Radical Democracy: A Principled Disruption

DISSERTATION

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by

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DEDICATION

To

My amazing Parents and Sisters
who have always believed in me
even when I have not always
believed in myself
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CURRICULUM VITAE

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ABSTRACT OF THE DISSERTATION

Radical Democracy: A Principled Disruption

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Politics concerns the fact that it is not obvious how we are supposed to live together in community, and that community is a question and a problem rather than a self-evident given. I explore the implications of this idea and develop a theory of politics as the perpetual disruption and transformation of sedimented social structures, orders, and institutions and explore the implications that this has for the idea and practice of political legitimacy. I seek to develop a principled approach to mediating the co-constitutive forces constituting the very possibility of human community of the disruptive and transformative power of politics and the solidifying and stabilizing power of social structures, orders, and institutions.
Introduction

Human beings are social animals. We live together in communities in more or less organized, coordinated, and generally interconnected ways. Most of us seemingly want to live together in community, consciously or unconsciously enjoy living together in community, enjoy being social beings and enjoy the indescribably complex interdependency that we as a species embody. Regardless of some indeterminate assessment of intentionality and desire, we are arguably intrinsically social and communal beings defined and determined even in our very independence, individuality, and singularity as social and interdependent. Community, despite all of this, is not a self-evident given.

It is distinctly not self-evident how we are supposed to live together and how we are supposed to order and organize our interconnectivities. There is not some blue-print ingrained into our biological essence; we do not, like ants, emerge into a complex interconnected universe and simply follow "instinct" and fulfill our role within a naturally self-evidently functioning social unit. Or if there is some blue-print, some "right" way, some "natural" way to live together in community, a correct and self-evident social order to a properly enlightened, clear-headed, and rational perspective, it is again, certainly not self-evident in practice, or it is self-evidently wildly contested and contestable. In practice, it is undeniably clear that community is a question and a problem, one distinctly without a clear and obvious answer. The long conflict-ridden history of humanity attests to this fact in often violent and bloody detail. It is clear that we are meant to, or are naturally inclined to, or want to, or have to live together in non-random and descriptively ordered ways; it is
equally clear, however, that we as a species know of no obviously "right way" to do so. We argue and fight about this very question incessantly and perpetually and passionately. This is politics. Politics concerns the fact that it is not self-evident how we are supposed to live together in community. Here and throughout I use the term community in this way in its most general sense to simply refer descriptively to the phenomenon of more or less organized interconnectivity and coordination amongst a given group of people, to situations of ordered common spaces and interconnectedness as opposed to complete disorder and/or a simple descriptive lack of interconnectivity amongst some particular peoples. It is not in this way intended to connote some particular type or form or theory of community in this way, and is rather simply a descriptive term.

The long history of political thought and political practice entails varied approaches to dealing with this question of politics, to dealing with, quite simply, how we are supposed to live together, how we are supposed to coordinate and order our common interconnectivities, and what the purpose and goals are and ought to be for our social collectivities and individual lives. Philosophically, in admittedly very overly simplified broad strokes, the question of politics at this most general level can be answered in one of two ways: quite simply, either there is a "right" answer as to how we are supposed to live together in community or there is not. Either the project of political philosophy is to "answer the question" of politics in one way or another, by finding self-evident or objectively reasonable natural truths and laws upon which to found social order and to legitimate particular logics of ordering community, or intrinsic truths and characteristics about human nature and/or social hierarchies, or objective and determining laws of social dynamics, social order, and the path of human history, or "right" normative principles of
justice to be discerned from particular human practices, interactions, or human nature and so on. In any event there is a right "answer" to the problem of politics and to the question of how we are supposed to live together or are determined to live together.

Or politics is constitutive of human community and the human condition and there is not an answer to the question of community. There is not a self-evident or "right" way to organize, coordinate, and order our living together in community, either naturally, rationally, or normatively, and there is not any determined logic or determined teleological progress to be discerned in the history or practices of human communities. This perspective can certainly go the route of relativism in its variety of guises, or distinctly communitarian perspectives, or pragmatist ones, or a bald nihilism or anarchy; in any event it is a route of leaving behind the supposedly vain and conceited- not to mention impossible- task of utilizing principled approaches to objectively answering the question of politics, as if the very question of community is not intimately bound with "cultural" values and merely particular and historically conditioned frameworks of thought that are beyond the scope of any independent or objective reason and principled approach to access.

Now the purpose of carving out this dichotomy is not to suggest that particular political theories, approaches, or schools of thought all fall neatly in their entirety on one side or the other of this artificially stark divide. It is rather to bring to the foreground this particular implication of political philosophical inquiries that seek to answer the questions of politics of how we are supposed to live together and how we do live together and what the purpose or meaning of community is or ought to be. I suggest that looking at the problem of politics from this perspective illuminates the particular role that reason and principles play in normative and descriptive political theories and illuminates the
philosophical foundations and political implications of different approaches to political philosophical inquiry. In other words, I am simply suggesting that the above dichotomy provides a useful matrix to highlight the descriptive and normative implications of particular approaches to theorizing politics.

Certainly sometimes, perhaps in contemporary political philosophical approaches and schools of thought most of the time, particular theories and approaches blend and blur the lines between these dichotomies and not in an unaware or unprincipled manner, but this does not mean the dichotomy is not a meaningful, enlightening, or useful one. On the contrary, I argue that being aware of where a particular theory or approach falls upon this matrix has important implications philosophically and practically on political possibilities and realities. In particular, marking where a political theory or approach stands along this axis has significant implications on the relationship within a particular theory between its philosophical foundations and commitments on the one hand and practical and normative political realities on the other, between what we might describe as a theory’s metaphysical or ontological presuppositions, foundations, or commitments and its implications for the actual occurrence and practices of politics, normatively or simply descriptively. Clarifying where a theory is positioned along the axis of this dichotomous matrix clarifies the presuppositions and commitments, implications and objectives that a theory has and helps to provide some clarity to the tricky question of the relationship between the meta-level of political philosophical inquiry and practical implications of this same inquiry. When these questions are clarified, what sometimes appears to be profound disagreement between schools of thought, theories, or approaches emerges as rather a lack of clarity within these theories on the aforementioned relationship between their philosophical
commitments/presuppositions/foundations and practical politics, normatively or descriptively. Simply put, sometimes seemingly competing theoretical schools of thought are really yielding very similar outcomes and assessments, and where their seeming disagreements lie might rather reveal different perspectives on similar outcomes which can illuminate aspects of each theory and lead to new and different political insights of these theories.

The present endeavor engages our so called question of politics through the lens of a confrontation between two of these seemingly disagreeing schools of thought in contemporary democratic theory that I argue are in fact not as contradictory as they might first appear or as their practitioners and theorists might assume. Here I refer to two of the more influential schools of thought in contemporary democratic theory, those of deliberative democracy that I will engage via the most influential proponent of this perspective Jurgen Habermas, and agonistic radical democracy that I engage via the influential French post-structuralist Jacques Ranciere. These more or less coherent approaches to theorizing politics are presumed to maintain opposing philosophical commitments and practical political implications and objectives, although certainly both falling on the side of progressive or leftist politics very broadly construed.

The deliberative democratic perspective proceeds within the broadly construed liberal-democratic and contractarian tradition, seeking to generate a reasoned and principled anchor in the presuppositions and practices of communication, discourse, and deliberation. This is certainly perceived to be a fluid and open-ended anchor point grounded and interpreted through human practices as opposed to the transcendental perspectives of the more classical liberal Kantian and Lockean natural law perspectives.
Deliberative democracy seeks to discern in the practices and historical development of the structures of liberal democratic institutions the mutually supportive roles of individual and political rights and democratic political institutions and processes to generate procedures of democratic law-making that might enjoy the presumption of legitimacy. Deliberative democracy thus places an emphasis on a principled theory of political legitimacy emphasizes procedures, institutions, structures and a law-making process that presumptively enjoys and begets political legitimacy. This perspective certainly understands itself as pluralistic and very open to transformation, change, and internal disagreements and different political points of view, but this does not play a distinct role either in the philosophical foundations and commitments nor in the normative implications of the theory that rather leads towards “rational processes of opinion and will formation” and towards consensus and agreement. This is precisely what is opposed by the agonistic radical democratic perspective.

Agonistic democracy on the other hand proceeds within a certain strand of the Marxist democratic tradition that places greater emphasis on conflict, disagreement, and internal social contradictions constituting social orders. Philosophically this agonistic radical democracy thus proceeds from certain Post-Structuralist philosophical perspectives that understand the role of universality in theory and in practice to be an empty place, a lack, or an abundance, in any event a dislocated or indeterminate place-holder that itself is politically constructed and fluid and thus does not yield any substantive or determinate principled theory of political legitimacy freed from always particular and politically constructed power-infused social dynamics. Simply put, to use our previous “anchor” metaphor, there is no anchor, the role of the anchor lacks its anchoring ability, and the role
that the anchor plays is itself a politicized construction in on-going processes of social
dynamics and transformations which are certainly not entirely arbitrary or indeterminate,
but are open-ended, indeterminate, or over-determined to a meaningful degree. Agonistic
democracy thus proposes politics as constitutive of community, in this sense very plainly
falling on the latter side of our political question dichotomy, and suggests a practical and
normative politics emphasizing internal dissensus and “agonistic” (as opposed to
antagonistic) confrontation both as an ends and value in and of itself and as a means to
constantly open up and transform social structures and norms that they argue intrinsically
tend toward stultification and inequality by their very nature. They thus place an emphasis
on an egalitarian politics that is best supported or advanced via this agonistic politics, an
egalitarianism which they argue is implicit in precisely the indeterminate and open-ended
nature of human subjectivity and community itself following their philosophical
commitments previously described. Agonistic democracy thus distinctly does not place
principled emphasis on procedures, structures, institutions, and law-making processes that
might beget political legitimacy. In so far as these “institutional apparatus,” so to speak,
might be more or less legitimate is simply in so far as they might more or less be open to or
encourage the agonistic politics and a radical egalitarian politics supported by agonistic
democracy.

These are then the admittedly over-simplified terms of the political-philosophical
disagreement between the perspectives of deliberative democracy and agonistic radical
democracy from our point of view of the question of politics. Deliberative democrats
emphasize a principled approach to procedures and the institutional perspective broadly
construed to generate an at least loosely anchored perspective of political legitimacy while
agonistic radical democrats embrace the ends of an agonistic contested democratic politics that is broadly opposed to the power-infused and oppressive institutional apparatus of procedure, structure, and the law-making process. Herein I will explore the nature of this disagreement and will seek to investigate if the philosophical commitments and practical political outcomes generated by these theories really generate as differing or antagonistic theories of political legitimacy as it initially appears. I will contend that they are in fact far more complementary than antagonistic, and that the appearance of this profound disagreement stems more from an emphasis on one point of view or another on a similar phenomenon. These different emphases however are useful as they illuminate on the one hand, the more radical and transformative political potential and the radical openness to internal dissensus and contested political spaces of the deliberative democratic perspective, and the principled (and hence not simply arbitrary or indifferent) role that the “institutional apparatus” (to use our catch all phrase termed previously) plays in encouraging or discouraging certain political practices and can thus support or discourage certain forms of democratic politics.

I will argue from the political philosophical perspective of the post-structuralist agonistic radical democrats in understanding politics as fundamentally concerning the irreducible contingency of human community and in understanding politics as thus constitutive of community.¹ I will, however, attempt to develop a perspective on politics

¹ While I will not overtly engage the numerous works of Gilles Deleuze herein, I have his ontological perspective in mind throughout. The entire political narrative and understanding of community developed throughout this work builds upon Deleuze’s notion of “rhizomatic” structures of heterogeneous construct where perspective and point of view play a key role. This is the manner in which I will consistently develop the idea that community is essentially, in Deleuze’s terms, “rhizomatic” in its composition and consists simultaneously of different and conflicting- heterogeneous- orders of being, process, and temporality, what will be developed herein through ideas such as “institutionalized instability,” “two communities in one,” as “becoming community,” etcetera. In any event, we will develop a theory of
that maintains a principled perspective in analyzing political institutions and political order while arguing that the political logic itself is precisely one of contingency and open-endedness. A principled chaos, an ordered disorder, a logic of paradox, disruption, and contingency. Nor is this as dizzying and absurd or as wildly radical a departure from "traditional" thinking regarding practical political realities, institutional structures, and objectives as it might seem. It in fact captures and simply "tweaks" so to speak many common intuitions and political practices and, I will argue, more coherently and consistently articulates the aims and aspirations of certain "progressive" democratic and political perspectives.

I will thus attempt to bridge this supposed gap between deliberative democracy and agonistic radical democracy. In the first chapter I will engage the so-called "democratic paradoxes" dealing with the notoriously tricky question of the relationship between "good" democratic institutions and the "good" democratic people in suggesting a certain radicalized understanding of the deliberative democratic framework developed by Jurgen Habermas. The aim of this chapter will be to suggest a principled theory of the institutionalization of political order that embraces or is precisely built upon the contingency of politics as suggested above, and explores the ways in which Habermas' deliberative framework is actually far more open to the radical contingency of politics than it might seem on the surface or than he argues it is. Here I will engage the idea that he borrows from Hannah Arendt that the democratic people’s popular sovereignty is

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essentially a bodiless *communicative power* and will contend that this generates a theory of political legitimacy that envisions a much more open-ended, transformative, and radically contingent theory of democratic politics than at might be anticipated.

The second chapter will seek to develop a "definition" of politics, fleshing out this general intuition of politics as the contingency of community through engaging the agonistic radical democratic theory of politics developed by Jacques Ranciere. This chapter will again seek to bridge this gap between the opposing perspectives of embracing the chaos and contingency and proffering principled theories of the institutionalization of politics but from the opposite perspective, this time arguing that this contingent theory of politics still does speak to a principled approach to theorizing the institutionalization of political order. Here I will first flesh out the contours of Ranciere’s theory of politics as the rationality of disagreement and a confrontation between the logic of politics and the logic of social order that he refers to as “the police.” Then I will develop a critique of this framework in describing how this disruptive theory of politics where politics exposes the radical contingency of community in disrupting sedimented norms and orders still suggests a principled approach to systems of social order being better or worse than others.

The last chapter will circle back to the democratic paradoxes as the framework through which to conceptualize a theory of the qualitative characteristics of the legitimating force of the democratic people and their general will to give substance to the institutional framework developed in the first chapter and the logic of the process of politics developed in the second chapter. This chapter will engage one of the classic foundational texts for democratic theory in Jean-Jacques Rousseau’s *Social Contract* and will, I argue, build upon the conceptual intuition and principle guiding Rousseau’s
description of the democratic people and their general will but will extend this in
directions that Rousseau himself certainly did not go, again offering a certain "radicalized"
reading of Rousseau. Here I argue that the democratic people and their general will is
premised upon what I will describe as the principle of community, quite simply that it is
better for each and all generally to live together than to not. I argue that from this
seemingly simple principle we can develop a radically contingent, open-ended, and
transformative theory of democratic politics that is still principled and speaks to
democratic institutions and order as well as contingency and radical upheaval and
transformation.
Chapter Two: Paradoxes, What Paradoxes? Institutionalize Instability

Modern democracy is a potentially coarse mixture of competing principles. Mitigating the tensions between liberty and equality, openness and closure, and democratic procedure and democratic substance are fiercely contested battles waged both in theory and in practice. Political legitimacy is what is at stake with these tensions. But what exactly does this mean? Is there some fixed standard by which democracy can be absolutely judged? Does democratic legitimacy demand perfection for democracy to live up to its name? The so-called “paradoxes of democracy” invite these questions and offer the lenses through which to analyze democratic legitimacy.

Jean-Jacques Rousseau is one of the first to cogently expound troubling paradoxes at the heart of the idea and practice of what we now generally refer to as democracy. His puzzling legislator figure continues to demand various and contradictory explanations and interpretations from democratic theorists. How can a democratic people found itself democratically? What comes first: a good democratic people capable of creating a truly general will or good democratic procedures to ensure us that we, in fact, have an appropriately democratic people? How can a people recognize when its will is appropriately general and when it is in fact worthy of the name “the people?”

These paradoxes continue to press democratic theory as the empirical conditions of their existence demand democratic treatment. Swirling controversies around multiculturalism, immigration, health care, the welfare state, sexual-orientation, women’s and minorities’ rights, just to name an obvious few, confront democracies and democracy as such with the tensions embodied in its own principles. Issues like these confront
democracy with the pesterling limitations of any of its actual manifestations. Determining
who the democratic people is, what democratic rights they should have, and how this
process should be determined democratically is a process burdening the democratic aspect
of many democratic societies in modern times.

I will first flesh out the contours of the paradoxes of democracy through several
distinct but related perspectives. Alan Keenan describes the “paradox of creation” at a
conceptual or philosophical level while Kevin Olson demonstrates an essentially similar
“paradox of foundation” from a juridical, procedural perspective. Bonnie Honig’s
description of the “paradox of politics” effectively portrays why these paradoxes extend
perpetually through democratic practice. I suggest that commonly underlying these
paradoxes of democracy is an understanding of democratic legitimacy that assumes a
potentially fixed embodiment of popular sovereignty as the aim and/or foundation of
democracy. In other words, I suggest that an artificial paradox is created by assuming that
popular sovereignty is ideally the expression of an actually existing, particular and
determinate democratic people. I contend rather that democratic principles and practice
demand the perpetual reconstitution, reconfiguration, and contestation over who precisely
the democratic people is at any given time. In this way popular sovereignty is the
expression of an always incomplete democratic people, which is another way of saying that
the democratic people is always beyond whatever it might be identified as being. It is this
incompletion itself that is democratic politics. In this way I suggest that legitimating
democracy is a process of politicizing legitimacy, of institutionalizing instability; it is a
process aimed towards continually legitimating rather than any final legitimacy.
I develop this notion of democracy as *institutionalized instability* from a radicalized reading of the deliberative democratic framework expounded by Jurgen Habermas in his magnum opus *Between Facts and Norms*. This will certainly seem off track to critics of deliberative democracy like the agonistic radical democratic perspective proposed by Chantal Mouffe whose visions of radical democracy seem much more congruent with the notion of politicized legitimacy and institutionalized instability that I have suggested.² While I am completely sympathetic to Mouffe’s aims in these regards, I agree with Keenan and others that it is entirely unclear how Mouffe’s radical democracy actually comes about and equally unclear what it might actually look like.³ Further, I argue that a radicalized reading of deliberative democracy actually does provide a framework for the type of agonistic pluralism desired by radical democrats like Mouffe.⁴ In this spirit, I contend that a deliberativist exposition of democracy can provide clarity as to actual democratic institutions and practice while simultaneously providing the sort of radically contingent openness at the heart of democracy that critics like Mouffe desire, the kind of radically contingent openness that makes the paradoxes of democracy productively constitutive of democratic practice.

