

Opening Pandora's Box: Historical Comments on Bonnie Honig's Paradoxes in Democratic Theory

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It is perhaps one of the defining characteristics of modern philosophers that they expect to find the solution to their philosophical predicament by shifting to another discipline. Just like Descartes put his stakes on geometry, more recently philosophers hoped to find a way out through economics (like the rational choice theorists); via neurology and genomics (as some of the evolutionary moral philosophers have done); or, like many of the ethical and moral thinkers in the tradition of Nietzsche, through a recourse to art and literature. Another way out of the dire straits of philosophical discourse has been found in the vast area of history. Thinkers like Michel Foucault and Hannah Arendt have not just clothed their arguments in historical attire, but argued in favor of a historical reason, by which to explore the fields of subjectivity, action, knowledge, and rationality.

In her article 'Between Decision and Deliberation', Bonnie Honig points in the latter direction, and, like her favourite philosopher Hannah Arendt, argues for a philosophical argument that starts *in medias res*, in the flow of events that constitute the life of political institutions. I applaud the strategy, and admire the rigor of the argument by which Honig is able to shift the ground of the debate on democratic theory, in order to liberate it from the paradoxes that have kept democratic theorists encaptured by a series of false oppositions. Yet the outcome of Honig's reasoning is only a half-way house: she points the way she does not take herself, standing, as one might say, on the quay, but never embarking on the boat to sail the open sea of history.

In this contribution, I want to re-read the argument Honig presents in order to make its historical nature more explicit. Then I will present an example of historical reasoning in order to make clear what the founding of a

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democratic polity entails. Finally, I will discuss to what extent this kind of historical argument might contribute to the philosophical problems Honig has raised.

1 Honig's turn to history

Honig discusses two kinds of paradoxes 'deliberativist' democratic theorists have come to love to be troubled by. In their struggle with 'decisionists' who refuse to engage with the aporias of justification of a just political order by accepting the 'unreasoned' foundation of any polity, deliberativists develop a number of binary oppositions that can best be overcome by a deliberativist approach – if only because a deliberativist is, and has to be, convinced that all oppositions, at least within democratic theory, are 'litiges' that can be solved by recourse to a common criterion of decision, and not a 'différend', that lacks such a common ground. According to Seyla Benhabib, the tension within democratic legitimation between majoritarianism and universality implied in the principle of popular sovereignty, can be overcome by subjecting the empirical popular will to the rule of law, 'deliberatively' and thus revisably understood. This leads to a second paradox, that of constitutional democracy, exemplified by Jürgen Habermas, who accepts (as Benhabib does not) that constitutional limits to the sovereignty of the people are themselves not democratic, since the constitutional assembly is, as a matter of principle, unable to justify the constitutional rules it proposes as the basis of legitimate political order. Yet, Habermas argues, these constitutional assemblies can be read as approximations of the rule of reason and thus as a manifestation of reason in history; that is, for the time being, until a new round of constitutional criticism, revision and reconstruction takes place.

It is at this point that Honig shifts the debate to the paradox of politics, by pointing to the fact that the constitutional assemblies of Philadelphia and Paris were not just edifying examples of constitutional deliberation, and as such traces in a universal history of deliberative reason, but 'two distinct revolutions and foundings, each characterized by its own unique, contingent drama, intrigue, public spiritedness, and remnants'.¹ 'Paris' and 'Philadelphia' are parts of distinctive histories, which have not survived in a complete and immaculate state. Some of its fragments have been lost forever, other elements have been tainted by subsequent events, hijacked by political entrepreneurs, or unmasked as vain illusions. The normative relevance of these examples can never be fully disconnected from the empirical nature of their history. It is their 'historicity', the fact that they happened

1 Honig, 'Between Decision and Deliberation', on p. 132 of this special issue.

then and there, which breeds the enthusiasm for them and their moral appeal. But they are irrevocably historical also because the high expectations and sorry illusions, the promising perspectives and false beginnings of these events always clutter together.

