional Democracy' essay, in which he considers a question posed by Frank Michelman. Michelman appreciates the deliberative democratic view of constitutionalism as the nonconflictual partner to democracy but, Habermas notes, Michelman worries that the deliberative democratic solution is incomplete, and he raises a powerful objection:

> 'A truly democratic process is itself inescapably a legally conditioned and constituted process (...) Thus, in order to confer legitimacy on a set of laws issuing from an actual set of discursive institutions and practices (...) those institutions and practices would themselves have to be legally constituted in the right way.'[35]

In Habermas' parsing: The 'chain of presuppositions of legitimation reaches back even beyond the constitution-making practice. For example, the constitutional assembly cannot itself vouch for the legitimacy of the rules according to which it was constituted. The chain never terminates, and the democratic process is caught in a circular self-constitution that leads to an infinite regress'.[36]

Habermas rejects the option of stopping the infinite regress with a 'moral realism that would be hard to defend'.[37] Nor does he try to resuscitate his earlier model of the founders as deliberative decision-makers. Instead he embraces the regress he once sought to halt:

> 'I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution.'

He shifts the burden of legitimation from the past to the present and future, and points to the responsibility of postfounding generations to 'actualiz[e] the still-untapped normative substance of the system of rights laid down in the original document of the constitution'.[38] The present generation 'tap[s] the system of rights ever more fully', expands the circle of rights to ever greater inclusion, and thereby brings constitutionalism and democracy into better balance. The practice of tapping supports the co-originality thesis, by working further to harmonize the two elements of

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35 Frank I. Michelman, 'Constitutional Authorship', in: L. Alexander (ed.), Constitutionalism: Philosophical Foundations, Cambridge: Cambridge University Press 1998; quoted in: Habermas, 'Constitutional Democracy', p. 773 (supra note 4).

36 Habermas, 'Constitutional Democracy', p. 774 (supra note 4).

37 Habermas, 'Constitutional Democracy', p. 774 (supra note 4).

38 Habermas, 'Constitutional Democracy', p. 774 (supra note 4).

constitutional democracy, but also by directing us away from the problematic empirical past, which cannot by itself stop the infinite regress, and toward a not yet problematic future. Tapping also posits an origin for rights (in our tapping of the Constitution) that is less problematic than the not fully legitimate empirical founding that gave birth to the Constitution. Moreover, the 'system of rights' itself works as a backstop to the threat of regress insofar as the system is said to bear within its 'normative substance'. True, for Habermas, that normative substance is formal, but its association with an empirical constitution clothes it. Identified with a constitution but not completely captured by it, the normative substance becomes a potential object of affective attachment, via what Habermas calls 'constitutional patriotism',[39] while also retaining its universal character, in accordance with discourse theory's requirement.

Thus, Habermas' contribution to the constitutional democracy paradox literature is to endorse a thin constitutionalism, situated between a conceptual co-originality (the ground) and a practice of tapping (the horizon) that together work to secure the sense of freedom that constitutional rule might otherwise threaten. He braids together the two sources of liberal democratic legitimation (rule of law and popular sovereignty), casts them as mutually constitutive, not antagonistic, and insists that each is dependent on the other for eventual full realization:

> 'The allegedly paradoxical relation between democracy and the rule of law resolves itself in the dimension of historical time, provided one conceives of the constitution as a project that makes a founding act into an ongoing process of constitution-making that continues across generations.'[40]

Launched into time, but anchored by a co-origin that is out of time, the paradox of constitutional democracy seems to Habermas to be resolved or dissolved. Yet Habermas provides one more argument. He goes on to supplement the conceptual origin, co-originality, with an empirical event, the constitutional assemblies of Paris and Philadelphia. He provides the supplement in the context of a passing remark about Kant. In 'Conflict of the Faculties', Kant 'went beyond the systematic boundaries of [his] philosophy and raised the French Revolution to the level of a 'historical sign' for the possibility of a moral progress of humanity'.[41] Habermas seems genuinely puzzled by Kant here, but he misremembers Kant's position.

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39 Jurgen Habermas, 'On the Relation between the Nation, the Rule of Law, and Democracy', in: Inclusion of the Other, Cambridge, MA: MIT Press 1998.
40 Habermas, 'Constitutional Democracy', p. 768 (supra note 4).
41 Habermas, 'Constitutional Democracy', p. 768 (supra note 4).