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The Paradoxes

Popular sovereignty- the rule of the people- fuels democracy and hence, its paradoxes. How is “the people” to comprise itself legitimately, i.e., democratically? If constituting a democracy is understood literally as a historically contingent moment where a democratic people constitutes itself as such then there appears to be a looming paradox, for how is “the people” to know that it is sufficiently democratically constituted in order for it to legitimate their democracy; how is it to know that it is in fact democratic? It would appear that we need to be secure in the first instance that the people is in fact sufficiently democratically constituted for it to legitimately constitute its democratic politics.

Alan Keenan engages Cornelius Castoriadis to describe what he terms the “paradox of creation.” “What is at stake...is not merely a norm for judging and choosing on a particular issue but rather a norm for judging what the community itself is. According to what standard can ‘the community’ judge what makes it a community? How can this standard not be either circular (relying on a prior standard that is itself in need of support) or arbitrary? In other words, how can a democratic, autonomous community be produced democratically, or autonomously?’ For Keenan, “the simple answer ... is that it cannot be.”

Significant both abstractly and practically is the recognition that “a people” constituting a democracy will be a people in a historically contextual environment. In this way, the people, if existing in a homogenous setting with, in Jurgen Habermas’ terminology, shared “lifeworld backgrounds,” might seem able to constitute itself as the people simply through its shared underlying understanding of who in fact it is as a people. However, this does not answer the paradox of creation because the people still have not determined their status as

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5 Keenan (n.4), p.33.
such through *democratic* means. Regardless of the degree of a historically situated, thus “real,” underlying shared understanding of who “we” are who are constituting ourselves as a democratic people, this understanding is not a democratically generated one. “Whatever sense of common identity and generality there is, if it is not the residue of a past, pre-political (unconscious) community, can only be the effect of a political intervention that by definition cannot be an autonomous act- given that it is the act that creates the community as community.”

This suggests that if there is to be an overtly *political* commonality identifying a political community, then it can not be generated truly *democratically*, for a democratically determined democratic people needs an appropriately democratic people to act truly *democratically*, which is, of course, the very purpose of this sort of founding political intervention in the first place. This conceptual paradox thus seems wed to the very nature of founding a democracy, which inherently entails the identification and delineation of a democratic people via seemingly undemocratic means.

Kevin Olson describes the same paradox as the “paradox of the founding.” This paradox “shows that a legal and political order cannot be democratically founded, at least not in a procedurally legitimate sense.” This paradox confronts the same conceptual difficulty described by Keenan but expresses it from a juridical or procedural point of view, from the point of view of the legal expression of popular sovereignty in democratic procedure. In creating a constitution for a given group of people, the founders of the constitution have to determine *how* they are to determine who the people are. “The founders must, in other words, devise ground rules that will allow them to set up ground

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6 Ibid. p. 33.

rules for constitution founding," which means that "any democratic attempt to create a constitution requires a previous constitution that has already established democratic procedures. There is an infinite regression of procedures presupposing procedures, each necessary to form the procedures following it."\textsuperscript{8} Theoretically, democracy functions through legally channeling the will of the people (popular sovereignty) into their governance. In other words, the people are simultaneously the source and subject of the law or, as Habermas describes this: the people must be the "addressees" and "addressors" of the law.\textsuperscript{9} It is this relation that confronts a democratically legitimate creation of the people in the founding instance, for in the founding instance the people can not rely on predetermined democratically legitimate procedures to determine democratically legitimate procedures to determine themselves a democratic people.

At this juncture an essentially similar paradox has been described from slightly different perspectives. The essence of both is that a people cannot determine itself to be a democratic people democratically. In Rousseau's famous conception, "the effect would have to become the cause."\textsuperscript{10} Keenan describes this abstractly while Olson highlights it procedurally. Bonnie Honig demonstrates the paradoxes in a slightly different manner, and points to Rousseau to suggest an underlying expression of the democratic paradox.

Honig describes three subtly different paradoxes of democracy; two she claims are normally used by deliberativists, these being the paradox of democratic legitimation and the paradox of constitutional democracy, and a third that is supposedly distinct yet over-
looked by deliberativists, the paradox of politics.\textsuperscript{11} Honig describes the paradox of democratic legitimation as the difficulty of rooting democracy in popular sovereignty- the will of the people- but simultaneously demanding that this will be in fact the ‘general will’ and not the untamed and merely particular “will of all.” This seems to require the will to be aimed in a \textit{particular} direction, namely towards the \textit{general} will. How can the people know when they embody the general will rather than simply the will of all, and further, how can the will of the people direct itself somehow automatically towards the general will if it is in fact the ultimate authority in a democracy? Honig suggests that the paradox of democratic legitimation is actually a surface manifestation of a more underlying paradox. She notes that the paradox of legitimation actually exposes that “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.”\textsuperscript{12} Honig calls this the paradox of politics and recognizes that it is sometimes referred to as the paradox of foundation, but she notes that “it is more than that, for it is alive at every moment of political life and not just at the origins of a regime.”\textsuperscript{13}

Honig exposes the paradox of politics through discussing Rousseau’s legislator as a potential solution to the paradox of democratic legitimation. She points out that regardless of the legislator’s apparently external position, which allows him the ability to make good law and, thereby, save the people from their lack of orientation in founding themselves

\textsuperscript{11} Bonnie Honig (2007) ‘Between Decision and Deliberation: Political Paradox in Democratic Theory’, \textit{American Political Science Review} 101:1-17

\textsuperscript{12} Ibid. p.5.

\textsuperscript{13} Ibid. p.3.
democratically, he still must be accepted by the people. ‘The lawgiver forms a people into a unity that may or may not stay true to his leadership and he also generates remnants with plural and contending visions of the public good. The lawgiver does not transcend the political fray; he (or really law itself) is at the center of it.”14 Here, Honig signifies that the paradox of politics continues regardless of an external orienting force while further demonstrating that this attempt—such as a constitution (Honig’s reference to the law itself)—does not answer the paradox of politics. Rather, this effort actually extends the paradox by generating “remnants” of the public will who might offer contending visions of the general will and therefore might not accept the nature of the external imposition. These “remnants” are those who might not be convinced that the external impositions guidance has in fact generated, or identified the truly “general will.” They are those who might consider themselves officially, i.e. legally or constitutionally, excluded, or unofficially, i.e. without the means—financial or otherwise, to partake in or identify with the general will’s formation or maintenance. It is not democratically sufficient to inform these ‘remnants’ that they simply do not grasp the general will but that it has in fact been established without them. Any external imposition is in the last instance just that, external to “the people’s” hypothetical “general will.”

While usefully explicating the paradox through a slightly different lens, Honig’s paradox of politics remains essentially similar to Keenan’s paradox of creation and Olson’s paradox of the founding as none maintains the paradox to be relevant only in the founding instance. Keenan highlights succinctly why this is: “the fact that ‘the people’ come into existence only through the intervention of an outside force, and thus not from ‘the people’

14 Ibid. p.6.
themselves, means, then that the people can never fully come into being. They are, indeed, in need of perpetual re-institution, a process that can never be complete and that, because it must be performed from a point that is never itself fully general, will always remain deeply contestable.”

Keenan identifies precisely why the paradox of the founding is inherently more than just a paradox of the founding, but becomes a paradox via the founding. Regardless of the specific orientation, all three paradoxes revolve around the tension of the generation and determination of a particular, truly democratic people, one sufficiently “general” to embody a “general will” and thus legitimize “their” democracy.

Finally, Honig discusses the paradox of constitutional democracy. While she admits that it replays several facets of the paradox of democratic legitimacy, she cites its distinction as, “instead of the will of all versus general will, we have popular sovereignty versus constitutionalism.” This branch of paradox, in other words, pits democracy’s supposedly legitimating force, popular sovereignty, against an existent rigidity, the constitution. Again, as is the case with Honig’s paradox of democratic legitimation, this paradox highlights the difficulty of seeming to limit or constrain democracy’s ultimate authority, popular sovereignty. Whereas the paradox of democratic legitimation highlights the tension of demanding popular sovereignty to be aimed in a particular direction, namely the “general” one, Honig suggests that it is the temporal factor that distinguishes the paradox of constitutional democracy. The paradox of politics/founding/creation entails a “chicken and egg” circle of which comes first, good people or good laws? The paradox of constitutional democracy is the “rather different problem of constitutional democracy and

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15 Keenan (n.4), p. 35.

16 Honig (n.12), p. 8.
its limits from the past on popular sovereignty in the present.” Honig sees this paradox as one of inexplicably binding the present popular sovereignty, supposedly the ongoing legitimating power of democracy, to a past legitimating and binding force, a past popular sovereignty.

While the distinctions Honig draws between the paradoxes are conceptually useful, I suggest that some fundamental considerations draw together all of the paradoxes that have been discussed. Perhaps the paradoxes are better understood as three expressions of an underlying tension. The paradox of politics/foundation/creation highlights the difficulty in democratically ascertaining a democratic people while the paradox of democratic legitimacy points to the difficulty in determining the general will to be truly general. The paradox of constitutional democracy, in turn, questions the binding of the supposed ultimate authority of popular sovereignty to a constitution whose at least partial purpose is to mitigate the problems of the paradox of politics. Honig’s discussion of Rousseau’s lawgiver aids us in tying together legitimacy, popular sovereignty, and constitutional law. The lawgiver seemingly solves one paradox (the paradox of legitimation) by orienting the public will towards the general will (through, perhaps, a constitution which beckons towards the paradox of constitutional democracy), but in reality still requires the acceptance of these same people, thus highlighting the continuing contested spaces within democracy (the paradox of politics). Thus we come full circle, each paradox linking to the others through the tensions in the embodiment and expression of the principle of popular sovereignty at the heart of democracy. These paradoxes demonstrate the difficulties of

17 Ibid. p. 9.
connecting democracy’s legitimating force of popular sovereignty to actually existing democratic peoples.

The paradoxes of democracy taken as a whole only become paradoxical when they judge democratic practice as requiring a finite and closed political people, a particular *democratic* people. In other words, they understand democratic legitimacy as requiring a particular existent democratic people, rather than a constantly evolving, shifting, and contestable democratic people. If a democratic people is understood to be in a process of *perpetually becoming* then it is no longer inherently paradoxical that there is not a democratically secured *democratic people* in the first instance because there will not be, and could not be, a truly democratic body of people *ever*. In essence, this turns the notion of democracy that premises the paradoxes on its head. Now democracy does not seek its authority from a determined and determinative particular and properly democratic people; rather, *democratic legitimation* is itself * politicized* as democracy draws its legitimating power from the constantly contested perpetual generation of its democratic people(s). This circularity then loses its viciousness and becomes democracy’s very essence, and the paradoxes, rather than paradoxical, are democratic politics itself.

It certainly remains to be seen if this is a productive or normatively beneficial understanding of democratic legitimacy and, more generally, democracy itself. As we have seen, the paradoxes certainly present very real difficulties in manifesting democratic politics. It is not enough to simply claim that the paradoxes are actually, as it turns out, *strengths* of democracy rather than weaknesses. We have to now reconceptualize democratic politics, and see if this new suggestion for democratic legitimacy can actually
offer productive mechanisms for reconfiguring the paradoxes of democracy into democratic strengths.

Deliberative Democratic Legitimacy in a Different Light

Again, it will seem odd to critics of deliberative democracy to utilize Habermas in an effort to reconceptualize democratic legitimacy along the seemingly unhinged and ungrounded lines that I have suggested above. I contend that while Habermas himself responds to the paradoxes of democracy differently, aspects of his deliberative model actually provide mechanisms through which to conceptualize democracy and the generation of democratic peoples as a perpetual political project. It is Habermas’s use of the borrowed concept from Hannah Arendt of communicative power that underlies my conceptualization of a perpetually becoming democratic people.\(^\text{18}\) I propose democracy as a socially integrating force through communicative action. What this requires then is the positivization of law, and a subjectless popular sovereignty generating communicative power to fuel the substantiation of basic democratic rights. Democracy is thus conceptualized as the institutionalizing of instability; it is aimed at socially integrating rather than social integration; in other words, it is aimed towards a perpetual process rather than a teleologically achievable determinate end or standard.

While Habermas emphasizes legitimacy through procedures that can generate rational opinion-and-will formation, I propose a reflexively generating dialectic of progressive potentiality prefaced on a balanced tension between institutionalization- the structuring of democratic manifestations, and instability- the emptiness encountered

through acknowledging the particularity of any and all democratic manifestations, and
constructing democracy precisely upon this lack. Habermas’s democratic imaginary places
too much normative emphasis on the conditions that generate particular instantiations of
democratic rights via presumed rational opinion-and-will formation that then fuels
government’s decisions and implementations, i.e. the particular instantiation of rights via
laws. The deliberativist imaginary inverts the normative thrust of democratic potential; it
encourages the conditions for a potentially radical democratic imaginary while replacing a
constitutive tool for the normative purpose. The normative thrust for democratic politics
needs to be found in its potential to ever more progressively democratize particular
instantiations of democratic rights rather than in the conditions for these instantiations. In
this way, the finitude of every particular democratic instantiation mirrors a progressive
democratic imaginary that constructs the institutionalizing of instability upon the
disconnect of any particularity to any supposed universality. However, this democratic
imaginary also shows the radical potential of a seemingly mechanistic and rationalist
deliberativist framework.

Institutionalizing instability is conceptualized along a double-logic. From one
perspective, it is institutionalizing instability- thus seeking to preserve, or institutionalize,
instability in a democratic order’s particular instantiations of democratic rights and thus to
insure democratic institutions’ openness to radical transformation and change. From
another perspective it is institutionalizing instability, thus entailing institutional restraints,
limits, and standards to reign in unbridled instability and to structure the political realm.
Institutionalizing instability projects a progressive democratic imaginary that realizes the
limits of any and all particular manifestations of democratic rights, while institutionalizing
instability insures the preservation, protection, and promotion of democratic rights in their particularities. Conceptually, each force juts into the continuity of the other, disrupting the fullness of either concepts individual implications. These countervailing forces generate a vision of democracy with the potential for a reflexively progressive democratic politics.

The Democratic Sphere

Before explicating the rationale underlying this vision of democracy, I will take the typical idea of a particular governing body’s “sphere of influence” as the back-drop for modeling democracy as a democratic sphere. Imagine a particular democracy exists with particular laws, customs, and norms, containing a particular given people within its sphere of influence. There are those that exist within the sphere of influence of the particular democracy and hence are affected by and live within the effects of its laws and customs but who are largely unrecognized and un(der)-represented by the laws, customs, and norms of the particular democracy; it is these people, Honig’s “remnants,” who occupy the hollowed center of our sphere. Examples might include people such as immigrants without citizenship, homosexuals who do not have similar rights as heterossexuals, and minorities and/or women who are both legally and culturally oppressed or under-represented etc. While it might seem odd to conceptualize these people as “inside” our democratic sphere rather than ‘outside,’ what is significant here is that these people are already in the sphere of influence of our democracy, they simply do not have equal means to influence and effect the essence of the democratic sphere of influence. The essence of the sphere is the principles, policies, and activities, both formal and informal, of the particular democracy.
The sphere can be considered to “change” its essence constantly as the principles, policies, and activities, both formal and informal, themselves change.

In substantive terms, the aim of democracy that I am presenting is to continually shrink the hollow center of our democratic sphere by encouraging the continuing inclusion of those “remnants” into the essence of our democratic sphere, encouraging their access to and recognition in democratic decision making. It is never known with absolute certainty from the perspective of those already integrated within the essence of the sphere, those already with varying degrees of access to and recognition in democratic politics, what excluded elements remain in the hollow center. The changing nature of the sphere is formally aimed at integrating the hollow center; however, the boundaries between the hollow center and the substance of the sphere remain porous thus allowing the force of those excluded from democratic politics in the hollow center to potentially influence those already with access to and recognition in democratic decision making processes. This is the radical democratic aspect of this vision of democracy: it is permanently integrating. The remnants of the substantiation of basic rights are theoretically still able to influence the essence of the sphere despite their official and/or unofficial exclusion and can thus gain access and recognition through the permanently porous boundaries between the hollow center and substantive essence of the democratic sphere.

The actual ability of these “remnants” to permeate both official and unofficial power-relations which at least partially generate their relative status as “remnants” in the first place will clearly differ drastically depending on the particular situation. What is significant in the abstract is that these official and unofficial instantiations of the substance of our democratic sphere are institutionally porous and unstable, thus allowing the relative
status of remnant’s to be contested and contestable. Further, this vision of democracy encourages the recognition that no matter what, particular instantiations of democratic substance are only that, particular instantiations that can never sufficiently capture the universal. This encourages critique and encourages the recognition that the instantiation of democratic substance will never be perfect and can always get “better,” and certainly, more sinisterly, potentially “worse.” This vision of democracy thus encourages caution, critique, and vigilance in constantly recognizing the imperfections and shortcomings of any and all particular instantiations of democratic substance, while simultaneously supplying firm grounds for guarded optimism in the knowledge that the potential for reimagining democratic politics is always possible, and surely absolutely necessary.