As such, these histories are instances of the paradox of politics, as expressed by Rousseau in the second book of the *Social Contract*, where he argues that

‘in order for a nascent people to appreciate the sound political maxims and follow the fundamental rules of statecraft, the effect would have to become the cause; the public spirit, which should be the product of the way in which the country was founded would have to preside over the founding itself’ (*Social Contract*, Book II, chapter 7).

That is to say: in order to be able to speak of a sovereign people, and to discuss to what extent its sovereignty should be limited or not, one first has to have a people. As Honig rightly observes, the actual existence of a people is never self-evident. Even in a well-established polity, the people or the nation is subject to constant reconstruction, as new generations are born, and newcomers aspire to become part of an existing nation. It is not just at the moment of founding, but in the continuous process of socialization of newcomers into citizens of a political community on terms not of their own choosing, that democratic politics is based on the fictitious assumption of a legitimate sovereignty of the people.

It is debatable to what extent this paradox of politics requires a recourse to history. I think there are three main reasons why this is the case. A first reason is related to an argument Honig presented in her ‘Political Theory and the Displacement of Politics’, where she discussed Derrida’s commentary on Austin’s speech-act theory.² Derrida criticized Austin for his retreat from the radical implication of his theory, to wit the contingency of speech-acts. Austin argued that under normal circumstances speech-acts establish social relations, yet he refused to accept the radical possibility of a failure of mutual understanding by positing the conventionality of speech-acts as the precondition for their performative character. Only by following a pre-determined script, and by postulating the sincere intention of a speaking subject, Austin argues, the performative effect of speech-acts comes about. Derrida, on the other hand, rejects the conventionality of speech-acts and thinks the nature of speech as action can only be preserved by acknowledging its completely contingent character. Not only the act itself is wholly new, but even the subject uttering the statement only comes about as the

2 Bonnie Honig, *Political Theory and the Displacement of Politics*, Ithaca/London: Cornell University Press 1993, p. 89-96.

result of the web of meaning speech-acts constitute. From this perspective, the paradox of politics is the paradox of founding, *i.e.*, the creation *ab ovo* of a political community that is at the same time presupposed as the founder of this community. However: this is too drastic. Just like there are no private languages, there are also no speech-acts that are completely disconnected from common usage, shared understandings, and accrued traditions interlocutors in a conversation have at their disposal. Even though they are always remnants, fragments, parts of a fund of conventions and understandings, which need to be pieced together, and will always be put together in a bricolage that is unprecedented and utterly new, every speech-acts weaves into a texture of meanings, images, references with a life extending far beyond the confines of a particular conversation. It is at least in this sense, of an unorganized collection of relics from the past, that history is inevitable in order to handle the paradox of politics. Every community builds on the remnants of older ones, even if it is established in order to make a clean break with the past.

A second reason why the perspective of the paradox of politics leads to a historical mode of argumentation is revealed by rephrasing the paradox of politics as a confrontation between a constructivist and a naturalist conception of the people. In the constructivist perspective, the people are a construct of the law, while in a naturalist perspective the people are a natural entity, and as such the source of the law. While the first position reiterates Benhabib's a-historical deliberativist position, which Honig rejects, in the second position the people emerge from a prior history – *e.g.*, a shared language, culture, creed, or community of fate. However, this in itself is not yet a very convincing argument for the idea that history is inevitable. As Ernest Renan pointed out already in his famous lecture at the Sorbonne in 1882, *Qu'est-ce qu'une nation?*, the French nation, which had an indisputable political existence, lacked a shared language (most Frenchmen spoke some form of regional patois), the commonality of a common culture (Paris against the rest; north and south, east and west differed strongly), or a common creed. On the contrary, as he famously argued, the French nation could only exist by virtue of forgetting the Night of Saint Bartolomew of 1572, when Catholics slaughtered the Protestant nobility. Renan therefore argued that the nation had to be understood as a daily and permanent plebiscite, a continuous political act by which the nation constituted itself.³ In that sense Renan's discourse has to be read as a Rousseauist defense of the Third Republic along the lines drawn by the revolutionary first republic. Yet it also points to the crucial issue that forging a nation entails the reworking of that nation's past: it is only by viewing a specific history as the nation's past, by