In 'Conflict of the Faculties', Kant sought some sign that mankind might improve over time. What event might 'serve to prove the existence of a *tendency* within the human race as a *whole*'?[42] Not the French revolution. Its meaning, contra Habermas, was too volatile and uncertain to serve as a sign of anything. Instead, Kant took hope from the spectatorial response to the revolution. The sign of possible human improvement was the universal sympathy for the revolution that 'borders almost on enthusiasm', and the fact that spectators outside France, themselves still subject to monarchical rule, risked expressing their sympathy publicly: 'It proves', Kant says, '(because of its universality) that man has a moral character, or at least the makings of one' (182). The details of Kant's account, the emphasis on the universality and the morality of spectatorship, admiration for non self-interested action, and suggestion of a transnational public sphere, are all Habermas' own central commitments. Why then does Habermas miscast the account and distance himself from it?

For Habermas, it may not actually matter whether we are talking about the revolution or public enthusiasm for it. Both endanger the context-transcendent constitutional project by orienting us toward rupture rather than continuity. Indeed, perhaps most dangerous of all, from his perspective, is precisely the very thing Kant did cling to (and that Habermas here erases from Kant's account) – the sight of people caught up, even at their own risk, in revolutionary fervor, but not in constitutional enchantment. For this contemporary theorist of constitutional patriotism and champion of a rights-centered democratic politics, the possibility that only the former inspires the heroism Kant admired is a dismal possibility indeed. So Habermas substitutes his own sign for Kant's: In place of the French revolution, Habermas offers up for our (near) enthusiasm what Kant inexplicably left out:

> 'the constitutional assemblies of Philadelphia and Paris [or] at least the '*reasonable* trace of [that] great dual historical event that we can now see in retrospect as an entirely new beginning. With this event began a project that holds together a rational constitutional discourse across the centuries'.[43]

Can rational discourse, the core element of Habermas' deliberative democratic theory, need the supplement of an event (or, more aptly, its 'reasonable trace')? Habermas here tries to take advantage of the exemplary power of the event without forsaking the transcontextual rationalism of discourse

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42   Kant, Immanual, 'The Contest of the Faculties', in: Hans Reiss (ed.), Political Writings, Cambridge: Cambridge University Press 1991, p. 181; italics original.

43   Habermas, 'Constitutional Democracy', p. 768 (supra note 4), emphasis original.

theory; (not the event, but its 'reasonable trace', not a constitution, but a 'rational constitutional discourse'). Habermas needs Philadelphia and Paris to motivate his 'constitutional patriotism'. Without the events to conjure up a colorful human world of passion, loyalty, betrayal, idealism, and reason, the idea of affectively attaching to a constitution (which, after its characteristic nods to the people's virtue, is simply a list of offices, procedures, and rules) is about as attractive as kissing a typewriter.

With the place names, however, a Pandora's box opens. Philadelphia and Paris represent not simply 'constitutionalism' but two distinct revolutions and foundings, each characterised by its own unique, contingent drama, intrigue, public spiritedness, and remnants. In the U.S. case, 'Philadelphia' conjures not only the assembly that produced the new national constitution, but also the many competing conceptions of the American experiment that were sidelined or minoritized by the assembly and its constitution. The revolution, the Articles of Confederation, the constitutional assembly in Philadelphia, the resulting constitution itself, the antifederalists who fought it, the diverse crowds considered too unruly to be part of the deliberations, the various practices of popular constitutionalism delegitimated over the years, and the confederal practices of some native peoples are all the origins of contemporary American constitutional democracy. Not all of these are compatible, but all are part of American popular and democratic constitutionalisms and all – including those defeated – played a role in the historical shaping of American democracy. If they are unrecollected in Habermas' invocation of 'Philadelphia', that is because they are not, for him, part of its 'reasonable trace'. It is the trace, not the event, that he seeks to recollect. It is the trace not the event that he secures when he says that those who tap the system of rights must orient themselves toward a beginning from which they take their bearings and build a tradition. To do so, and by doing so, they must inhabit the perspective of the founders (they are 'in the same boat') and take up the unfinished project of founding: 'a constitution that is democratic (...) is a tradition-building project with a clearly marked beginning in time'.[44]

But which is to be the beginning? Philadelphia or Paris? Habermas refers to that 'great dual historical event' as if it does not or must not matter. But if it really does not matter, why utter the names Paris and Philadelphia at all? Clearly Habermas is aware that the names inspire; he wants to avail himself of their inspiration without the (for him) problematic particularities that make them inspirational but not universal, formative of a people but also productive of remnants. Once we conjure up the event, however, there is no putting it back in the bottle. For democratic theorists more alert

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44   Habermas, 'Constitutional Democracy', p. 774 (supra note 4).

to the paradox of politics, such as Hannah Arendt, Sheldon Wolin, and Larry Kramer, 'Philadelphia' is not the opening chapter in a *bildungsroman*, but a pivotal moment in a tragic story of almost irrecoverable loss or theft.[45] To Arendt, Wolin, and Kramer, a democratic tradition built on practices now lost would be very different from the one we have. This is not to endorse their judgment over Habermas', but to highlight the latter's insistent character, while calling attention to the genred nature of his reading of the signs he favors. Rousseau's insight is apt here: Signs do not speak for themselves. No criteria decide which event is a sign and which is its (un)reasonable trace: We do, and the worth of our judgment depends on its implications: what politics and public goods are generated thereby?