Communicative Power: The Path to a Bodiless Popular Sovereignty

In this conception of democracy, popular sovereignty is generated in the processes and results of communication across all branches of society and in the legislative processes of government which are supposed to channel the results of this communication. Because basic democratic rights are established from the presuppositions of communicative understanding that is institutionalized through positive law, popular sovereignty is found in these boundless modes of communication both inside the government apparatus and in informal public spaces. Habermas says about popular sovereignty that “only in this anonymous form can its communicatively fluid power bind the administrative power of the state apparatus to the will of the citizens.”¹⁹ Here, Habermas is pointing out that popular sovereignty is clearly connected to actual persons but that its generative force, its

¹⁹ Habermas (n.10), p.136.
communicative power, is only translated to the administrative power of government in a subjectless manner, thus removing the impetus from an existent, rigid, and closed body to the fluid and potentially boundless essence of communicative power.

Communicative power is the force resulting from a proceduralized popular sovereignty; it is the power of the ever-changing results of communicative action across society and within legislative branches. As Habermas describes, “read in discourse theoretic terms, the principle of popular sovereignty states that all political power derives from the communicative power of citizens.”20 Because popular sovereignty generates the validity of positive law that simultaneously grants it legitimate coercive power, it is the results of popular sovereignty, communicative power, which give democratic lawmakers the content of their lawmaking. “Communicatively generated legitimate power can have an effect on the political system insofar as it assumes responsibility for the pool of reasons from which administrative decisions must draw their rationalizations.”21 It is “power” in this sense because it provides the motivating force for the “administrative employment of already constituted power, that is, the process of exercising power.”22 By this, Habermas intends that the communicative power is motivational, potential power, but does not actually become power until it is employed via democratic administrative power, or governmental law making and activity. In this way the law is the medium through which communicative power is transformed into governing power.

Communicative power entails informal, untamed, and unorganized political opinion-and-will formation across society, potentially from recognized participants who

20 Ibid. p. 170.
21 Ibid. p. 484.
22 Ibid. p. 149.
have relative access to and recognition in decision making processes compared to those excluded who, quite simply, do not. As Habermas says, “an informal opinion-formation that prepares and influences political decision making is relieved of the institutional constraints of formal proceedings programmed to reach decisions. These arenas must certainly be constitutionally protected in view of the space they are supposed to make available for free-floating opinions, validity claims, and considered judgments.”

These “formal proceedings” are happenings like the legislative processes of government that are purposeful in that they are geared towards the generation of decisions which are to be implemented. What gives these legislative bodies their normative arguments is this untamed, informal arena that, therefore, must be constitutionally protected if popular sovereignty is to legitimate the positivization of law.

What Habermas glosses over in this rather optimistic account of the “informal opinion-formation” that must be “constitutionally protected” is the latent tension between these ideas. It is this very “constitutional protection” which can generate and perpetuate exclusions within a democratic society in the first place, thereby limiting the potential effectiveness of those excluded “remnants” to participate in the generation of communicative power, examples of this are certainly bountiful. Communicative power in this manner needs to be sharply conceptually divorced from its constitutional protection, for it needs to be able to fuel the very re-formulation and ever developing instantiation of particular rights embodied and interpreted through the constitution. Essentially, communicative power needs to be able to fuel the reformulation of the protected space for

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23 Ibid. p. 171.

its own generation. However, Habermas is correct in assuming that this informal opinion formation does need to be protected, but what a more robust notion of communicative power must entail is the understanding that it can be, and has to be, at least partially generated from informal opinion-formation processes existing completely outside of the current constitutional order of a particular democracy. It is in this way that communicative power can more radically be understood to potentially access- and stem from- Honig’s excluded “remnants” of a democratic society. This conceptualization of communicative power detaches communicative power from its constitutional protection, thus severing part of the mechanistic suturing of communicative power- the generator of popular sovereignty- to the constitutional order itself. Communicative power can thus serve as an always-under-construction bridge between the legitimating force of popular sovereignty and the coercive nature of the legal system. For this to actually occur entails both constitutional protections of essential freedoms and liberties that can work towards maintaining open spaces within the coercive legal-order, along with simply a robust unofficial public sphere that actually does generate these ideas. Significantly in modern times is that this robust public sphere is in no way confined by territorial or state boundaries, and the ideas generated by communicative power that fuel any particular democratic societies official law-making apparatus within the legal coercive state can be flow from untamed circuits of information wherever.

Habermas’s “basic rights” constitutive of democracy are not substantive and only describe the form that rights might take which are then substantiated by particular legal actors in particular settings.\(^{25}\) When the substance of democratic basic rights is in

permanent flux and is substantiated perpetually by a communicatively fueled popular sovereignty which structurally assumes an open, unorganized public opinion-and-will formation, then access and recognition as legal subjects- which is at least a portion of the substantiation of the basic rights- is constantly contested by the very structural nature of democracy. In other words, the substantive determination of who are legal citizens, and hence those who are actually simultaneously the “addressees” and “authors” of the law, and the degree to which they can use these substantive rights, are constantly in flux and are contestable precisely because the communicative power generating this substantiation is unbound and does not pay heed only to the legally recognized actors within the system. Also, those who gain membership in a democracy are inherently given the tools with which to maintain, alter, and shape the nature of their membership. This is again where we can see the potential radical nature of democracy latent within a discourse theoretic understanding of democracy.

While admittedly oversimplifying and over-glorifying this aspect of radical democratic potential, a simple example of this is how previously legally excluded bodies such as African Americans and women were still able to participate to a degree in the unbound communicative power of popular sovereignty and eventually assist in transforming the substantiation of the basic rights of democratic citizenship. That this process is not completed by any means is not the theoretical significance here. The point is that these examples demonstrate the potential radical transformations of the instantiation of basic democratic rights, and just as importantly, that these instantiations can be, to varying degrees, influenced and effected by the very “remnants” of the constitutional order who are seeking influence, and/or access, and/or recognition in that order. Understanding
popular sovereignty through communicative power in this way allows us to understand how excluded bodies are able to encourage and demand access and recognition without already having it. Democratic membership then can, to varying degrees of effectiveness, entail the tools with which to continually maintain and improve the conditions of membership itself, a point that will be more fully developed later.

I will explain the substantiation of basic rights from the notion of self-legislation by citizens through three steps. First, Habermas observes that “the idea of self-legislation by citizens . . . requires that those subject to law as its addressees can at the same time understand themselves as authors of the law.”\(^\text{26}\) This is just a slightly more complex and technical way of explicating the familiar “government by the people for the people” principle. It is Habermas’s guard against a moralistic paternalism where a democratic people generates its own legitimating attitude towards democratic government which allows the people to be able to understand the genesis of laws as stemming from them.

Next, Habermas describes peoples’ orientations to law for it to be legitimate. “Legitimate law is compatible only with a mode of legal coercion that does not destroy the rational motives for obeying the law: it must remain possible for everyone to obey legal norms on the basis of insight. In spite of its coercive character, therefore, law must not compel its addressees to adopt such motives but must offer them the option, in each case, of foregoing the exercise of communicative freedom and not taking a position on the legitimacy claim of law, that is, the option of giving up the performative attitude to law in a particular case in favor of the objectivating attitude of an actor who freely decides on the

\(^{26}\) Ibid. p.120.
basis of utility calculations.”27 This explains what is needed for law to be understood as being applied to those who also create it rather than embodying an externally imposed moral principle; for democratic law does not ultimately derive its power or authority from an abstract moral principle but rather from the people of whom it governs. This is why the people must be able to take an amoral attitude towards the law and understand it as stemming from their interest, rather than stemming purely from a “morally legitimating” attitude of communicative freedom towards the concept of law. Basically, people must be able to willingly obey the law because they see it as best for them for whatever reasons they so choose rather than only because they see it as morally right.

Lastly, Habermas introduces the discourse principle to the concept of law which allows for a communicative understanding of popular sovereignty. When the discourse principle, which embodies underlying orientations and attitudes taken in performative speech acts, meets the legal medium, then a discourse-theoretic democratic principle ensues which “ends by legally institutionalizing the conditions for a discursive exercise of political autonomy. By means of this political autonomy, the private autonomy that was at first abstractly posited can retroactively assume an elaborated legal shape.”28 Through the principle of democracy embodying a discursive conception of legitimating legal rights, private autonomy and public autonomy are conjoined. The private citizen becomes simultaneously a public citizen; the addressee of law simultaneously becomes its author. While the democratic rights resulting from this process clearly apply to actual people, the legitimating force of the democracy principle is not found directly in its connection to

27 Ibid. p.121.
28 Ibid. p.121.
individual people; it is found in the abstracted discourses which can then become the force for giving substance to the substanceless rights which result from the principle of democracy. As Habermas describes this; “the logical genesis of these rights comprises a circular process in which the legal code, or legal form, and the mechanism for producing legitimate law—hence the democratic principle—are co-originally constituted.”

Two aspects of this “co-originality” thesis are significant for my purposes here. The basic rights stemming from the democracy principle can only be found in this conjunction of the discourse theory and the mode of law. Also, the co-originality thesis suggests removing the legitimation of democracy from an embodied popular sovereignty. That the legitimating force of law, the democratic principle, generates merely the forms of law means that it is then the communicative power of popular sovereignty that fuels the normative justifications for the intrinsically fluid substantiations of democratic rights. They are inherently fluid because the mechanism for generating their substance is powered by discourse, which itself is fluid and theoretically flows through potentially boundless channels. That these channels are, in reality, bound and never free of power relationships is clear, but that is why the fluidity itself is incorporated into the substantiation of the basic rights.

The substanceless nature of democratic rights must be understood in order to demonstrate the permanently contestable nature of the actual substantiation of democratic rights. The ever-changing nature of actual ‘bodies’ officially participating in democracy, the legally recognized rights-bearing citizens, is constantly contested by the bodiless, communicative power driven popular sovereignty which stretches from those officially

29 Ibid. p.122.
recognized participants to those excluded within a democratic society. In this way, those excluded- those residing in the hollowed center of our democratic sphere- are potentially always able to permeate the integrated essence of democracy at least to a degree.

In the abstract, basic rights simply result from the principle of democracy applied to the positivization of law. "We can say that the general right to equal liberties, along with the correlative membership rights and guaranteed legal remedies, establishes the legal code as such. In a word, there is no legitimate law without these rights." At this level, however, these rights are substanceless. Habermas admits that by the nature of law itself, as an aspect of "the facticity of making and enforcing law," these basic rights are given substance within a historically contingent society. "Legal norms stem from the decisions of a historical legislature; they refer to a geographically delimited legal territory and to a socially delimitable collectivity of legal consociates, and consequently to particular jurisdictional boundaries." He notes that this is true even of a world government, that any substantiation of legal rights remains "provincial in comparison with the future and universe." Because of this innately "provincial" nature of the substantiation of law, "the basic rights inscribed in the legal code itself remain unsaturated, so to speak. They must be interpreted and given concrete shape by a political legislature in response to changing circumstances." This includes the determinations of technical participants in the political process, those with substantive rights and access to, and recognition in the democratic political process. In other words, the makeup of the people, in a technical sense, is constantly in flux along with every other aspect of the substantiation of the basic rights.

30 Ibid. p.125.
31 Ibid. p.124.
32 Ibid. p.125.
The significance of this in dealing with the paradoxes of democracy is that legitimating
democracy no longer implies that a perfectly embodied popular sovereignty is required for
the generation of an appropriately democratic founding of a constitution as a distinct event
in time.

The literal constituting of democracy clearly occurs, but the substance of this
constitution is not, thereby, innately fixed nor is it legitimated by an already democratically
embodied popular sovereignty. Habermas notes that “every constitution is a living project
that can endure only as an ongoing interpretation continually carried forward at all levels
of the production of law.” In combining this with a bodiless popular sovereignty, the
legitimating of democracy is not a matter of the difficulty in determining a particularly
general popular sovereignty at any given moment in time. The particularly “general”
substantiation of popular sovereignty, those officially partaking in the actual substantiating
acts of interpreting the constitution via the generation of law is, in fact, inherently evolving
along with the all other interpretations and substantiations of basic rights as enumerated
by a constitution which originally substantiates basic rights in some particular manner.

It is impossible to generate democracy- or any political form- in a vacuum, from a
blank canvas. Hence the substantiation of democratic rights by a democratic founding will
obviously be influenced and shaped by practices and ways of life and customs already in
existence- the shared lifeworld backgrounds- of those within a society constituting a
democracy. Habermas notes that “even a proceduralized ‘popular sovereignty’ . . . cannot
operate without the support of an accommodating political culture, without the basic
attitudes, mediated by tradition and socialization, or a population accustomed to political

33 Ibid. p. 129.
freedom: rational political will-formation cannot occur unless a rationalized lifeworld meets it halfway.”34 A society must be capable of generating communicative power via popular sovereignty in order for it to practice democracy and continue to substantiate and interpret its constitution. This is not to say that a democracy already needs to be democratic to be a democracy; rather, this marks the recognition that democracy is never democratically legitimately founded by a legitimately embodied popular sovereignty at some particular moment in time. Democracy is founded by people situated in lifeworld backgrounds with pre-existing practices and norms which will support and shape their continuing existence as a democratic project, a project whose aim is to constantly regenerate and instantiate its particularity at any given time. The recognition that democracy relies on societal practices and norms already existing and continuing to exist independently from democratic government itself demonstrates its reliance on aspects of society not already entailed within it. This captures democracy's aiming at integrating rather than integration—there is always an outside. Democracy thus envisioned recognizes that practices—i.e. culture, religion, a multitude of sources of identification—exist independently from it which nevertheless legitimate it; this symbiotic relationship ties democracy to untamed public spheres.

The connection of a seemingly abstracted legitimating nature of democracy to particular democracy’s being actually founded at particular moments can be a confusing transition. Habermas provides the seeds for a more radical response to the paradoxes of

34 Ibid. p. 487.
foundation than he himself presents. In responding to Frank Michelman’s explication of
the paradoxes of democracy\textsuperscript{35}, Habermas says that

“a constitution that is democratic-not just in its content but also according to its
source of legitimation- is a tradition building project with a clearly marked
beginning in time. All the later generations have the task of actualizing the still-
untapped normative substance of the system of rights laid down in the original
document of the constitution. According to this dynamic understanding of the
constitution, ongoing legislation carries on the system of rights by interpreting and
adapting rights for current circumstances (and, to this extent levels off the threshold
between constitutional norms and ordinary law). To be sure, this fallible
continuation of the founding event can break out of the circle of a polity’s
groundless discursive self-constitution only if this process-which is not immune to
contingent interruptions and historical regressions- can be understood in the long
run as a self-correcting learning process.”\textsuperscript{36}

That there is a clearly marked beginning in time is simply the observation that a specific
democracy itself is generated at some moment, but this does not, thereby, imply that the
legitimating notion of democracy needs to be constantly past-oriented to somehow
embody the substance of an “initial founding moment.” In fact, the next sentence negates
this interpretation when Habermas notes that future generations will continue to give
substance to the system of rights laid out in the original constitution.


Habermas, however, places unwarranted emphasis on the temporal aspect of the present generations looking back to continually instantiate the “still untapped normative substance of the system of rights of the original document of the constitution.” There is nothing theoretically or normatively significant about the temporality of the founding moment, nor is the “still-untapped normative substance of the basic system of rights” untapped in any temporally significant sense. It is not as though the original document has the complete normative goody-bag that is to be somehow necessarily accessed for any and all instantiations of democratic rights throughout a particular democracy’s existence.

Certainly the founding document will be cited, accessed, utilized, and will provide limits, guidelines, and legal structure, and it will be instrumental in the overall normative instantiations of rights, but there is certainly no normative mechanistic teleology to this process. Regardless of the reasoning actually given by present generations for their continual substantiation and interpretation of the system of rights, the point is that they actually continue to do so. In other words, because normative arguments at any given moment in time cite the past substantiation of the system of rights for “present” substantiations of rights does not mean that the legitimating nature of the democratic constitution is thereby a “past-oriented” one. The radicalized legitimating nature of democracy that I have suggested here is in fact inherently and always a “future-oriented” one and does not seek the just-state either as a goal or teleological process. Therefore the process of the substantiation of the system of rights is inherently on-going and perpetual. The process can be perceived as a “self-corrective learning process” only from the perspective of the ever-evolving present generation which continues to substantiate the system of rights. To whatever degree the present generation looks back and observes the
continuing substantiation of the system of rights to be “better” by the normative reasons 
generated through the communicative power of popular sovereignty then they perceive the 
process to be self-corrective. When this communicative power supplies normative reasons 
to the administrative power of democracy that substantiates the system of rights to expand 
to the previously officially excluded, then the present generation can understand the 
democratic process as a “self-corrective learning process.”

Kevin Olson describes this as a “legal-political ratcheting effect,” “the greater a 
marginalized group’s degree of reflexive agency, the more likely they will be to preserve 
gains in inclusion. Reflexivity does this by introducing asymmetry between gaining and 
losing agency. Once a group gains political agency—however that may happen—they are less 
likely to lose it. This asymmetry arises precisely because reflexive agency allows its 
possessors the means to defend it.” Olson’s “reflexivity” refers to citizens’ “legally defined 
capabilities to determine the meaning and benefits of their own status” in the 
substantiation of membership rights in a democracy, or, as he puts it, in those political 
rights “that give citizens the formal opportunities to participate in the political domain.”

Because members are able to continually question, determine, and defend the 
substantiation of the system of rights, including the nature of membership rights, then this 
“reflexive agency” can serve as a mechanism of a “self-corrective learning process.”

Because this process is perpetual, it is not inherently “self-corrective” in any 
absolute sense; instead it is “self-corrective” in its ongoing continuity. The 
institutionalization of democratic rights generates this asymmetry along multiple 

37 Olson (n.8), p. 338.
38 Ibid. p.337.
dimensions. From the legal-administrative perspective, particular instantiations of democratic rights to those previously excluded or oppressed grants them a heightened ability to protect these gains through the technical apparatuses of democratic governance, such as voting rights, re-distributions of wealth, affirmative action policies, etc. The point is not to debate the merits or lack-thereof of these sorts of policies; the point is that these are examples of “official” mechanisms through which gains in democratic rights can be more effectively maintained once attained or strengthened.