3 Ernest Renan, *Qu'est-ce qu'une nation?*, Leiden: Academie Press Leiden 1994 [1882].

distancing oneself from it and thereby making it truly historical, instead of an instance of an undetermined present, that the past fixates (and maybe even fixes) the nation.

This leads to a third argument why history is inevitable. Not just the reworking of the past needs to be taken into account in order to understand the 'founding' paradox of politics, but also the historical process by which the past is reworked. In Rousseau's version of this paradox, this whole process is made invisible by the illusion of a direct democracy. In the end, the people realize themselves by coming together on the central square of the village and by counting the yeas and (if the general will operates perfectly, no) nays of the multitude. Under the condition of the modern state, with a large population, a vast territory, and a centralized bureaucracy, (re)constructing a polity requires not only mechanisms of representation, but also the means to establish the authority of a separate group of people, acting as ruling elite or popular representatives, or even of a single leader as embodiment of the nation. Regardless of the particular constitutional forms chosen by the people, in all cases this involves the construction of some kind of an assembly or committee, acting as representatives or place-holders of the people, who themselves are incapable of acting as a collective. Also in this sense, history, as an account of the mechanism by which these constitutional constructions come about, is inevitable.

Honig's article thus gives ample reasons to assume that a historical line of argument would help to get a deeper understanding of the paradox of politics. She approvingly quotes Michael Oakeshott, who rejected the mythical beginnings of the natural law tradition of which deliberativist theorists like Habermas and Benhabib are part. Honig prefers the shakier ground of stories that start with 'once upon a time', which will perhaps lead to a convincing vindication of institutional arrangements, yet never to their final justification. However, as most philosophers do, Honig also recoils from actually entering the 'infinite sequence', as 'the condition in which we find ourselves when we think and act politically'.⁴ History for Honig remains 'Pandora's box', causing mayhem instead of insight among philosophers.

2 The constitution of the French Fourth Republic

There is one very practical reason why philosophers are seldom actually turning to history. Writing history is so much less efficient than doing philosophy. While it is one of the ambitions (and often also illusions) of philosophy to be all-encompassing, historians tend to focus on details, and increasingly so since the histories of nations and civilizations have fallen

4 Honig p. 136.

into disrepute. Historical accounts are therefore often long-winding, and some even rather pointless. If they are illustrative of something, it generally is the complexity of historical processes, yet they are hardly ever illustrations of a clear-cut philosophical point. Although I do not pretend to make a cutting-edge philosophical intervention by way of a historical analysis, I still hope to be able to support my previous argument by a short historical digression. I think the example of the establishment of the French Fourth Republic illustrates some of the implications of the paradox of politics Honig presents.

Eight days after D-Day, on June 14, 1944, Charles de Gaulle landed on the beach of Normandy to make a triumphal entry in the nearby city of Bayeux: 'We proceeded on foot, from street to street. At the sight of General de Gaulle', as he wrote in the third person in his *Mémoires de Guerre*,

'the inhabitants stood in a kind of haze, then burst into cheering or else into tears. Rushing out of their houses, they followed me, in the grip of an extraordinary emotion. The children surrounded me. The women smiled and sobbed. The men shook my hand. We walked on together, all overwhelmed by comradeship, feeling national joy, pride and hope rise again from the depths of the abyss'.⁵

The next day, back on the boat to England, the general said to one of his companions:

'You see, you have to present the Allies with a *fait accompli*. Our new authority is now established; you'll see they will not dare to have any more comments. The national sovereignty is practically safeguarded.'⁶

De Gaulle's entry in Bayeux belongs to the French postwar mythology. The story of his rise to the leadership of the government of national unity coming to power on September 9, 1944, is as heroic as it is reductive. It neglects De Gaulle's initial lack of legitimacy and the complex struggle for power that lasted from 1944 until 1946 between a plurality of forces between which not only the political authority in France was contested, but even more funda-

5 Charles de Gaulle, *War Memoirs. Unity 1942-1944* (Trans.) Richard Howard, London: Weidenfeld and Nicholson 1959, p. 235.