It may seem to Habermas that the paradox of politics calls us back repeatedly to the political moment of origins wherein it pulls the rug out from under our feet, and it may seem to him that in such moments, upheaval rather than settlement necessarily dominates, but this need not be the case. The paradox of politics can be a generative force. It makes little sense to talk of constitutionalism versus democracy, as such: there are varieties of constitutionalism, including popular constitutionalism, many of which were casualties of Philadelphia and Paris.[46]

When Habermas' tappers choose 'Philadelphia' as the beginning of their tradition-building enterprise, the costs of alternatives foregone and still sidelined daily are not viewed. Does Philadelphia win out over other contenders now because it did so then, that is, because you go to politics with the constitution you have, not with the one you wish you had? If so, then this seems to be one of those moments of decision that critics claim are discernible in deliberative democratic theory, notwithstanding its protestations to the contrary. Habermas even seems to concede the point when he says: 'We can now see in retrospect' that Philadelphia and Paris marked 'an entirely new beginning'. If our apprehension of Philadelphia and Paris as new beginnings is, as Habermas says, retrospective, then that means we are making the judgment from inside the frame we are supposed to be judging – and that means we are not out of but rather firmly in the paradox of politics.

4   The paradox of politics, revisited

Which came first, the chicken or the egg? Anaximander solved this, the oldest paradox, by postulating an infinite thing, an uncaused cause that functions not unlike Habermas's postulate of co-originality. Aristotle

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45   Arendt, On Revolution (supra note 29); Sheldon Wolin, The Presence of the Past: Essays on the State and the Constitution, Baltimore: The Johns Hopkins University Press 1990; Kramer, The People Themselves (supra note 27).

46   Larry D. Kramer, The People Themselves (supra note 27).

generated a different solution, the immortality of species[47] which, Roy Sorenson says, posits 'an infinite relationship between finite things, (...) an infinite sequence of parents and children'.[48]

Arendt may have had in mind something like Aristotle's infinite relationship between finite things when she remarked that the American revolutionaries succeeded because they practiced self-governance for decades before they rebelled.[49] Although theirs was a revolutionary beginning, it was preceded by decades of acculturation in democratic habits, mindsets, practices, law, and institutions (an infinite sequence, as it were, of parents and children) made possible by their contingent distance from sovereign power. The enabling distance Arendt noted was not simply a natural fact. According to Richard Ross, the American colonists, canny navigators of the seas of authority, sometimes pretended not to have received unwelcome directives from England, thus actively protecting the distance from monarchical power that was a condition of their successful self-governance.[50]

Arendt is often referred to as a theorist of beginnings.[51] She repeatedly emphasises the inaugural powers of action but her resort to something like Aristotle's infinite sequence to praise the American Revolution suggests a different notion of beginning than the *ab initio* variety with which she is usually associated (for good reason [see, *e.g.*, 205] by many of her readers, including this one) and with which, as we saw earlier, Habermas also affiliates: he celebrates Philadelphia and Paris as an 'entirely new beginning' and endorses a constitutional democracy that 'is a tradition-building project with a clearly marked beginning in time'.[52] What are the two different ways of thinking about political origins? Michael Oakeshott is helpful when he distinguishes *ab initio* origin stories, which he disapprovingly associates with the opening line, 'In the beginning', from those that that begin with 'Once upon a time.' The latter invite entry into another time and postulate many temporalities (that they imagine *a* time, suggests there are others as well). They have 'no unconditional conclusion; [their] end is the beginning of another story. [They have] no over-all meaning; [they tell of] occurrences understood in terms of the meanings they acquire from their evi-

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47   Aristotle, De Anima, (Trans.) Hugh Lawson-Tancred, New York: Penguin Books 1986, 415b, II, p. 4.

48   Roy Sorenson, A Brief History of the Paradox: Philosophy and the Labyrinths of the Mind, Oxford: Oxford University Press 2003, p. 11.

49   Arendt, On Revolution (supra note 29).

50   Richard J. Ross, 'Communications and Imperial Governance in Colonial British and Spanish America', in: Christopher L. Tomlins & Michael Grossberg (eds.), Cambridge History of Law in America, Cambridge: Cambridge University Press 2006.