From the perspective of communicative power, this self corrective learning process highlights the counter-perspectives of institutionalizing instability legitimating this vision of democracy. As has been discussed, an aspect of the instantiations of democratic rights is also the constitutional/legal protection of space for the generation of communicative power. Furthermore, as previously discussed, this constitutional protection will itself dramatically influence the generation of communicative power. It is in fact precisely this facet which premises the legal-political ratcheting effect of this “self-corrective learning process.” The legal-political ratcheting effect can be understood along this dimension as institutionally altering the power-structures, or access to effectively participating in the generation of communicative power, in such a way as to open a more accessible and influential space for those previously excluded in the generation of communicative power. However, this only further demonstrates the degree to which instability needs to simultaneously temper and destabilize these institutionalizations. To whatever degree the legal-political ratcheting effect is actually effective is simultaneously the degree to which democracy admits the particularity and incompleteness of all instantiations of democratic rights and also the effect that these instantiations have in projecting and protecting
asymmetrical power-relationships *within* a constitutionally protected communicative power. Thus this legal-political ratcheting effect that allows us to understand reflexive democratic citizenship as a self-corrective learning process simultaneously displays the need to conceptualize and *actualize* communicative power *apart from* its constitutional protection, while simultaneously relying on this institutionalization to provide mechanisms through which gains in inclusion can be encouraged and maintained.

These hypothetical gains in inclusion are relative, and clearly can be both improved and worsened. This relativity simultaneously demonstrates the *fluidity* of actual power-relationships in generating communicative power. To a degree, in democratic societies, because of their more-or-less untamed public-spheres, the generation of communicative power fueling democratic lawmaking flows *not only* from those with officially sanctioned access and recognition to lawmaking bodies, but also from those either/both without official access and recognition and/or with relatively limited effective utilization of their sanctioned access and recognition. Thus constitutional protection of this space for the generation of communicative power operates through a tri-directional interplay. Constitutional protection delimits and maintains power-structures which will serve to constrain the generation of communicative power while simultaneously promoting and preserving the means with which to maintain and improve potential gains in inclusion within the constitutional order. Furthermore, constitutional protection of this space for the generation of communicative power can act as an institutional mechanism for preserving the very grounds on which those excluded remnants of a constitutional order can *gain* access to this order. In other words, because of the admittedly power-infused porousness (the legal political ratcheting effect *would not* exist *without* this porousness being power-
infused) of the boundaries between “official,” or perhaps more generally, “effective,” influence/access/recognition in governmental decision making bodies and the periphery of those excluded remnants without official/(as-)effective influence/access/recognition, communicative power flows outside of, but along with and buttressed by, constitutional protection. In this way, instability is melded into the institutionalization of democratic rights, while this very institutionalization aids a normatively progressive democratic imaginary, and thus potential democratic realities.

The potential changes in the particular instantiations of democratic rights might change drastically. Actual constitutions might be completely re-written; original territorial boundaries might shift dramatically; a plethora of spatio-temporal changes might take place that do not negate this on-going shaping and re-shaping, interpreting and re-interpreting of a system of democratic rights. When popular sovereignty is disembodied, the actual composition of a democratic people under a constitution is vastly flexible. Even if every single sentient entity in a hypothetically finite universe were under a single democratic constitution and every single sentient entity had legally recognized official access to democratic government, there would still be the potential for the continual substantiation of the system of democratic rights via the degrees of effective utilization of democratic rights. Underlying much of this discussion is the observation that it is not simply having rights that matters, but also the ability to effectively utilize and instantiate rights in always transforming socio-political contexts. Olson notes this phenomenon, albeit in regards to a slightly different yet related notion of reflexive citizenship noted earlier, when he describes that “equally important” to “formal opportunities to participate in the
political domain,” “are the less visible measures that affect a person’s ability to *use* political rights.”

The multitude of dimensions relevant to a disembodied notion of popular sovereignty legitimating democracy ensures its flexibility. In this way the idea of normative progress in the substantiation of a system of democratic rights might change greatly over time. Perhaps the practice of national sovereignty will go by the wayside, as we see hints of occurring with the ongoing development of the European Union and the seemingly unstoppable march of globalization (whatever this term might exactly encapsulate). Similarly, perhaps current policies relating to borders and national citizenship will in time seem abhorrently anti-democratic in their closing of the substantiation of democratic rights to immigrants. Perhaps the relation of money to official democratic politics as it is currently handled will someday be seen to be absurdly anti-democratic. Perhaps all of these things will be seen in the same light as we now see the abolition of slavery, the progress of women’s rights and minority rights, etc., as aspects intrinsic to a more robust understanding of the substantiation of democratic rights. That even none of these shifts in our perspectives of democracy have been *anywhere near* “complete” is *entirely* clear, but the real issue here is that the flexibility of democratic politics *can* allow for popular sovereignty to generate communicative power that *can be* expansive and hence alter the future substantiation of a system of rights, *even drastically*, as is often the case. For this *can* to become a *will* takes the generation of strong communicative power of an *actual* active, responsive, and progressive democratic people.

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39 Ibid. p. 337.
Conclusion

I hope to have at the very least provocatively demonstrated some benefits to transforming the understanding of democratic legitimacy that underscores the paradoxes of democracy. I have argued that an embodied popular sovereignty should not be conceived of as the legitimating force of democracy. Instead, I contend that popular sovereignty needs to be fluid and changing to mirror the potential for a radical democratic imaginary that progressively seeks ever greater inclusion, access, and recognition to democratic politics. Democracy in this way should be understood as aiming towards integrating, rather than integration. Popular sovereignty is disembodied by its communicative supposition that it stretches from the already-included substance of democracy found in the legally recognized political apparatus to the periphery found in an unorganized political opinion-and-will formation.

The porous interface between these sources of a communicatively generated popular sovereignty is the mechanism through which those ‘excluded remnants’, those without voice, access, or recognition in the official political mechanisms, can influence the already officially sanctioned substance of democracy and thus gain influence, access, and recognition. Simply put, it is the porous nature of popular sovereignty’s generation across the entirety of society that allows for those excluded to influence the formally included, so that they, themselves, can become formally included. There will always be those not included; there will always be those excluded remnants; there will always be those in the hollow center of our democratic sphere. Equally importantly, not only will there always be those remnants as actual people, but there will be excluded elements understood as the degree of use and effectiveness of democratic rights in always transforming contexts. This
recognition does not sap democracy of its normative or practical import, rather it is the acknowledgement that any particular democracy at any given moment is never “perfect” and can always get “better,” or, more democratic.

I have envisioned democracy as a reflexive dialectic of institutionalizing instability. While Habermas himself does not wield this democratic imaginary of unhinged perpetual becoming, I have suggested that within his deliberative framework with the disembodied popular sovereignty of communicative power there are resources for a radical democratic imaginary. When democratic legitimacy is not considered as reaching a particular embodied democratic order or “end state,” but rather as a continual integrating process deriving legitimacy from a disembodied popular sovereignty continually generated communicatively across society, then the “procedure of lawmaking” which “begets legitimacy” is a perpetual, never-ending process. This form of legitimacy becomes the embracing of an institutionally tempered instability and flexibility. This instability is clearly steered by the positivization of law embodying communicative action, but the freedom that this ensures disavows an exterior force determining a legitimate end to the process because it maintains itself as the only legitimating force. When this force itself is flexible and inherently laced with dissent, then we can see that democracy, by its nature, is also, at least to a degree, unstable, flexible, and inherently laced with dissent. In this way the paradoxes of democracy can not be and should not be “solved,” and are in fact an influential reminder of the always incomplete manifestations of democratic politics.
Chapter Three: A Politics of Disagreement and Disruption

Defining politics has been about as controversial and varied as has been its practice. I return to this question in the present chapter in order to investigate a distinctly conflictual model of politics where the logic of politics is one of disrupting sedimented social norms and institutional structures in continually rearticulating the organization of community. Jacques Ranciere follows the general Marxist intuition that the structures, systems of order, and general functional logics of human communities are internally contradictory constructs; however, in line with certain post-structuralist Marxist developments he distinctly politicizes this intuition in arguing that this internal contradiction is indeterminate and unfixed, and he argues that this is precisely the logic of politics itself.\footnote{Ranciere is perhaps most concisely described as an aesthetic theorist of the logic of equality, and his overtly political works developing a distinctive theory of politics which culminates in \textit{Disagreement} and begins with \textit{On the Shores of Politics} is as follows: Jacques Ranciere (1995) \textit{On the Shores of Politics}, trans. Liz Heron. London, New York: Verso; Jacques Ranciere (1999) \textit{Disagreement}, trans. Julie Rose. London, Minneapolis: University of Minnesota Press; Jacques Ranciere (2006) \textit{Hatred of Democracy}, trans. Steve Corcoran. London, New York: Verso.; Jacques Ranciere (2004) \textit{The Politics of Aesthetics}, trans. Gabriel Rockhill. London, New York: Continuum, 2004.; Jacques Ranciere (2004) “Who is the Subject of the Rights of Man,” \textit{The South Atlantic Quarterly} 103, no. 2/3.; Jacques Ranciere (2001) “Ten Theses on Politics,” \textit{Theory and Event} 5, no. 3. The present endeavor is primarily oriented towards the “philosophical perspective” of politics as a “quandary of philosophical thought,” and hence is interested in explicating Ranciere’s distinctly “political theory of politics,” which is then essentially an aesthetic theory of politics, and the distinct logic of politics as the expression of equality in human community through the rationality of disagreement, and hence deals exclusively with \textit{Disagreement} where Ranciere presents a \textit{theory of politics} in the only way that one might from this perspective, through a \textit{disagreement} with the philosophical perspective and philosophy as such.} He suggests that politics essentially concerns the equality of human beings in their communicative structuring of their common lives, what he calls the equality of speaking beings. It is this “empty equality of speaking beings” that disrupts sedimented social orders over and over again through always particular and specific disagreements within community that themselves simultaneously express meta-disagreements between
two distinct orders of speaking beings constituting community (a process we will discuss in detail in what follows), disagreements that are intrinsically premised upon and demonstrate a certain type of intrinsic equality between people.\textsuperscript{41} Politics is fundamental and constitutive of community according to this theory and humans are thus indeed essentially “political animals.” This conflictual model of politics betraying the contingency of the descriptively ordered characteristic of human community provides an efficacious framework to grasp democratic politics as a process of institutionalized instability that we

\textsuperscript{41} While Ranciere’s eclectic Marxist, hermeneutical, existentialist, post-structuralist, and generally post-modern theoretical orientation is itself partially responsible for the general lack of clarity and understanding as to what precisely he means to refer to by politics, this reading follows a Deleuzian interpretation focusing on the meeting of heterogeneous social logics taking the form of the Deleuzian “rhizome” model which describes machinic structures that are syntheses of heterogenous inputs. While detailed assessment of these connections is not the present aim, see particularly Gilles Deleuze and Felix Guattari (1987) A Thousand Plateaus, Capitalism and Schizophrenia, trans. Brian Massumi. Minneapolis, London: The University of Minnesota Press, chap. 1. In this way I disagrees with other readings of Ranciere, such as Michael Dillon’s, who suggests, “to use a Derridean motif that he would reject, one might say that for Ranciere equality is always ‘to come.’” Michael Dillon (2005) “A Passion for the (Im)possible,” European Journal of Political Theory 4, no. 4, p. 430. Ranciere would indeed disagree with this precisely because politics and political equality is not an operative assumption “never to be achieved but to be aimed towards” nor is it to refer to a particular embodied state of affairs in the governing of political communities and is rather only ever to refer to the perpetual disruption of this social order. This is similarly the problem with Todd May’s book treating Ranciere’s politics as opposed in kind to the principles of social order, thus missing the heterogeneity of these social logics, a process we will see in detail in this chapter. See Todd May (2008) The Political Thought of Jacques Ranciere: Creating Equality. University Park: Penn State University Press. It is also to distinguish this reading from Jean-Philippe Deranty’s thoroughgoing exegesis of Ranciere’s politics of recognition, which while I am in general agreement with, places the emphasis on the form of politics “meta-disagreement” with philosophy and Ranciere’s “police orders” and thus grasps Ranciere’s political logic as essentially a politics of “recognition” rather than emphasizing the immanence or simultaneity of this meta-disagreement with the very real particular and recurring specific “demonstrations of wrong,” a point which I do not take Deranty to necessarily disagree with in any particular way. See Jean-Philippe Deranty (2003) “Jacques Ranciere’s Contribution to the Ethics of Recognition,” Political Theory 31, no. 1. In this way, the present reading focuses on Ranciere’s being a theorist of the “primacy of the political” and focuses on understanding Ranciere as contributing to what might loosely be considered “agonistic” notions of democracy such as Chantal Mouffe’s and Ernesto Laclau’s placing contestation and struggle amongst a political people and with the general system of social and political order as foundational and irreducible. Laclau himself has referenced Ranciere in these regards see Ernesto Laclau (2005) On Populist Reason. London, New York: Verso, p. 93-94., as has Paul Bowman in a critical engagement with both theorists works through the lens of populism. See Paul Bowman (2007) “This Disagreement is Not One: The Populisms of Laclau, Ranciere, and Arditi,” Social Semiotics 17, no. 4. Ranciere’s eclectic oeuvre and the wide-ranging implications of his “empty” egalitarian logic at the heart of any positive ordering of the social make many connections within social and political thought possible. See also Jeremy Valentine (2005) “Ranciere and Contemporary Political Problems,” Paragraph: A Journal of Modern Critical Theory 28, no. 1.; Samuel Chambers (2005) “The Politics of Literarity,” Theory and Event 8, no. 3.; Jean-Philippe Deranty (2003) “Ranciere and Contemporary Political Ontology,” Theory and Event 6, no. 4.
developed in the previous chapter and will develop further in the following chapter in conceptualizing the democratic people and their general will. We will begin by fleshing out the conceptual contours of Ranciere’s theory of politics before assessing shortcomings in Ranciere’s own discussion of the implications that his theory of politics has on the institutional perspective of political-order and will conclude with a brief example of the process of politics premised upon the model developed herein.

The Rationality of Disagreement: The Rationality and form of Politics

Ranciere develops his conflictual model of politics through a certain formal modeling of a speech situation that he describes as the rationality of disagreement. In opposition to the deliberativist model of a speech-situation aimed at mutual understanding, Ranciere argues that the political disagreement is more properly understood as disagreement over understanding itself, disagreement over who speaking parties are who are trying to understand something and each other, disagreement between parties who are disagreeing over the entire situation potentiating and constituting their interaction as such. This situation potentiating the interaction as such entails the entire existential milieu, the entire field of pre-supposed contiguity potentiating meaningful interaction between speaking beings in the first place; quite simply this situation is broadly speaking “the world(s)” within which speaking parties find themselves in, create, and perpetuate.42 This is the manner in which, as we will uncover, the political disagreement is a clash of “two worlds in one,” and is the demonstration of community as a contentious commonality composed of two different but intersecting and interweaving orders of how human beings

appear to one another in community.

In practical terms, the political disagreement concerns disagreement over the identity or general make-up of a community, what we might loosely call the “community-ness” of a community, the structures and orderings and distributions of goods, places, roles, and things- disagreement over what pertains to the community as such- and over who people are within a community, what place they occupy and how they interact and impact one another in their myriad of interconnectivities. Political disagreements are thus clashes of different worlds within one common contentious world: one world where one’s sexual orientation and sexual identity is an open-ended affirmation of self-expression and selfhood to be treated with dignity and respect by one’s peers and within the official and unofficial orderings of one’s community and another world in which sexuality is a matter of communal values and “tradition” to be regulated and dictated by the government and perceived traditional social-cultural norms. These clashing worlds, however, are within the same world and they share a common contentious space and common and overlapping contentious identities and roles within one and the same community. These worlds intersect and interweave within the same contentious common space and overlap upon each other in innumerable ways.

Political disagreements, according to Ranciere, are thus not accurately understood or “resolved” by a speech-situation aimed at mutual understanding. Rather the formal model of political disagreements is a particular sort of doubled disagreement: it is a disagreement over who might understand whom in the first place and what this understanding might entail. It is a rationality of disagreement rather than the irrationality of disagreement or rather than a rationality of agreement and understanding. It is
disagreement over terms and definitions and the structures that maintain these; only these terms and definitions are obviously not merely terms and definitions as they refer to the concrete reality of who people are and the distribution of community parts within an ordered and coordinated common space. These disagreements need not be over matters of the identity of political subjects per se, they can also be over the identity of the community as a whole, so to speak, over what pertains to the community as such, disagreements over environmental concerns, security issues, the economy etc. In each case, however, the political disagreement in its essence reveals this clash of worlds, this clash of two communities within one, of two different orders of speaking beings; one world composed of the generalized and open-ended undifferentiated equality of speaking beings, the other of particular structured hierarchical social-divisions and complexes, a process which will be described in what follows.

In a more technical sense, Ranciere describes the rationality of disagreement in the following manner: it is a disagreement where "X cannot see the common object Y is presenting because X cannot comprehend that the sounds uttered by Y form words and chains of words similar to X's own"43 and is the rationality of a certain multi-dimensional relationship between speaking beings themselves and between these speaking beings and the common tangible worlds in which they speak and of which their speech effectively connects them with one another and these worlds in particular discursive-material configurations. Put differently, this extreme form of disagreement that concerns politics is the rationality of a relationship between speech and speaking beings and this relationship's relationship with the identifiable and tangible world in which they live together in non-

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random, coordinated, and ordered ways. It is in this way that Ranciere clarifies that "disagreement clearly is not to do with words alone. It generally bears on the very situation in which speaking parties find themselves,"\(^{44}\) as we touched upon above. This is also to say that politics clearly is not to do with words alone, and bears upon the entire discursive-material situation, the everyday "real world," in which people find themselves.

The aforementioned extreme form of political disagreement thus reveals the equality of speaking beings that is empty of any particular content, place, or identity prior to any particular configuration determining a relationship between speech, speaking beings, and the discursive-material milieus constituting their tangible worlds, namely, prior to any particular place and identity within an ordered social space and speech situation. Ranciere describes how "there is order in society because some people command and others obey, but in order to obey an order at least two things are required: you must understand the order and you must understand that you are to obey it. And to do that, you must already be the equal of the person who is ordering you. It is this equality that gnaws away at any natural order."\(^{45}\) Political disagreement can be understood by observing this irreducible doubling of the role of "understanding" [an] order presupposed in its very effectiveness. These simultaneous roles of understanding reveal two distinct orders of speaking beings presumed in the effective implementation of the command form of order: one where the particular conditions of the speech-act situation (including the "general situation in which the parties find themselves") is undifferentiated and a general equality in speaking premises the effective implementation of a command where understanding

\(^{44}\) Ibid. p. x.