6 Quoted in Jean Lacouture, *Charles de Gaulle. I. Le rebelle 1890-1944*, Paris: Éditions du Seuil 1984, p. 778-781.

mentally, the question of which form society, politics and authority should have in postwar France.⁷

Let me briefly point to a number of important characteristics of the process France went through, from the material, social and political chaos at the end of the regime of Vichy and the German occupation, to the more stabilized (yet hardly stable) structure of authority of the Fourth Republic. One might first of all suspect that military force played a decisive role. Indeed, without the Allied bombings and landing of the troops, the Germans would never have left, and democracy would not have stood a chance. However, the Americans and British had no ambition at all to establish a civil administration, and were all too happy to leave that complicated task to the French. And despite the fact that De Gaulle presented himself as a general, he had hardly any military might at his command. It was clear that the struggle for democracy could never be won by arms alone. More important was the establishment of a legitimate structure of decision-making, and the forging of a legitimate authority that was able to create such a structure.

The decisive step in that direction was the establishment of a provisional government, with enough authority to set the process of constitutional reconstruction in motion. From an early moment onwards, De Gaulle and his entourage were making preparations for creating such an authority. A first element of these preparations was the staging of De Gaulle as a charismatic leader. Acutely aware of the reputation he needed to develop, not only his radio-speeches after June 1940, but even more his self-presentation during the second half of 1944, were aimed at creating his reputation as the saviour of France. The entry in Bayeux in June 1944 was like an informal plebiscite, meant to test and to enhance the prestige of the general, as well as to establish his authority on French soil. The eventful entry was repeated many times over, always involving the same elements: the reception at the town limits by the notables of the town, the triumphal march through the streets, a reception in the city hall, the speech to the crowd in the central square. The high point of this series of joyous entries was, of course, his entry in Paris on August 25 and 26, 1944, staged by the general in order to 'mould all minds into a single national impulse, but also cause the figure and the authority of the state to appear at once'.⁸

These entries point to a second element of establishing authority, which is the extensive use of propaganda. Already in 1940, De Gaulle had started a press campaign⁹ and he remained very much aware of his public image.

7 Grégoire Madjarian, *Conflits, pouvoirs et société à la Libération*, Paris: Union générale d'éditions 1980, p. 76.

8 De Gaulle, *War Memoirs*. Unity (supra note 5), p. 305.

9 Jean-Louis Crémieux-Brilhac, *La France Libre. De l'appel du Juin 18 à la libération*, Paris: Gallimard 1996, p. 72.

Contrary to De Gaulle's depiction of the Bayeux entry as a spontaneous event, it was thoroughly staged. His aides had arrived a few days before to make preparations for the meeting. Before De Gaulle entered the city, his arrival had been announced, making sure there would be a welcoming crowd. Afterwards, the visit to Bayeux was widely publicized, to begin with in a communiqué, stating: 'Le général de Gaulle a traversé la ville à pied au milieu de l'émotion et de l'enthousiasme indescriptibles de la population, bouleversée par son arrive inattendue' – note the more concise, yet roughly similar words as used in the so-called personal memoirs of the general.¹⁰ Later entries were also extensively reported.¹¹ Although the tone of most reports was generally approving of De Gaulle's call for the restoration of the Republic, some commentators were critical of the fact that the general called for discipline and order, which appeared to include former supporters of the Vichy regime.¹²