51   Hannah Arendt, On Revolution (supra note 29).

52   Bonnie Honig, Political Theory and the Displacement of Politics, Ithaca: Cornell University Press 1993; Jurgen Habermas, 'Constitutional Democracy' (supra note 4).

dential contingent relationships'. In the beginning stories, by contrast, posit one time, one beginning and, as in Habermas's tradition-building project with its clearly marked beginning in time, their energies are harnessed to an overall purpose. They are grand narratives, out 'not to tell a story but to construct a myth',[53] Oakeshott says, though we need not accept his implication that the choice is between good stories and bad myths. The paradox of politics resists that binary as well. Most narratives have elements of myth and story, and partake of both sets of traits Oakeshott identifies here. They can be turned to either purpose (story and/or myth) or, perhaps better, we can be turned by them to either purpose, or both.

When deliberative democratic theorists and some of their critics substitute neo-Schmittian binary paradoxes for the vicious circle of Rousseau's paradox of politics, they evade the conditionality tracked here in the work of Aristotle, Arendt, and Oakeshott.[54] Deliberativists do so in the hope that constitutional democracy can be provided with a less contingent more legitimate ground, with what Oakeshott refers to as a *justification* rather than a *vindication*.[55] This lands them in the very paradoxes they then worry how to resolve, manage, or transcend. If deliberativists prefer binary paradoxes, however worrying they find them, to the paradox of politics, it is because the problems posed by the former (general will vs. will of all, constitutionalism vs. democracy) are themselves the deliberative democrats' solution.[56] In their preferred paradoxes, the people are a problem that rules might solve. In the paradox of politics by contrast, with its plural 'once upon a time' and 'in the beginning' temporalities, the problem is that the people are always also a multitude, the general will is inhabited by the will of all, the law(giver) is possibly a charlatan, and political theorists' objectivity is also partisan. Here, we get neither deliberation nor decision as such; we get a politics, in which plural and contending parties make claims in the name of public goods, seek support from various constituencies, and the legitimacy of outcomes is always contestable.

With their focus on conflicting principles (Habermas, Benhabib) or incommensurable 'logics' (Agamben, Mouffe, Christodoulidis),[57] democratic theorists drive us into binary paradoxes that shuttle us back and forth between decision and deliberation. Even Mouffe's strategy of articulation can-

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53 Michael Oakeshott, On Human Conduct, Oxford: Oxford University Press 1975, p. 105.
54 Aristotle, De Anima (supra note 47); Arendt, On Revolution (supra note 29); Oakeshott, On Human Conduct (supra note 53).
55 Oakeshott, On Human Conduct, p. 69 (supra note 53).
56 Cf. Mary G. Dietz, 'Merely Combating the Phrases of This World: Recent Democratic Theory', Political Theory (26) 1998, p. 112-139.
57 Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life, Stanford: Stanford University Press 1998; Mouffe, 'Carl Schmitt and the Paradox of Liberal Democracy' (supra note 12); Christodoulidis, 'The Aporia of Sovereignty' (supra note 15).

not help but preserve the binary of law and democracy whose pragmatic settlements she seeks to rework. Political events and dramas exceed such hypostatized categorizations. Politics occurs in the spaces between them. As Mary Dietz says of a different Habermasian binary, the two tensions are never resolved. They are played out 'along a continuum of "more or less"',[58] not a binary of either-or. The categorisations, principles, logics are not entirely pernicious, however. The terms 'general will' and 'will of all', for example, capture certain elements of political experience and can provide a way to move people into supporting common agendas. But these advantages are lost when the terms in question are frozen into a binary paradoxical structure in which each term not only opposes the other but also props it up and between them the vast, complicated, and subtle terrain of politics is excluded.

Rousseau's paradox of politics, like Aristotle's infinite sequence, explodes the familiar binaries that structure the debates between decision and deliberation. It points to alternative domains of political work by depriving us of postulated points of origin (landing us right in the conundrum of which comes first, good law or the wisdom of self-governance?) and inviting us to see how (admittedly to different extents, in different ways, in different regimes) law and its authors/subjects fundamentally fail to intersect in the present in ways that satisfy independent standards of legitimation. This is not, contra Jefferson and Webster, simply because others authored the law by which we are later, distantly governed. Nor is it, contra deliberative democratic theory, because we lack a moral standpoint from which rightly to distinguish the general will from will of all. Nor is it because we have failed our responsibility to tap the systems of right by which we are governed (though we may well have). Rather it is because this infinite sequence is the condition in which we find ourselves when we think and act politically, when we demand that the lawgiving/charlatan institutions by which we are always already governed and shaped be responsive to the plural, conflicting agents who together are said to authorize or benefit from them: the ever-changing and infinitely sequential people, the multitude, and their remnants.

58   Mary G. Dietz,'Working in Half-Truth', in: Turning Operations, New York: Routledge 2002.