\(^{45}\) Ibid. p. x.
relates immediately to understanding the *conditions* of the speech situation itself (understanding the order). Then on top of this, another order where the conditions of the speech act situation are already hierarchically differentiated or unequal, and understanding relates only to the effective implementation of the already implicitly hierarchical relation of the command itself, where understanding is simply understanding that one does not need to understand one simply needs to obey.

The political point here is that the previous function of understanding premises the latter and is still at work in the latter; namely, that the undifferentiated or empty equality of speaking beings premises the differentiated and ordered distribution of speaking beings. Put simply, the political point is that *inequality is only possible through equality*; the descriptive inequality of the latter role of understanding that one is to obey an order is parasitic upon, which is to say works through, the equality of the speaking parties that underlies the inequality of the command. This is where Ranciere notes that “in the final analysis, inequality is only possible through equality,”\(^46\) that human beings living together in community, in some particular discursive-material milieu making appear inter-related worlds, is only possible through the general undifferentiated equality of people prior to any and all particular hierarchical configurations of their common worlds. Ranciere thus describes that politics is constitutive of community and is “the lack of foundation, the sheer contingency of any social order”\(^47\) whose positivity is then the rationality of disagreement and the assumed equality of people, which we will describe in the following section. The occurrences of politics thus reorder, disrupt, and rearticulate hierarchical social structures

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\(^46\) Ibid. p. 17.

\(^47\) Ibid. p. 16.
in community through demonstrating community as always internally divided from itself, as a space of fundamentally contentious commonality, or “two communities in one.”

A Matter of Contingent Perspective: The Police and Politics

In the last section we developed a certain formal model of politics as the rationality of a particular form of disagreement, disagreement over the terms of community itself, over identities within community, over what pertains to community, disagreements between different worlds within one and the same world. In this section we will examine the clash of these different worlds and the political stage of community where these political disagreements play out and where they shape the very essence of community in an always transforming manner. Ranciere describes the political process as a meeting of heterogeneous logics: the logic of politics which turns upon equality as its principle and the logic of social order that he describes as “the police”\(^\text{48}\) (the terms social order and police order will be used interchangeably throughout the remainder of the chapter). Ranciere utilizes the term “police” for a small range of etymological reasons which do not particularly concern us here, the point is that this logic is more than simply the government, the enforcement of the law, or the state, and it refers to the overall official and unofficial situation of social order as such which extends from coercively enforced state-government-legal apparatus to general social-cultural norms, etc. We will see that these different perspectives of politics and of the police embody this rationality of disagreement previously described in exposing the confrontation of two worlds within one; one community of undifferentiated equals and another community of hierarchically

\(^{48}\) Ibid. pp. 21-43.
While Ranciere describes this recurring confrontation between these two conflicting social logics of the police and politics as a *meeting* of heterogeneous logics, his own demonstration often leans heavily on the *clashing* and opposition of the logics rather than their *meeting* and intertwining in co-constitutively constituting community. It is in following this intuition that I will pay particular attention to the significance of perspective in developing the nature of this confrontational meeting place of conflicting social logics. Perspective here takes on two primary and interrelated characteristics: the first marks the descriptive significance of the perspective of politics or of the police order on their common object of community itself. However, the significance of perspective is not merely a convenient comparative analytical tool to conceptualize different or conflicting perspectives of the same phenomena; rather, it is only the perspective of politics that instantiates there being two perspectives of this same phenomena, while the perspective of the police order only sees its own. And this is precisely the irreducible and perpetual meta-disagreement between them that plays out through always particular disagreements premised upon, exposing, and expressing the same underlying recurring logic. This means that from the perspective of politics, its occurrence makes its own problem, which in fact it does in the way that we have described political community as fundamentally *contentious community*, or “always potentially disagreeing” community.

From this perspective of politics as the rationality of disagreement and the clash of these heterogeneous logics, politics occurs before it is usually considered too. Ranciere describes in this way that politics is usually considered to concern the managing or governing of community and the distribution of values, that “politics is generally
considered as that set of procedures whereby the aggregation and consent of collectivities is achieved, the organization of powers, the distribution of places and roles, and the systems for legitimizing this distribution;" however, now this general system of order is what Ranciere refers to descriptively as “the police.”\(^{49}\) Again the important point for our purposes here is that the police is thus referring to the generally functioning system of social order as a whole, from the official codified coercive-legal apparatus of government to unofficial social and cultural norms and everything in between, everything pertaining to the distribution of values and identities and the hierarchically differentiated terms of community itself. From our perspective then, politics logically precedes, underlies, and potentiates this police order system of distribution and legitimation, and politics itself is the occurrence of disagreement over the particular terms of these distributions and legitimations at any given time and place. Because politics is disagreement over the appearance of speaking beings as such, its contention is not simply with the state, or government, or the law, or any particular official codification of a system of social order. The occurrence of politics re-orders and transforms the common space of community to varying degrees and in varying manners, a process which encompasses but is not reducible to some particular official codification of order. That the general system of “distribution and legitimation” is not exhaustively contained in the codification or functioning of a legal-coercive apparatus is not to say anything particularly ambitious, but the political point here in distinguishing the system of social order from the political perspective is to establish politics’ occurrence at the very foundation of social order rather than its occurrence being confined to some determinable or identifiable sphere that Ranciere accuses political

\(^{49}\) Ibid. p. 28
philosophy of “trapping it” in a variety of guises. The political point is that there is no 
natural or self-evident organization to community and that community itself is a 
fundamentally contentious-commonality.

The occurrence of politics is then the occurrence of the clash- the recurrent and 
irreducible disagreement- between the empty equality of speaking beings (the political 
community) and the social order (the hierarchically differentiated, descriptively 
intrinsically unequal police order). A given community itself from the political perspective 
is always irreducibly both of these logics of community within one community. The 
political community referring to what I have been describing as the undifferentiated and 
empty equality of speaking beings is “empty” in the sense of being empty of any particular, 
determinable, identifiable content, identity, or place; it is always that part of community 
that presents and represents that human community is a community of equals even whilst 
simultaneously being hierarchically differentiated by the very phenomenon of particularity 
and social order that is built upon and through this equality. This inequality of police 
orders is thus certainly not intrinsically bad even whilst always needing to be disagreed 
with and more precisely disagreed over in the sense in which I have described that political 
disagreements play out over the very terms of community and who is who in community, a 
point that will develop further in what follows. Politics is specifically then the meeting of 
the logics of equality and that of the social order, this meeting being the occurrence of 
particular disagreements between these communities, rather than the attainment of some

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50 Ibid. pp. 61-94.

51 As opposed to an orthodox Marxism then, Ranciere’s argument here is that this political community is 
not intrinsically “the proletariat” as an economically determinable and determined “class,” and that the 
recurring political disagreement is thus a perpetual and on-going one rather than one aimed at eventually 
“getting it right” in an achievable “just” or utopian social order.
fixed or determinable equality in some particular way being brought to bear on that which is substantively inegalitarian.

These two disagreeing communities however, we need to remember, are at the same time one and the same community and the disagreement itself is over this contentiously common space. So the political community disagreeing with the ordered community is also precisely part of, within, and is identified by the terms of this police order. It is a part of this policed community while simultaneously being a different order of community as such as the disagreement precisely involves the particular terms and identities of this ordered community itself. The political community referring to the undifferentiated equality of anybody and everybody is in the police order itself constituting its very essence, constituting precisely the inequality of the social order, actually working within order as social order's excess and doubling. Or so says the political community of equals when it confronts this community of social order partially on its own terms and using its own terms in these always particular concrete disagreements that play out this continually recurring meta-disagreement between these two heterogeneous logics of community every time there are these particular concrete disagreements.

The heterogeneous logics of the police (social order) and of politics thus define and co-constitutively determine community along interweaving registers. As has been discussed, the logic of social order actually embodies community through identifying and determining its parts, through inscribing the distribution of people with particular hierarchically distributed characteristics and ordered relations. However ultimately incomplete or insufficient this ordering logic of the police actually is, is something determined purely by the actual occurrences of politics. We must here recognize that
identifying is most certainly not self-evidently the same as causing. It is also the case that the occurrence of politics identifies social orders and hence constitutes new communities in different ways than does the police. Here I will argue that there are two distinct manners in which we can recognize the logic of politics identifying and determining communities, one that corresponds to the police perspective and one that corresponds to the distinctly political perspective as we recall that it is only the political perspective that makes appear two distinct perspectives on constituting community in the first place.

First, the occurrence of politics identifies new communities within the same policed community, what, from the perspective of the police, might be considered the expansion of a social order to include new and different identities and relations and structures than it previously identified. This form of identifying communities through the logic of politics can be considered from the police logic’s perspective as a quantitative or numerical expansion of community. For instance, the degree to which something like the gay-rights movement might be successful in these terms might be considered the degree to which the opposed police order has expanded to include those identitarian points of disagreements as to who speaking beings are in their common community and how they are inter-connected and ordered. Quite simply more people, more precisely more identities and different identities, are brought into the contentious common space of a social order who weren’t acknowledged on their own terms before, thus re-ordering structures and differential relations within community. Simply put, the political goal of a disagreement contesting an egalitarian wrong is indeed for its wrong to be processed into the policed space of which it is opposed to and interested in. This is again the manner in which the political disagreement is over the terms of social order itself, is precisely over the identity of this
contentious community itself, rather than being opposed to the social order as such. Now certainly some particular political disagreements might be precisely over the more general and higher level situation of the very ordering of a community itself and at least implicate this meta disagreement in their particularity and there are certainly numerous layers and interconnections to particular political disagreements, they clearly do not exist in a social vacuum. The form of the opposition, however, is over the exclusivity claimed by the social order and over its implicit inequality which perpetuates precisely this inequality by its very nature. So the political disagreement in its recurrent meta-disagreement with the social order is always seeking to re-articulate and transform the social order continually, but only through the particular egalitarian disagreements that will pop up wherever and over whatever issues and identities that might be relevant at any given time.

In a different manner, and from the polemical or aesthetic perspective of politics rather than the descriptive perspective of the logic of social order, the occurrence of politics betrays the existence of policed communities where these communities might not be recognized as even existing. This is to say that the occurrences of politics can betray systemic injustices and inequalities, and thus betray non-random, hierarchically determined functioning systems of order even where there might not be any officially codified system of social order in place. This again highlights that the occurrence of politics is formally (logically) and actually indifferent to any particular codification of police order and that the occurrence of politics itself determines where there is a functioning policed order, which is to say that people themselves through their political disagreements betray where inequalities and disagreements over social orders’ practices are. We might consider by example something like the environmental movement, very broadly construed, whose
opposed police order that might be considered to be wronging some particular segment of
the open-ended and undifferentiated community of equals (which can very well indeed be
any and every human being on planet Earth) might be considered as the entire functioning
political-economic global order, while the processing of the various particular wrongs
might very well occur at any number of discernable levels of inter-connected policed
orders (nation states, intergovernmental organizations of various political and/or
economic sorts etcetera) below this functioning global one. The point, however, is that
the very occurrence of the political disagreement itself is what might determine that there
is indeed a police order, even if the police order in question doesn't necessarily identity
itself as being in existence in the way that the political disagreement “accuses” it of being
through its very disagreement.

We thus have two distinguishable but intersecting ways by which the logic of
politics constitutes human communities from the distinctly political perspective: first, the
occurrence of politics identifies communities beyond (but within) any particular
functioning police orders’ claim as the exclusive identifier and determiner of the terms of
its own order. Secondly, the actual particular political disagreement itself can be
understood to identify a new community where one was not identified before and can thus
betray systems of order where they might not be officially codified as existing. It is this
second partitioning of community that is the occurrence of politics in its essence and is its
aesthetic, which is to say its creative and generative form, is its “positivity” corresponding
to the descriptive perspective of the rationality of disagreement described in the previous
section. This is what marks the distinctly political logic of the distributing of our

52 “Global order” here refers simply to the “source” of the wrong being global in scope, and not to some particularly
dominant mechanisms controlling or determining the functioning or structure of this global order.
contentious common worlds and communities. We see yet again that the occurrence of politics is thereby the sheer repetition of the dislocations of systems of social order resulting from particular contestations that betray the undifferentiated and empty equality of people undergirding any and every human community thereby establishing any and every community as a contentious commonality, a political community.53

Political Subjectivity

How then do we conceptualize political subjectivity from this perspective of contentious community, or two communities in one, that we have been describing? Ranciere describes that “politics is a matter of subjects or, rather, modes of subjectification. By subjectification [I] mean the production through a series of actions of a body and a capacity for enunciation not previously identifiable within a given field of experience, whose identification is thus part of the reconfiguration of the field of experience.”54 The political subject is that subjectivity expressing the open-ended, indeterminate, “empty” equality of the political community of equals that I will refer to as the subject of contentious multiplicity. This subject is multiple in that it is the subject of distinct manifestations of the egalitarian logic that can be exposed and inscribed anywhere and by anyone within a social order as the pre-politically identifiable substance conditioning the actual occurrences of politics is the assumption of the equality of anyone and everyone strewn throughout and

53 This is again where we point to Ranciere’s compatibility with Deleuze’s Nietzschean ontological perspective of the “repetition of difference” as an interpretation of the “eternal recurrence” or “eternal return.” He this is mirrored in Ranciere’s theory of politics as founding community upon that which is always different from that which it ever identifiably is, which is to say that community is an “immanent becoming,” which is simply another way of describing the political disagreement which literally “calls forth” two communities in one, each and every time, in its very disagreement.

54 Ranciere (2000, in n.41), Pg. 35
constituting the hierarchically differentiated social order as such. As Ranciere notes, “politics runs up against the police everywhere.”55

There is thus no essential content to the political subject, the political subject acts in such a way as to expose these conflicts over the ordering of communities following the logic we have been describing. It is further multiple in that the political subject is the subject claiming her multiple identification, or perhaps more properly exposing her multiple identifications, within overlapping yet distinguishable communities within one and the same community. She is the subject of contention over identifications and identities, and over what pertains to the community as such, the community-ness of community. For example, political subjects disagreeing with the social orders official and unofficial ordering of sexual mores and norms are exposing in their disagreement and/or in their particular personal conduct itself (often-times obviously both) that marriage, love, relationships, sexual activities, etcetera are distinctly not simply the way that the social order recognizes them to be and orders them to be. The subjects then are demanding that the social order re-order itself accordingly, a process that we have been discussing and will continue to do so.

From the perspective of the police order, those political subjects manifesting their singular disruptions of contentious community can be taken up by a variety of police-identified subjects. In other words, the political subject might manifest through a range of particular policed identities in community depending on the particular nature of the disagreement of egalitarian wrong. And while the process of subjectification might manifest through a range of identities and subjects, it will certainly need to effect a more or

55 Ibid. p. 32.
less wide range of subjects in the community to garner its political efficacy in that sense that politics is essentially contestation over the “hearts and minds of the people,” to speak colloquially but not imprecisely, along with contestation over particular institutionalized and structural features of a police order. Significantly here is that the political subject embodies no pre-politically determined characteristics, nor does the political subject articulate any inherent substance or content.

The Gauging of Incommensurables: a “better or worse” Police order?

We have now explored the ways in which the occurrence of politics is a certain type of disagreement within community, one whose particular terms of disagreement simultaneously reveal a meta-disagreement between two communities in one community. This is what we have described as a contentious commonality and as the meeting place of two heterogenous logics of determining the terms and identities of human community, those of the political logic of equality and that of the social ordering logic of the police. These heterogenous logics operate on opposing presuppositions, generating and reflecting disagreeing perspectives of the constitution of community at any given time. Ranciere notes in regards to this contentious meeting of the heterogenous logics that “it is indeed a question of incommensurables. But these incommensurables are well gauged in regard to each other, and this gauge reconfigures the relationships of parts and parties, of objects likely to give rise to dispute, of subjects able to articulate it. It produces both new inscriptions of equality within liberty and a fresh sphere of visibility for further demonstrations. Politics is not made up of power relationships; it is made up of a
relationship between worlds.”56 If we have now examined the ways in which these incommensurable worlds—these “two worlds in one”—are gauged in regard to each other, the ways in which politics operates through an egalitarian logic in manifesting contentious community in disagreements over the terms, identities, parts, and structures of a common ordered community, then we have yet to examine if there is any principled way to differentiate different police orders from one another, we have yet to see if different policed-orders might be better or worse, and if so how?

Answering this question requires the same shifts in perspective between individual particular political disagreements with their particular aims in transforming social orders each and every time along with the meta-perspective of the recurring disagreement between politics and the police as such. In regards to assessing particular forms of the police, Ranciere says “There is a worse and a better police—the better one, incidentally, not being the one that adheres to the supposedly natural order of society or the science of legislators, but the one that all the breaking and entering perpetrated by egalitarian logic has most often jolted out of its “natural” logic. The police can procure all sorts of good, and one kind of police may be infinitely preferable to another.”57 Ranciere, however, does not describe any principled way to distinguish a better police order from a worse police order, a principle that might make a police order more likely to be jolted out of its naturalness, or a principled manner in which to distinguish a police order that might be infinitely preferable to another one besides the merely descriptive characteristic that it is the one that is jolted out of its naturalness “most often.” This is what we turn to in this section in suggesting a

56 Ibid. p. 42.
57 Ibid. p. 31.
principled manner in which to approach this question and assess the better or worse police order.