This points to a third aspect, which is that of representation. Already from an early moment onwards, De Gaulle's committee of national liberation was focused on expanding its base of support by integrating representatives of the internal and also the communist resistance. In this way it hoped to acquire a position from which it could claim to be the legitimate representative of the French people. In 1943 De Gaulle also established a Consultative Assembly, consisting of people of his own entourage in Algiers, and former politicians of the Third Republic, who could counterbalance the members of the internal resistance, which was also represented. This council would be able to express 'ce que désirent et ressentent les Français',¹³ and function as a channel for the legitimation of a new authority, even though De Gaulle payed little attention to it, because, as André Philip, one of his main opponents, candidly told him, 'vous êtes incapable de l'écouter'.¹⁴ Yet this strategy to enhance the 'representative' nature of his regime also created the suspicion that De Gaulle was catering to the interests of former Vichyists, whom

10 'Communiqué du Gouvernement français au sujet de la visite du général de Gaulle à la région de Bayeux', in: De Gaulle, *Mémoires de guerre II, l'Unité 1942-1944*, Paris: Librairie Plon 1956, p. 645; see also René Hostache, 'Bayeux, 14 juni 1944: étape décisive sur la voie d'Alger à Paris', in: Fondation Charles de Gaulle, *La rétablissement de la légalité républicaine (1944)*, Paris: Éditions Complexe 1996, p. 231-242.

11 Sylvie Lindeperg, 'Actualité sous influence: la presse filmé de la liberation (septembre 1944-décembre 1944)', in: Fondation Charles de Gaulle, *La rétablissement de la légalité républicaine (1944)*, Paris: Éditions Complexe 1996, p. 663-689.

12 Laurent Douzou & Dominique Veillon, 'Les déplacements du général de Gaulle à travers la France', in: *La rétablissement de la légalité républicaine*, Paris: Éditions Complexe 1996, p. 641-661.

13 'Discours prononcé par le général de Gaulle à la séance inaugurale de l'Assemblée consultative le 3 novembre 1943, à Alger', in: De Gaulle, *Mémoires de guerre II* (supra note 5), p. 542-547: 542.

14 Loïc Philip, André Philip, Paris: Beauchesne 1988, p. 67.

he tried to integrate in the broad political coalition that was supposed to support him.

The problematic position of the former Vichyistes points to the ambiguous relation of a constituent power to history I discussed before. De Gaulle, on the one hand, rejected the past and wanted to start with a clean slate. He opposed the government of Vichy, which had been the result of an apparently valid decision by the last parliament of the Third Republic to grant marshall Pétain extraordinary powers to create a new constitution. De Gaulle disputed the constitutionality of the latter decision, yet he did so by reconstructing another past, based on a reconstructed 'légalité républicaine', that is of the Third Republic. When he arrived in Paris on the day of its liberation, he therefore rejected the request of the resistance to proclaim the republic, since, as he explained:

'The Republic has never ceased. Free France, Fighting France, the French Committee of National Liberation have successively incorporated it. Vichy always was and still remains null and void. I myself am the President of the Government of the Republic. Why should I proclaim it now?'¹⁵

At the same time, it was impossible to disband the structure of the Vichy state completely, if only because the administration of public order and the well-being of the population depended upon a functioning state apparatus.

Balancing between these divergent tendencies, the National Liberation Committee renamed itself as the Provisional Government of the French Republic (GPRF), which then organized elections for a Constituent Assembly. Interestingly, at this point De Gaulle lost the initiative to the other parties that were reconstituted prior to the election for the new Constituante. They objected to the authoritarian direction in which De Gaulle's constitutional proposals appeared to go, and forced him to leave his position as government leader, sending him into the political desert for more than twelve years. From the perspective of the paradox of politics these later episodes are less relevant, because at that moment procedures were already in place that were considered to enable the French nation to re-constitute itself in a legitimate way.