That the “police can procure all sorts of good” is to refer quite simply to the vast and varied benefits of living together in community as such not to mention the fact that the entire purpose of political disagreements is precisely to transform police orders rather than overturn them as such (unless the particularity of the disagreement is to overturn a particular social order in its entirety, but this is not the same as overturning the logic of social orders in their entirety as such). In other words, political disagreements recognize intrinsically the “good” that police orders do and in fact want the police orders to be doing something; they simply demand that the police order community differently than they are currently doing. The connections in the underlying logics of Rousseau and Ranciere’s argumentation will be more thoroughly extrapolated in the following chapter, but here it suffices to recall the seeming back-and-forth in Rousseau’s discussion of the transition from a hypothetical state of nature to civil society where “man is born free, and everywhere he is in chains,” but that the “social order is a sacred right which serves as the foundation for all other rights,”58 and in regards to finding himself in civil society “his faculties are exercised and developed, his ideas are broadened, his feelings are ennobled, his entire soul is elevated to such a height that, *if the abuse of this new condition did not often lower his status to beneath the level he left*, he ought constantly to bless the happy moment that pulled him away from it forever and which transformed him from a stupid, limited animal into an intelligent being and a man” (italics added).59 This is exactly the intuition animating

my interpretation of Rancière’s argument above, namely that even though living together in ordered and hence hierarchically differentiated community is the source of injustice and inequality and is that which is formally and actually opposed by the logic and occurrence of the political process of equality in the ways in which we have described here, living together in ordered community is not bad as such nor is opposed as such by the egalitarian logic of politics and the occurrence of political disagreements. To embrace this seemingly vertiginous perspective is, however, precisely part of the point and the difficulty suggested by the present theory of the politics, as will continue to be discussed.

There are two interconnecting dimensions of the logic of the better police order being the one that is most often “jolted out of its ‘natural’ logic.” The first dimension is the question of the perspective of this temporal gaze assessing the order that “has most often” been jolted out of its naturalness. Who is making this assessment and from what point of view, from “when” is this judgement taking place? Because we must remember that from the perspective of politics the meta-disagreement of politics and the police (that perspective that might see a police order being jolted out of its natural logic most often) only plays out through recurring particular political disagreements that are exhaustively concerned with re-ordering community right now, each and every time. This is a process which itself, each and every time, takes time, an unknowable and indeterminate amount of time, and is a process. From this perspective then, the interest in jolting a police order out of its naturalness is entirely imminent; the rupture is exhausted in the particularity of its display of contentious community in the moment, however long this moment lasts. It is the manifestation of the disagreement itself, however “long” the disagreement lasts (which is

50 Ibid, p. 151.
to say, how long it “takes to be processed,” which is entirely contingent upon the particular disagreement itself and those political subjects disagreeing), that the community of equals is concerned with in determining the parts of their community.

From this perspective, it is only the actual manifesting of particular political disagreements that betrays a better police order while the disagreement plays out. Here “we” (as “always potential” political subjects) must make appear or call forth political community in our particular egalitarian disagreements whenever and wherever they might crop up, call forth the community of equals’ presence in constituting any particular policed order right now. It is only ever retroactively, precisely in assuming the descriptive, objectifying guise of the perspective of the police logic- a logic of distribution and legitimation- that “we” can say “this particular police order’s logic of distribution and legitimation (“our” particular police orders logic) has been disrupted here and there, and more or less often, etcetera. Significantly however, is that this “has been disrupted” is a narrative from the purely hypothetical gaze of the immanently exhausted occurrence of politics, from the perspective of a political community that is only ever interested in re-articulating community now through particular disagreements over the terms of community recurring constantly anywhere and everywhere indeterminately. This “has been,” this hypothetically retroactive gaze, occurs purely in the present and the right now of any actual policed community. This is to say that the particularity of political disagreements are not necessarily interested in the meta-perspective of police orders being jolted out of their naturalness “more often” over time, they are in their particularity interested in jolting police orders out of their naturalness right now. The police order that has been jolted out of its naturalness most often is thus the police order that now needs to
be exposed as such, that needs to, right now, be jolted out of its naturalness.

The police order that needs to be exposed as such, that needs to right now be jolted out of its naturalness in whatever particular way via whatever particular disagreements might be more or less apt to be so jolted, however. This is the second dimension, the principled and structural/institutional dimension, of analyzing the better or worse police order that might be jolted out of its naturalness most often. The particular structure of a police order- both officially in its institutionalized structure and unofficially in the general socio-political-cultural norms- might structurally encourage or discourage to greater or lesser degrees what we are describing as political disagreements with precisely the police order. The political community of equals in this way also has a perpetual but still particular meta-disagreement with the police order as such, namely that it be open to being jolted out its naturalness more often, which is to say that it be structured so as to process political disagreements and to allow for and/or encourage political disagreements (what we discuss in the following chapter as being open to the “democratic People” who are always more than they are ever identified as being).

Essentially, a police order might have a greater or lesser capacity to be disrupted out of its naturalness more or less often and a greater or lesser capacity to process political disagreements, and the always potential political community of equals can be more-or-less "aware of this," and thus structure the police order accordingly and utilize this structure accordingly. Officially or institutionally, this is the way that we can understand the aims of democratic political institutions from the perspective developed here and recall the theory of democratic politics as institutionalized instability developed in the previous chapter. This institutionalized instability is precisely the instability that might allow for the
democratic people who is always more than it is ever identified as being to disrupt the police order more often in rearticulating the terms and identities of community, the community-ness of a community, what pertains to the community as such, including who precisely “the people” are in community. Ranciere describes in this manner that “democracy is, in general, politics’ mode of subjectification if, by politics, we mean something other than the organization of bodies as a community and the management of places, powers, and functions. Democracy is more precisely the name of a singular disruption of this order of distribution of bodies as a community that we proposed to conceptualize in the broader concept of the police. It is the name of what comes and interrupts the smooth working of this order through a singular mechanism of subjectification.”

We will uncover in more detail in the following chapter the relationship of democracy and democratic politics with this theory of politics being developed here. The point at this juncture is that democracy, from the structural and institutional perspective-the police perspective- might be considered to be a policed system where what we have been describing as politics occurs and actually disrupts the police order from within, where this social order might actually process these political disagreements in a “better” manner (more effectively, quickly, accurately, completely, etcetera), and where this is in fact institutionalized into the official codified political institutions themselves. From the unofficial perspective, this is a matter of the political culture of a community, generally speaking, as to how open a community is to political disagreements and transformations, recognizing that certainly there is obviously a give and take between institutions.

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60 Ranciere (2000, in n. 41), p. 99
contributing to and shaping this unofficial political culture as well. As we discussed in the previous chapter and will discuss in more detail in the following chapter, the only guarantor of democratic politics is democratic politics and a democratic people. A given policed community, a given policed people, might be more or less open to and encouraging of politics, is the point at this juncture. A given police order thus does not just happen to be jolted out of its naturalness more often, there are certainly potentially better or worse police orders in a principled manner.

This mutual imbrication of the police order with the occurrence of politics seems to complicate the neat opposition of these logics, and in a manner it does, but only to generate a more robust conceptualization of democratic politics. It shows us again that democratic politics are never freed from fundamentally contentious community; namely, they are never freed from the “miscount” of that part that has no part to the policed attempt at a naturalized whole of community at any given time. From the perspective developed here, democratic politics are the exposures of these seeming “impurities” in any particular rationalization of order, infinitely so; democratic politics never “ends” and is never “achieved.” It is at best called forth in proving that it refers to a real community, an indeterminate and open-ended community of equals, who can “speak” to past, present, and future communities in constructing their always transforming communities, now. Furthermore, the occurrence of politics’ interjection into the police clears away the tempting affiliation of assuming the occurrence of politics under the police’s ordering principle, and thus clears a path for conceptualizing a more robust gauging of the truly

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61 In a similar manner to Bonnie Honig’s response to the “democratic paradoxes” that is discussed in chapters 1 and 3 of the present text. See Bonnie Honig (2007) “Between Decision and Deliberation: Political Paradox in Democratic Theory,” *American Political Science Review* 101, no.1, p. 17.
heterogenous oppositional logics evidenced by the continual occurrences of politics. The better police order is, therefore, in a formal sense, the police order whose identified distribution and legitimation of the parts of community is altered in the very discursive infrastructure that it generates and maintains, which is to say, that police order which, on its own “terms,” has “changed” - even drastically - in its distributing of the parts of an always transforming and becoming community of speaking beings. The better police order is the one that institutionalizes instability into its official codification and functioning, into its coercive law-making apparatus. This is, of course, only formal and necessarily so, as it is still, as always, up to democratic subjects polemically presenting as subjects of politics to instantiate the merely hypothetical formal logic of a better police order.

For Example, Political Considerations of the Civil Right’s Movement

In order to shed light on the practical implications of this seemingly abstract political model, we will sketch a brief and very generalized political history of the Civil Rights Movement. This is to say that I will describe what might be distinctly “political” from our perspective developed here about anything like the Civil Rights movement. I do so recognizing that this history is still very actively being written and extended, and this is indeed precisely part of the point, as will be discussed, that as political disagreements are processed into police orders thus altering the structure and order of a community they can extend and build upon initial disagreements in new directions premised upon similar logics and rationales of previous disagreements. Simply put the “success” of previous disagreements can act as access points and what we will call policed platforms for further
disagreements. For instance the Civil Rights Amendments and Civil Rights Act have been utilized to extend civil rights to egalitarian disagreements other than racial discrimination regardless of their original intent.

This can be seen in two ways referring to the official institutional codified dimension and the unofficial dimension which clearly work together. First there is the official codification into the police order of the open-endedness of distinctly political terms like “equality”\textsuperscript{62} in terms such as “equal treatment under the law” in the Equal Protection clause of 14th Amendment and the open-endedness of “any person” not being deprived of life, liberty, or property without due process of the law in the Due Process clauses of the 5th and 14th Amendments. Secondly, there is the unofficial socio-political-cultural milieu that demands this extension of civil rights into these new realms precisely through their particular on-going disagreements which themselves fuel the official codified extensions. We see this very clearly in the development of civil rights in U.S. constitutional law where this is very openly and obviously the logic that is played out. In one of the most recent civil rights cases decided in federal courts, Bostic v Rainey, we see not only the obvious extension of civil rights into new directions building upon previous disagreements being at least somewhat processed into the police order and thus acting as access points for further disagreements, but also the notion that these disagreements being processed into the police order transforms and expands who “we the people” of the United States of America are, which is to say these disagreements alter the terms and identities of a given community and the ways in which the people are more than they are ever identified as

\textsuperscript{62} See Ranciere’s discussion of this idea in his article “Who is the Subject of the Rights of Man.” Ranciere (2004, in n. 41)
being at any given time. Federal district Judge Arenda Wright Allen in striking down Viriginia’s gay-marriage ban in Bostic v Rainey makes precisely this point in arguing that “Our nation’s uneven but dogged journey toward truer and more meaningful freedoms for our citizens has brought us continually to a deeper understanding of the first three words in our Constitution: *we the people.* “We the people” have become a broader, more diverse family than once imagined.”

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I will now suggest some of the ways that we might grasp the political history of the Civil Rights movement being processed into a policed order thus offering what I will term *policed platforms* for the continuing processing of particular and related political disagreements. Any particular piece of Civil Rights legislation, constitutional amendment, or court decision, for instance, is very literal evidence of a policed community’s codified order having changed in some technical way. It’s distinctly political trajectory, however, is purely evidenced in the instances of this transformation in the codified order being used in a distinctly political manner, in other words as a platform for egalitarian disagreement in demonstrating contentious community and in the demand to rearticulate the common terms, identities, and distributions of community parts within the contentious commonality of a given community. This is the way in which the content of the codified change itself is an inscription of contentious community on the terms of the policed order. It is, or rather can be- something purely determined by its use as such- a wedge in the police order’s own codified ordering; the codified change can be an opening for political disagreement with the police order precisely codified into the police order’s very ordering thus serving to re-order itself and being open to disagreement from within. Whenever a civil rights court case is

raised upon Equal Protection or Due Process clause grounds, for instance, this is happening. This again clearly harkens back to the idea of institutionalized instability in the previous chapter.

The distinctly political success of any particular codified police platform such as a civil rights amendment or statute is paradoxically when it is no longer needed on its own grounds in its political potentiality for its substantive content- its disagreement- has actually been processed into the police order more completely. By this it is intended simply that the political goal of Civil Rights legislation is indeed that the particular egalitarian disagreements and instantiations of contentious community be processed into the policed community, that the content of the contestation transform the police order in question, which is to say transform the makeup of the community. For instance, the goal of something like the gay-rights movement as an aspect of the Civil Rights movement will be the general equal treatment, respect, acceptance, and tolerance of sexual orientation to the degree that it is not even a matter of political disagreement anymore. Constitutional rulings such as the one previously mentioned would then simply become commonplace aspects of the police order that is the community of the United States of America. Rulings such as these are then certainly used in a practical sense in so far as same-sex couples might get married etcetera, but that its distinctly political use in disagreeing with the police order will not be needed anymore because it will be more fully processed into that same police order.

The Civil Rights movement then, from the distinctly political perspective, demonstrates that the history of the United States is not one of adequately approximated
equality, liberty, or democratic government, and that in fact it is a history of oppressive, oligarchic, and discriminatory social order and government. I suggest this in such broad, polemically loaded terms purposefully, to highlight the formal condition that this is so of all police orders as such; this is precisely the formal description of politics rupturing policed community. Police order, from the perspective of politics, is intrinsically oppressive and oligarchic, because the political disagreement is that no governing- no policing- flows unmediated from the logic of equality. Rather, policing siphons equality; it converts it into order, rule, and governing, namely into inequality. The Civil Rights movement, in so far as it is political, does indeed display that this history of oligarchic oppressive government is “our” history. Politically, however, it only demands this in so far as it demands the processing of particular wrongs right now- the particularity of which has this effect of “changing the past” by revealing its policed, inegalitarian ordering which is responsible for having wronged and currently wronging the democratic community of equals. It is also in this way that we see an important dimension of a police order that might be “jolted out of its naturalness.” We can simultaneously assess that the Civil Rights movement has jolted the policed order out of its naturalness and that it is still doing so and in ways potentially drastically differently than it did before or in the past. In this way we see that politics in its rupturing of the police order is purely concerned with re-partitioning community now, with the content of the particular disagreements themselves, rather than with the form of “disagreement” as such (again except to the degree that the particular disagreements in question are concerned with or implicate this meta-level openly in their particular disagreement as such, rather than simply being an iteration of the logic of the meta disagreement, as we have discussed). But this active present is always in the midst of
processes constituted previously and being processed now. As we have discussed, the police order that might be described as being jolted out of its naturalness most often is simply the police order that needs to be or is being jolted out of its naturalness now, and there is indeed no other way to pre-politically determine this.

Any governed or policed processing of political disagreements is thus only as efficacious as political subjects utilize it to be. For instance, the policed codification of the “citizen” is distinctly political as a policed platform for politics in so far as it is a space used to disrupt policed order, as an access point to jolt a police order out of its naturalness more often. Similarly, laws or legislative acts are politically efficacious in so far as they are utilized in actually processing wrongs- egalitarian disagreements- and in so far as the laws themselves are sites of internal paradox, disagreement, and contestation. Simply insisting that laws find their “true,” “rational, or “proper” place in some historical foundation or document, and that their legitimation is harnessed there and simply applied or interpreted where needed to cancel out those manifestations (cases) where its force need be applied does not make it so. From the perspective of politics, insisting that the force of law flows immediately from its coherency or legitimacy rather than its practiced manifestation is quite literally mere semantics. It is in their practiced manifestation that laws might be politically efficacious, not in their more accurately approximating the “original intent” of any identified legitimation, whether this be the original intent of some natural or self-evident reason and rationality or in some purported objective history of a legal community traced back to this legal community's foundation in linear policed time (a “foundation” that in the case of the United States literally, all semantics aside, enforced the enslavement of human beings who were identified as such (as slave) by their presumed inequality associated with
the color of their skin).

Politically, it is utterly irrelevant where any policed perspective wants to demand this original identified legitimation to policed rule, and utterly irrelevant (formally, but often incredibly significant practically, something determined purely by the occurrence of politics) if any policed perspective insists upon the “truth” of their original intent. The egalitarian disagreement of politics pays no heed to these claims; it lays no claims to original intent of its determining community. Rather, the occurrence of politics is egalitarian disagreement that says right here, right now, we must construct community together with acknowledgement of and respect for our common general and undifferentiated equality. This means that any ordered social space is ultimately, potentially, and in the last instance (something only cancelled or nullified by sheer unmitigated violence rather than by rationality) a fundamental space of contentious community.

Conclusion

Where then does this theory of a politics of disruption and re-articulation leave us? Yet again this depends on perspective and point of view. On the one hand we are left with the seemingly depressing or pessimistic abandonment of achieving the Just social order, the Just Community. Stripped away is that seemingly noble endeavor to “get it right,” to find the right standards of justice once and for all, to build the “correct” (rational, natural, etcetera) political institutions and laws and to be done with it, to move beyond the endless cycles of conflict and disagreement that have plagued humanity throughout our history. Left behind are the grand teleological narratives and utopian objectives, the universal
objective truths that can serve as unquestionable and undeniable foundations upon which to securely construct and perpetuate THE Just political order. And what is left to fill this void? Seemingly nothing. Only conflict. Only disagreement. Over and over and over again. But this is certainly not the only perspective.