15 De Gaulle, War Memoirs. Unity (supra note 5), p. 309.

3 The limits of constitutional history

It is immediately clear that the way in which the Fourth Republic was constituted fell short of the demands of justice and democracy required by democratic theorists. Even though sheer force was not decisive, the road to the Constitutional Assembly was paved with propaganda and symbolic politics, compromises between political opponents defined by the contingent balance of power at the moment of the German breakdown, and fictitious claims to the legality of the reconstruction process, which even covered up the integration of many of the institutions and personnel of the former regime. Yet at the same time, one has to conclude that within a year, a constitutional assembly was established, which was able to present a draft of a constitution. Even more remarkable, this first proposal was voted down, after which a second Constituante made an alternative proposal, which was finally accepted. Even if it was not perfect, from the standpoint of democratic theory, one might conclude this was a constituent power that worked cautiously at creating a new constitutional structure.

It confirms a crucial point made by Honig in her article with a reference to Mary Dietz, who argued that it is not helpful in politics to think in terms of binary or exclusionary logics. Tensions between poles of the paradox of politics are played out 'along a continuum of 'more or less', not a binary either-or'.¹⁶ This continuum is of an essentially historical nature, going from a little democratic state of affairs, to an increasingly democratic process. Therefore, one should reject the imagery of founding stemming from natural law and social contract theories, in which the constitution of a political community is presented as a one-blow affair, creating this community instantaneously, as the result of a one-time collective decision. Instead, it should be seen as a gradual process of legitimizing and stabilizing, much like phase transitions in the natural world, where the turbulent gas condenses into liquid, and crystalizing into the fixed structures of an established political system, for instance, of a 'frozen party system'.¹⁷

One might wonder how this transition to an increasingly democratic process comes about. One mechanism is what might be called empirical normativity: actors involved in these processes of constitution-making act not only from motives of interest and power, but also on the basis of moral convictions that urge them to construct and follow fair procedures. From the

¹⁶ Honig p. 136.

¹⁷ Ido de Haan, *Politieke reconstructie. Een nieuw begin in de politieke geschiedenis*, Utrecht: Universiteit Utrecht 2004; the concept of frozen party system was introduced by S.M. Lipset & S. Rokkan, 'Cleavage structures, party systems, and voter alignments', in: S.M. Lipset & S. Rokkan (eds.), *Party systems and voter alignments: Cross-national perspectives*. New York: Free Press 1967, p. 1-64.

perspective of democratic theorists this may not be very reassuring, since the chances of a democratic constitution then come to depend on the moral education of the participants. But from the perspective of real-world politics, it might be the only thing we have, and considering the wide acceptance of democracy as a norm, maybe that is not to be belittled. Yet there is still another sense in which these processes of constitutionalization have an innately democratic character. Generally, these are moments when it is unclear to all participants involved what the actual balance of power is. Behind such a historical, instead of a hypothetical, veil of ignorance, the risks of enforcing a constitutional arrangement against the interests of other major players are very high. Looking at the recurring instances of constitutional debate in modern history, it is clear that in most of these some kind of plebiscitary moment is of crucial importance.

All of this does not preclude the possibility of blatantly illegitimate outcomes, resulting from perverse coalitions, fraud and violence. The constitution of the Fourth Republic is a case in point. It was able to create a viable solution for the political predicament for 'la France métropolitaine', but it was not tailored to the demands of the people in the French colonies, who demanded recognition of their political rights, and resisted the constitutional order the Fourth Republic inherited from the Third. Yet even if a constitutional process is following the path of reason, it still might lead to the re-integration of people who have forfeited the rights of full citizenship as a result of their crimes against fellow-citizens or against humanity. As Renan stated, in many cases one has to forget the crimes of the past, in order to be able to live together in the future. As the constitutional historian Michael Foley once argued, the working of constitutions much depends on what remains unsaid, on the gaps and inconsistencies in their make-up, in their openness that allows politics to be played out.¹⁸

18 Michael Foley, *The Silence of Constitutions: Gaps, Abeyances and Political Temperament in the Maintenance of Government*, London: Routledge 1989.