What we are left with is the liberating realization that there simply might not be “the right answer” to the question of human community, and that this is not depressing or pessimistic at all and is in fact, precisely liberating. It simply means that like (arguably) everything else, in at least our collective human level of participation, in the universe any attempts at solidification, permanence, structuration, and order are intrinsically transient and fluid. We can certainly organize our communities in better or worse ways, we can certainly strive to achieve “just” communities; it is simply an ever on-going process and far from self-evident and is a process that mirrors the becoming characteristic of our human condition in a world of becoming in general. We can strive to be open to and aware of the inherent side effect of living together in community that generates and perpetuates injustice and inequality like exhaust from an engine. This isn’t something to resent, however, it is simply something to be aware of and to be combated, always. This combat itself can change its form, and perhaps the most noble collective endeavor is to always “agree to disagree” and to institutionalize this combat into debates and words rather than violence and blood, and to be institutionally and culturally aware of and seek out this inequality and injustice and thus to allow for these disagreements to continually reshape and transform our common worlds.
Chapter Four: The Principle of Community and The General Will

The aim of this chapter will be to describe an independent principle of political legitimacy consistent with the radically contingent character of politics and the political process described in the previous chapters. In the first chapter we described the formal characteristics of democratic institutions and law that might allow for a more open-ended conceptualization of the legitimating role of the democratic people and their popular sovereignty in our argument for a bodiless popular sovereignty fueled by communicative power. But this does not describe the character of this will, what might distinguish the legitimate general will from some other illegitimate merely particular will, be it bodiless and fueled by communicative power or otherwise. So in this chapter I will develop a theory of principle underlying the People and their general will through an engagement with Rousseau’s classic descriptions of these concepts. I will argue that this is not the rationalization process of the deliberative democratic version aimed at a “rational opinion and will formation,” nor does “the people” simply operate as some hypothetical “regulative fiction,” nor is it a merely identitarian/communitarian and hence purely contextual distinction, but it is rather a particular principled perspective of community stemming from the existential presuppositions of the very possibility and phenomenon of community as such to be discerned in the actual practices of real communities. In this way I will argue that the democratic people and their general will is not distinguished by some assessment of the rationality of the will as the “most rational” will when aimed at “mutual understanding” or some such supposed universal principle premised upon objective or communicatively generated reason, but is rather, following the more radical democratic
alternative building upon a distinctly egalitarian perspective, driven by a principle of equality always premised in the actual existential presuppositions of real communities and their very possibility.

In order to flesh out the contours of this understanding of Rousseau’s democratic people and their general will we will return again to Bonnie Honig’s framing of what she terms Rousseau’s “paradox of politics,” a paradox that “names not a clash between two logics or norms but a vicious circle of chicken-and-egg (which comes first- good people or good law?)” and which she says “cannot be resolved, transcended, managed, or even affirmed as an irreducible binary conflict,” as the deliberative democrats or so-called radical democrats, respectively, might argue regards the democratic paradoxes in general.

Here we are not interested in rehashing the characteristics of the democratic paradoxes but are rather more specifically interested in the debates surrounding what exactly Rousseau is attempting to do with his description of the democratic people and their general will. Here we are interested in what we might describe as the alleged “normative deficit” in Rousseau’s depiction, and what Seyla Benhabib describes as “the missing moral standpoint” and his willingness to “trade off legitimacy (the will of the people) for rationality (the legislator...)”.

I propose to build upon Honig’s suggestion that Rousseau is not attempting to “solve” these paradoxes, and that he is, in a certain light, better interpreted as a theorist of

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“political culture, not of universality,” and hence that Rousseau is orienting us towards the distinctly political nature of discerning the intersections and interactions of a “properly” democratic people and the mere multitude, between these people’s general will and democratic institutions and democratic law. I agree with Honig that Rousseau is orienting us towards “alternative domains of political work by depriving us of postulated points of origin...and inviting us to see how law and its authors/subjects fundamentally fail to intersect in the present in ways that satisfy independent standards of legitimation.”

While Honig wants to distinctly sever this proposal from binary oppositional logics such as those suggested by the “decisionistic” Schmittian influenced radical democrats like Chantal Mouffe or Giorgio Agamben whom she cites most specifically, I suggest that her description here of the “failed intersection” in the present between the law and the people is congruent with Ranciere’s more principled oppositional logic of politics and the police that we described in the previous chapter. This might be so, however, because Ranciere’s oppositional logic of politics and the police is not the decisionistic “either-or” that Honig is lamenting in her distancing herself from these binary oppositional logics. This can be seen

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66 I agree with Kevin Inston, however, that Rousseau does engage in a certain type of universality theorizing, only in a “post-foundationalist” manner where the universal is a contingent universal, an “empty place,” that is political constructed (a contingent universal that we will develop here as the existential presuppositions of community itself that are discerned as “real” and “actual” in the actual practices of real communities), and in this way can be considered as a theorist of political culture as Honig suggests here. Kevin Inston (2010) *Rousseau and Radical Democracy*. Continuum: London and New York. This is following the Lacanian influenced radical democratic thinkers, in particular Ernesto Laclau and Chantal Mouffe, a Lacanian and Post-Marxist political theory initially developed in their magnum-opus *Hegemony and Socialist Strategy* and then further through a wide-range of works. Ernesto Laclau and Chantal Mouffe (2001) *Hegemony and Socialist Strategy* (second edition) Verso: London and New York. The numerous works of Slavoj Zizek are also note-worthy in these regards. In regards to the other side of understanding Rousseau as a theorist of political culture, the “political sociology” side, so to speak, I agree with Joshua Cohen that Rousseau is indeed best interpreted as “wearing many hats,” so to speak, and that he mixes political philosophical perspectives and points of view with political sociological perspectives, with psychological, and with historical ones all at once and mixed together. Joshua Cohen (2010) *Rousseau*. New York, Oxford: OUP.

67 Honig (n. 65), p. 15.
when we recall that in Ranciere’s depiction this oppositional logic refers to “two communities in one” thus orienting us towards the significance of perspective and point of view and away from the simple oppositional binary of mere “decisionism” that Honig opposes.

I therefore agree with Honig’s general argument in suggesting that we understand Rousseau as pointing us away from “solving” these paradoxes and towards a more on-going politicized project of creating and re-creating the democratic people continually since, as Honig describes, “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, while acknowledging that such calls never fully succeed and invariably produce remnants.”68 I contend, however, that we can in fact discern a distinctly “moral standpoint” at work in Rousseau’s argumentation and hence can indeed discern an “independent standard of legitimation” that can aid the radical democratic perspective in offering the sort of principled critical criterion that is often lacking, as Honig herself agrees, in the more radical democratic alternatives to the objectivity and universality project of the liberal-democratic perspective more generally.

Too much ground is ceded to the more traditional enlightenment liberal-democratic tradition, with its well-known and lamented illusions of universality, objectivity, and rational purity, in abandoning the moral perspective and an independent standard of political legitimacy by which to conceptualize something like a democratic “people,” even if this people is envisioned as radically egalitarian, and hence has an open-ended, perpetually transformative and “becoming” characteristic, and hence is distinctly politicized from the

68 Ibid. p. 5
ground up, so to speak. Honig’s conclusions, while developing insightful critique, lead us no further than our arguments in our first engagement with the paradoxes for a sort of institutionalized instability as a way to grasp the formal characteristic of a more politicized and open-ended democratic politics. They do not lead us to envisioning a principled substantive characteristic of this democratic people and their general will beyond the broad dichotomies of the deliberative vision of a “rational will” or the radical democratic alternative of a distinctly indistinct and indefinite emphasis on an agonistic egalitarian politics.

This then will be the most significant aim of this chapter, to carve a principled theory of the democratic people and a standard of legitimacy that itself encompasses or more properly applies to these democratic institutions and law that I argued ought to be grasped as institutionalized instability fueled by the communicative power of a bodiless popular sovereignty. Certainly, then, I argue that this moral standpoint and principle of legitimacy do not suture this gap between the people and the institutional perspective of democratic law and do not transcend or solve the paradoxes; rather, this moral standpoint and principle of legitimacy point to the absolute irreconcilability and disjunction of the democratic people and their general will from the particularity intrinsic to the very practices of the institutional perspective of the political order and the very form and practices of political institutions and the coercive legal apparatus. This is the manner in which I suggest that this moral standard and principle of legitimacy at work in Rousseau’s argumentation might be more fruitfully understood as orienting us towards those ways in

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69 See Aletta Norval for similar arguments regarding the interplay between the deliberative and radical democratic alternatives. Aletta Norval (2007) *Aversive Democracy*. Cambridge: CUP.
which Ranciere’s better police orders (remembering that these are simply to be understood as the general system of political order) are those “that are jolted out of their naturalness most often.” Through Rousseau I suggest that we can grasp an actual principle of legitimacy that might explain principled formal characteristics of political systems that might institutionally make them more likely to be “jolted out of their naturalness most often,” or in Rousseau’s language, political institutions and laws that might be legitimated by the People and their general will, accepting now that the people is never adequately achieved or approximated and that the very practice of the law by its nature will always generate and perpetuate injustices, exclusions, Honig’s “remnants,” even while potentially being “more or less” legitimate and therefore instantiating a “better or worse” system of political-order, political institutions, and system of law.⁷⁰

⁷⁰ Engaging Rousseau in this radical democratic and open-ended politicized manner might certainly seem at the very least misguided or perverse to those large number of commentators seeing in Rousseau either an authoritarian streak at worst or a distinctly patriotic, organic communitarian streak at best. I agree with Kevin Inston that these readings of Rousseau are not the most fruitful and that very consistently underlying Rousseau’s entire oeuvre is the intuition of a radically open-ended, politicized, and radically pluralistic conceptualization of the democratic people and democratic process that is indeed consistent with a radically democratic egalitarian politics and a politics of freedom and liberty within this egalitarian framework, a perspective we develop further in what follows. Joshua Cohen has also been more sympathetic in his reading of Rousseau in these regards and has pointed out in regards to the common criticisms of the place of individual liberty and freedom in Rousseau’s logic that the role of individual freedom and liberty channeled through the general will in Rousseau’s logic undergirds the liberal-democratic principles of justice in John Rawl’s famous two-part formulation, regardless of criticisms of this project, it certainly puts Rousseau’s logic in a different light and one more congruent with our radical democratic perspective being developed here. In any event, the primary purpose of the present chapter is not primarily an interpretive one and I am not as interested in engaging the innumerable perspectives and commentaries on Rousseau’s work; I am more interested in developing a theory of political legitimacy consistent with the logic of politics developed throughout this entire work and suggest that an engagement with Rousseau’s logic of the democratic people and their general will is fruitful in these regards. While it is an entirely overlooked perspective, as far as this author knows, in regards to interpretations of Rousseau, as will become more clear in what follows my reading of Rousseau can most usefully be understood as a Levinasian one developing a distinctly dialectical logic animating Rousseau’s categorizations premised upon and stemming from the social interaction and sociality as such. Furthermore, it is worth noting, and following this dialectical reading, as opposed to the innumerable commentaries regarding the inconsistency and lack of systematic thinking in Rousseau, I understand Rousseau to be a very systematic and consistent thinker, as Rousseau himself argues, “All of my opinions are consistent, but I cannot present them all at once.” Jean-Jacques Rousseau (1987) On The Social Contract in The Basic Political Writings, pg. 160. Trans. Donald A. Cress. Indianapolis and Cambridge: Hackett Publishing Company.
The Principle of Community

I propose that a “missing moral standard” in Rousseau’s argumentation can be discerned in a deceptively simple and straightforward way whilst yielding the complexities for political thought and practice discussed at length previously through our investigation of the various faces of the so-called democratic and political paradoxes. As we described earlier, Honig points us in the right direction in arguing that Rousseau is a theorist of political culture rather than universality. I argue that Rousseau is indeed interested in theorizing political legitimacy not from the perspective of abstract principles of reason and objective universality, but rather from the existential conditions and practices of community itself, and in this way might usefully be considered a theorist of political culture; he is, as he famously describes, concerned with “taking men as they are and laws as they might be.” Rousseau begins his treatise into examining the idea of political legitimacy from the point of view of the observation that either people are ruled via mere force or also more-or-less legitimately: he says “man is born free, and everywhere he is in chains. He who believes himself the master of others does not escape being more of a slave than they. How did this change take? I do not know. What can render it legitimate? I believe I can answer this question.”71 (emphasis added) A subtle point emerges here that is often overlooked but is significant: man is still “everywhere in chains” even in Rousseau’s version of a hypothetically legitimate political order under the force of law. His answer of political legitimacy is not an answer that frees man from chains; it is simply an answer that makes these chains more or less “legitimate,” chains that might at best “fend off” the more radical

71 Rousseau (n. 71), p. 141.
abuses of the “sacred-right” of the social order rather than attain Justice through the enforcement of the law. The significance of this is that according to this logic, the legitimacy of the law is beyond the law, or other than the law. This is important to envisioning a radical democratic politics of open-endedness, radical transformation, and change. In a certain sense then by this understanding, the law’s being in force is an “unfortunate necessity” so long as it is it is actually necessary to fend off the radical abuses of the sacred right of the social order which is an intrinsic potentiality always.

With this in mind, I argue that we can discern the moral standard at work in Rousseau’s argumentation stemming from his claim that “the social order is a sacred right which serves as a foundation for all other rights. Nevertheless this right does not come from nature. It is therefore founded upon convention.” I argue that we ought to understand Rousseau in this manner as developing a sort of proto-Levinasian argument that quite literally the moral point-of-view and the ethical perspective as such originates in sociality itself, in what Levinas describes as the “confrontation with the other,” and what I argue in Rousseau’s distinctly political version can be understood as the principle of community: that it is better for each equally and generally to live together than to not. The social order serves as a foundation of all other rights, as a foundation for the very perspective of right as such, the very possibility of the moral perspective, the notion of right and wrong, of behaving towards others in a manner rightly or wrongly, of having some ethical obligation towards others at all. This suggestion is supported by other claims by Rousseau, such as the poignant passage demonstrating what we might conceptualize as

72 Ibid. p. 141.

73 See, for instance Totality and Infinity where he first developed this train of thought that he further developed throughout his entire oeuvre. Emmanuel Levinas (2011) Totality and Infinity. Netherlands: Springer.
man’s “dumb innocence” in the hypothetical pre-communal state of nature and his transformation into a moral being (in the sense of knowing of and actuating the moral perspective as such), and similarly a being capable of acting freely which is concomitant to this moral “awakening” and perspective, a just being (and also an “un-just” being), via his sociality and his collective transformation into community: “The passage from the state of nature to the civil state produces quite a remarkable change in man, for it substitutes justice for instinct in his behavior and gives his actions a moral quality they previously lacked...his faculties are exercised and developed, his ideas are broadened, his feelings are ennobled, his entire soul is elevated to such a height that, if the abuse of this new condition did not often lower his status to beneath the level he left, he ought constantly to bless the happy moment that pulled his away from it forever, and which transformed him from a stupid, limited animal into an intelligent being and a man. (italics added)”74i

Secondly, then, is the point that this sacred right of social order is not self-evident and given, it does not come “from nature” and is rather founded upon “convention” and is human artifice. Human community itself is the sacred foundation of all rights but is itself a question, a problem, a human creation, rather than a self-evident given. This again orients us towards this reading of Rousseau as a theorist of political culture rather than universality and towards deriving our principles of political legitimacy from conditions that can be discerned in the presuppositions and practices of community itself.

The principle of community that it is better for each and generally to live together than to not points us towards that community of undifferentiated equals underlying any and every particular community that we came across through our engagement with

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74 Rousseau (n. 71), pp. 150-51.
Ranciere in the previous chapter. The people and their general will premised upon the principle of community is thus not simply a “regulative fiction,” as Benhabib suggests, serving as some hypothesized benchmark and goal, and is rather the actually existing presupposition of a community of equals constituting the very possibility and make-up of community as such and therefore all actual, particular communities. In this manner it is essentially similar to Ranciere’s notion that the intrinsic inequality of particular communities is only built upon and through equality. The people and their general will are real and are actually there underlying, potentiating, and “in” any and every given community, and the problem is rather the degree to which they and their will “influence” or constitute the communities of particularity always being shaped and reshaped, ordered and re-ordered, in a word, policed above, upon, and through them. The problem is the degree to which “the People” can actually be discerned in the practices of a community, of a system of political order, rather than their “actuality” being more or less radically repressed or in Rousseau’s language, “abused.”

The principle of community embodies the underlying commonality that makes it “better” for everyone equally and generally to live in community as opposed to not doing so, both because it is more useful to live together in the self-interested sense that it is actually “better” for people individually to live together in community in order to pursue their private, self-interested pursuits and wills, and because it is “good” to, which is that stronger “moral standard” that the very perspective of valuation as such stems precisely from this social-interaction or confrontation and from living together in community and thus flows from this. Rousseau expresses both of these dimensions in describing that the “general will alone can direct the State according to the object for which it was instituted,
which is the common good. For if the opposition of private interests made necessary the establishment of societies, it is the accord of these same interests that made it possible. It is what these different interests have in common that forms the social bond, and, were there no point of agreement among all these interests, no society could exist. For it is utterly upon the basis of this common interest that society ought to be governed.”

This “common interest” that forms the social bond underlying the very possibility of community is referring to the “useful” or “self-interested” dimension of it being better for people to live together than to not. This is that manner in which I previously argued that this principle of community is actually presupposed in the existential conditions of community along with being the originary point of the moral and ethical perspective as such. We confronted this latter point in the previous paragraph in describing those “remarkable transformations” in man that changed him from a “stupid, limited animal into an intelligent being and a man” and that these transformations from a hypothetical state of nature to society gave man actions “a moral quality they previously lacked.” (italics added)

We have thus established that the principle of community needs to be understood as concretely real, a principle to be discerned in the occurrence and practices of community itself. It is actually there underlying the entire system of differences descriptively constituting actual communities no matter how much it might be “abused” in particular situations. On this note, simply because it is there inherently potentiating community itself certainly does not mean that it is actually present “on the surface,” in the concrete real world of particularity, however. It might be lying there seemingly entirely dormant or suppressed, or in Rousseau’s language “utterly abused,” even whilst still

potentiating this very situation of its utter abuse. We came across this previously in describing that “remarkable transformation” from the state of nature to society and that man “ought constantly bless that happy moment” “if the abuse of this new condition did not often lower his status to beneath the level he left.” These “abuses” need not be commented upon and are certainly blatantly obvious and refer to that way in which we suggested that sociality is the originary point of the moral perspective as such, of the perspective and potentiality of whatever is good and just etcetera and what is bad and unjust, etcetera. The perspective opens the path in both directions, co-equally; obviously much has been and can be said on this matter, but nothing need more be said for our purposes here. In any event, this is precisely why the principle of community does provide that stronger role of a critical standard by which to generate a principle of legitimacy and is more than simply a descriptive assessment of its implicit potentiality in the very possibility of community as such. It is thus aspirational and a particular critical perspective of community but more than that “regulative fiction” or some merely teleological utopian goal, as if “the people” is supposed to be achieved once and for all or can be objectively assessed or institutionally secured somehow and somewhere.

The people defined by their general will can be understood to appear in reality (which is to say can be understood to construct themselves in reality, which is to say can be discerned by certain determining characteristics within the world of particularity) embodying the equality at work in the principle of community. But when they appear in reality they appear in the world of particularity, thus always “distorting” their appearance and creating and perpetuating exclusions and incomplete or insufficient articulations of the
People and their general will. And this is certainly not to be lamented as such, it is simply an inevitability and irreducibility of the presuppositions of community in that same way that Ranciere’s police orders are not to be lamented as such and do plenty of “good” even while arguing that they ought to be “jolted out of their naturalness” as often as possible. This then clearly goes hand in glove with our argument for institutionalized instability and the necessity to have political institutions and laws serve as permanently open-ended integrating systems rather than being oriented towards some teleological achievable endpoint.

Rousseau’s standard of political legitimacy that I argue is founded upon this moral perspective of the principle of community is the general will. This standard entails three interlocking determinative components: the people whose will is general who are thus sovereign. We will begin with a formal description of these components of political legitimacy before describing their actual substantive characteristics premised upon the principle of community. There is a dialectical coupling of the sovereignty of the people (as opposed to mere magistracy representing only particular “parts” of the people however large or small this proportion might be), legitimate rule and law (as opposed to the rule of mere power and force and mere decrees), and the general will (as opposed to a merely private/particular will). If an act is the decision and represents the will of the Sovereign and thus expresses the general will and refers to and originates from the People in general then it is an act of law and legitimate. If it does not then it is merely an act of magistracy.

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and mere decree and amounts to simple orders backed up by coercive force. In this vein Rousseau describes how “sovereignty is indivisible for the same reason that it is inalienable. For either the will is general, or it is not. In the first case, this declared will is an act of sovereignty and constitutes law. In the second case, it is merely a private will, or an act of magistracy. At most it is a decree.” The characteristics that distinguish sovereignty from magistracy, law from decree, the general will from particular will are in this way formal, conceptual characteristics to a certain extent along with substantive, subjective characteristics distinguished by their “intent” or “will” which is not reducible to some formal structural features.

There is thus no formal criterion to definitively, objectively, and permanently discern if any particular act, including the very foundation of a particular State and system of positive law as such, is an act of Sovereignty and is legitimate and hence Law rather than merely an act of magistracy and decree. In other words, the distinction between legitimacy and illegitimacy cannot be discerned with certainty by the formal characteristics of any institutional structure or particular empirical or quantifiable act, event, or process. This is the way in which I will argue that Rousseau's theory of political legitimacy is a certain point of view, a certain perspective on community to be discerned in formal characteristics of political institutions and in subjective assessments of their substantive “content.” In this manner, technically any particular act (statutory laws, public policy, or even the enactment of an entire system of positive law as such) is by definition formally and potentially merely a decree and act of magistracy in so far as it is particular by its very declaration and occurrence and by its existential character of “being in force” and being enforced in the real

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77 Rousseau (n. 71), p. 154.
world of particularity, and the question then is in a certain sense the degree to which the particular act might be potentially and presumptively “legal” (which is to say legitimate) based upon certain formal characteristics that we will describe and ultimately subjective assessments of the “will” guiding the act or that can be discerned in the act. There are thus formal criteria that can discern whether a particular act might be potentially or presumptively legitimate including whether the entire system of law-making might be potentially legitimate, and we will briefly discern these formal characteristics the following paragraph, but these formal institutional characteristics are essentially what was developed in the first chapter on the institutional characteristics of political legitimacy in developing our theory of democratic political systems as institutionalized instability.

We will move on then first to this very brief description and re-hashing of the formal and procedural characteristics that are necessary for the institutional apparatus, the entire system of the law and law-making process, what we can think of as the “highest level of particularity,” to be potentially legitimate premised upon the above principle of legitimacy of the general will channeling the principle of community. The logic guiding these formal and procedural characteristics is quite simple: they are formal and procedural institutional characteristics that might allow for the general will to be sovereign and thus institutionally constrain the law-making process both through the procedures and mechanisms of governance and through substantive individual and political rights, where these are understood to be co-constitutive. This latter aspect has the two-fold role of both “allowing for the general-will to be sovereign” and “encouraging that will to be general,” keeping in mind that certainly this is exclusively something left in the last instance to the people themselves in so far as the formal institutional characteristics can only be potentially
legitimate as we’ve described, and because the actual general-will is always more than it ever is, in ways that we have already suggested and will flesh out in detail in what follows.

These institutional features are hence those formal characteristics that interrupt any permanence to any particular act and ensure an institutional voice and access to the people in the law-making process and hence institutionally discourage any “magister” from usurping the power that is only legitimately the sovereign people’s. All of the formal and procedural institutional characteristics necessary for a potentially legitimate political-order essentially boil down to one of two general principles: 1) the open-endedness of the political-order and the general system of positive law, which is to say it’s institutionalized instability, and 2) the institutionalization of the people’s will commanding and/or being the origin of and consenting to the law (the authors of the laws to which they are bound to obey). This entails most obviously individual and political rights, where these are to be understood as co-constitutive (as we discussed in chapter one via our engagement with Habermas), and voting rights, as the only legitimate form of government being representative government. 78 Both of these general principles follow from the idea of the people with their general will being sovereign as the standard of legitimate law as opposed

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78 Jurgen Habermas (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, pg. 104. Trans. William Rehg. Cambridge: MIT Press. It is also important to note here, however, that this is the only legitimate form of government if the law “needs” to be in force and enforced, so to speak, because in Rousseau’s account and following the legitimating logic of the principle of community underlying and fueling the general will, the legitimacy of the law is “beyond” the law in the sense that it is best thought of as an “unfortunate necessity” or perhaps more accurately an unfortunate potential necessity implicit in the possibilities of community itself corresponding to the “abuse” of the sacred right of the social order. This reading puts Rousseau more in line with certain Marxist and post-Marxist intuitions, I am here thinking particularly of Walter Benjamin, of the overcoming of the state in this case in a more hypothesized ideal standard in so far as the “abuse” of the social order is an intrinsic and co-constitutive potentiality alongside its very sacredness and cannot institutionally or with certainty ever be overcome as such. This is following an argument more in line with the Rancierean perspective developed in the previous chapter. The point is, however, is still significant because it attests to the inherent open-endedness in the practices of political order, government, and the law and that we can never be certain to have “gotten it right” nor is the point to “get it right,” a process we have described in the previous two chapters and will continue to develop in what follows.
to merely particular wills and acts of magistracy and decree backed up by force. Again, these formal and procedural characteristics in no way ensure the legitimacy of the law, they are simply characteristics that must be in place for a system of political order and the law to be potentially legitimate, which is to say not automatically illegitimate.

The People embodying the Principle of Community

Now then to describe the actual substantive nature of the independent standard of legitimacy of the People's general will whose formal institutional or procedural characteristics we have described above. The understanding of the People and their general will that I argue for here is rooted in Rousseau's own conceptualization and builds upon it. In this way we will proceed with engaging Rousseau's own argumentation while extending it in directions that Rousseau certainly did not explicitly go. I suggest that the People who is defined as such by their general will is a certain perspective and point of view of community. The People is always more than, other than, and underlying any particular quantifiable identification of a particular people in a particular community at a particular time and place. As discussed previously in our demonstration of the principle of community, I suggest we understand the People as that particular point of view of a community as the undifferentiated community of equals underlying and potentiating any and all particular descriptions and differentiations constituting a particular community. The People is thus “hypothetical actual” in a pre-suppositional and potentiating sense; it is that indeterminate, undifferentiated underlying commonality of a community; it is that aspect of a community that embodies the principle of community that it is better for each and all to live together than to not. Thus the People does not express itself nor its will
immediately (particularly) by its very nature: no particular identification of this or that group, based upon this or that determinate, measurable, descriptive characteristic refers as such to “the People.” This has all more or less been descriptively fleshed out fairly extensively throughout our entire discussion up to this point. Now it will behoove us to move towards more positive descriptions of what the people actually “is” rather than what it is not and its merely formal characteristics.

In a quantitative sense, from the point of view of particularity and worldliness as such, the People is most specifically defined as quite literally every single person individually and as a whole “living within a community,” where a community as such is determined by a meaningful level of interconnectedness and interdependency. That this definition is itself indeterminate, open-ended, and allows for multiple “layers” and indistinct, over-lapping, and blurred layerings of community is purposeful; it still functions as a criterion. From this quantitative point of view then, the People varies depending on the particular interconnectedness and interdependency in question. The People is not necessarily simply the citizenry of a particular state nor is it even every single individual living within a particular territorially delimited space. The People might be every person living within a territorially delimited space, within a particular state's jurisdiction, if the point of view in question is that of a community at this particular level of descriptively integrated living togetherness and interdependency. Or the People might be every human

79 Admittedly, this seems to moves against Rousseau’s argument for smaller peoples/communities being better, but again I agree with Cohen that this particular argument in Rousseau is not a philosophically principled one and is more a strategic matter or a political sociological point, and his principled point is simply that that the general will does not refer to an abstract universal humanity as such and is contextual in these regards, which is still in line with the present argument being developed here. An interesting recent work by RJB Walker in international relations theory regarding the blurred boundaries between states and systems of states and between international relations and world politics is relevant in these noteworthy in regards to the ontological and practical difficulties of thinking through state-interstate-global-world politics. R.B.J. Walker (2010) After the Globe, Before the World. London and New York: Routledge.
being living along with future generations if the given point of view of the community in question is that of the global community of humanity itself which is certainly empirically relevant in contemporary times in so far as there is unquestionably complex interdependency and interconnectedness of humanity at this global level along a variety of axes (global economy, the global environment, overtly global political organizations like the United Nations, and a wide array of international covenants and regulatory agencies, etcetera).

Qualitatively, the People is determined in its essence by its will, which is therefore the independent standard of legitimacy we are pursuing. The People is the undifferentiated community of equals whose will is general. The general will is precisely this will that “results” from the principle of community, or more accurately is the embodiment perpetually, continually, and all the time, no matter what, of this principle applied to community as such and any and all particular communities. In other words there is always a general will of a given community, regardless of the particular circumstance or even regardless of there being particular wills of a particular community, regardless of the “self-awareness” of a community as being a particular community and the self-awareness of “having a general will” or even particular wills about this or that within the community in question. Now certainly the actual content of this will, it’s particularity, will be dependent on the circumstance in question and is the expression and construction of the particular people in question, but the point is that wherever there is a community there is a general will, and it is not just “any” will of these people, it is that will which is general in the ways described here. As previously remarked, the people is in this way a perspective, a point of view on a given community along with actually- particularly- being
generated by the particular People in question.\textsuperscript{80} And that there \textit{is} a “community” does indeed attend to a sort of quantitative analysis, in other words, that there “is” “a community” is something that can be quantitatively assessed and asserted by the afore described criteria. At the highest level of generality then in regards to the over-all functioning, structure, and organizational logic of the community- the political order- as such, the general will of the people of a community might be described in the following manner: \textit{that the community functions in its interdependency and interconnectedness so as to originate from and affect the community of undifferentiated equals, the people, equally and generally as a whole.}\textsuperscript{81}

This entails two interconnected elements: equally, in so far as no \textit{particular} part of the community’s point of view or interest “matters” more or is inherently “valued” more than another for whatsoever reason or in whatsoever manner (this being the “undifferentiated” aspect of the equation, and is part of the intuition behind, for instance, individual rights and the protection of minority rights from the perspective we are developing here). Secondly, this principle functions in the manner of a side-constraint in that the political order is not to operate in a manner inconsistent with the general will, which is really the stronger claim that the underlying purpose of community be nothing other than abiding by the general will. This latter side-constraint function further acts as a side-constraint on “the people’s” actual particular will in any given circumstance, in other

\textsuperscript{80} Christopher Bertram notes in these regards that the general will is split between a “decision” and a “transcendent principle;” in our formulation, this “transcendent principle” is found in the existential presuppositions of community discerned in the actual practices of community as we have discussed Christopher Bertram (2004) \textit{Rousseau and the Social Contract}, pg. 98. London: Routledge

\textsuperscript{81} This is what Rousseau is describing when he says that “the general will, to really be such, must be general in its object as well as its essence; that it must derive from all in order to be applied to all; and that it loses its natural rectitude when it tends toward any individual, determinate object.” Rousseau (n. 71), pg. 157.
words it is what might distinguish some actual opinion or will of the people as the general will rather than merely the will of all, a point that we will develop further in what follows. By this standard there is no other higher “goal” for community such as to pursue wealth, influence, power, territorial expansion etcetera when this might be arbitrarily at the expense of and for the betterment of only a particular part of the community for a merely particular goal or aspiration, no matter what percentage of the populous it might refer to or represent. This side-constraint aspect is also that way in which institutional features of a given political-order, if there are such official institutional features of the community in question, serve to “encourage the will to be general” through their procedural characteristics and institutionalization of substantive rights in the ways previously described, particularly in chapter one.

The general will thus acts both as an underlying and over-riding purpose, that the community’s highest particular purpose is to abide by or embody the general will, and as a side-constraint, that in so far as the community-and individuals within a community, individually and in what-so-ever particular groupings- pursues particular goals it only do so in a manner consistent with abiding by the general will, again at the very least presumptively, which is to say institutionally. At this highest level of generality that we are here discussing, what can accurately be considered the general level as such as distinguished from the particular, the subjective essence of the will that is general might be described in the following manner: that (we) the people of this (given) community live together as a community of undifferentiated equals and for no other purpose (the latter qualification being strictly unnecessary as it is contained in the previous clause if properly understood). Indeed, if the will of a community, its guiding logic, principle, or purpose, its
“spirit,” it’s telos, is absolutely anything else than this, then the logic we are developing here suggests that it is by definition in the realm of illegitimacy and devolves into a matter of mere arbitrariness and hence social order maintained merely by force, rather than also legitimately, and is merely a private or particular will.

For example, if we take the instance of the global community of humanity distinguished as such by the global environment (accepting for our hypothetical that it is unquestioned empirical fact that the interdependency of the global social-political-economic system constitutes a global community along this distinguishing axis) then the general will of the people is that will that treats these effects equally and generally, not valuing or treating any particular locale or particular “parts” of the community preferentially or differently (i.e. not valuing any particular territorially delimited space or people differently/preferentially, including future generations of people) and valuing the community as such at this level, valuing the entirety of the global environment as such, generally, as a whole. Now, whether or not there is in fact some determinate particular some such will of the people of the community in question at this level is entirely irrelevant for this highest formal level of generality, which is significant as it generates both an aspirational and critical perspective in this way (but there certainly are innumerable particular wills which might arguably qualify as “attempts” at a general will or iterations of it, which is to say there are certainly wills which purport to be driven by something like the standard that we are developing here in regards to the global environment). There is, regardless, a general will where so ever there is a community and to the precise degree that

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82 Rousseau certainly argued against an abstract universal humanity constituting the general will, specifically against Diderot, as is well commented upon and as I remarked upon earlier, but that is certainly not what is at issue here. I am following the distinguishing principled qualitative logic of the general will which is open-ended in its applicability to whatever the community in question is.
there is a meaningful community, as an implicit underlying actuality and irreducible potentiality of the community in question. The particular substance of this general-will, what the general-will that is implicitly “there” in the way we are describing it actually *is* can clearly not be definitively stated, but the *standard* guiding it can be, that standard being the general will as distinguished by the principle of community. It is to this level of the *particularity* of the general will in particular circumstances, which is to say *any* actual circumstance, that we now turn.

In regards to particularity itself then, the general will can be considered a general "demand" or "interest" whose specific content thus takes on particularity. This is the manner in which I suggest we read the enigmatic “fuzzy math” of Rousseau’s description when he describes that the general will “considers only the general interest, whereas the former (the particular will of the “will of all”) considers private interest and is merely a sum of private wills. But remove from these same wills the pluses and minuses that cancel each other out, and what remains as the sum of the differences is the general will.”83 As Honig describes, Seyla Benhabib argues that "Rousseau’s 'arithmetic' solution does not satisfy, because it is not at all clear what the language of 'taking away the pluses and minuses of individual wills' could mean concretely or institutionally."84 I partially agree with Honig’s response that “might this be the lesson of Rousseau’s fuzzy math-that the general will is inhabited by the will of all and that we cannot know for certain when we have disentangled them and cannot hope, therefore, to guide our politics by such

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83 Rousseau (n. 71), p. 155-56.
84 Honig (n. 65), p. 4.
knowledge?” I agree that we cannot know for certain when we have disentangled them, but there is a more principled manner in which to understand this “fuzzy math.” And Honig gets it in reverse, in a manner, to suggest that the will of all inhabits the general will when it is more properly the other way around. The general will is not “inhabited” by the will of all as if the two wills are different types of the same genus and are simply descriptively different in inhabiting the same space and are simply difficult or impossible to disentangle, rather the general will is at work within, and potentiates, and underlies the particularity of the will of all but is of a heterogeneous nature to it and is thus conceptually and empirically distinct from it. The general will can not appear as such in and of itself, it can only appear “in the guise of” a particular will, or more properly in the form of a particular will and is thus impossible to distinguish upon purely formal grounds from a mere will of all. However, it is certainly possible to distinguish them based upon criterion that is certainly applicable in the real world, in the world of appearances (this is what we were discussing previously as to institutional features that are necessary for a political order to even be potentially legitimate, for instance) which is what we have been giving attention to currently.

85 ibid. p. 4. Also, Althusser is similarly imprecise in describing the mutual imbrication of the general will and will of all in remarking that “each particular interest contains in it the general interest, each particular will the general will” and suggests that this imbrication in reality serves simply to subsume the general in the specific in regards to the general nature of the will stemming from each individual considering their own personal interest (what Althusser rightly takes to be a merely private interest) and applying it to each therefore making it not burdensome on any (what Althusser, I argue, agreeing with Inston, incorrectly takes to be the nature of it’s “general” character, then), here remarking upon the famous formulation of the social contract. My reading here agrees with Kevin Inston’s that this is a misreading of the distinction of the general will from the particular will and the will of all and of the social contract and the general will does not stem from or originate from each individual considering their merely private will, this is the way that we described previously in this chapter that the principle of community underlying the general will has the dual characteristic of utility and usefulness referring to the merely private will and the very possibility of the moral perspective (justice and legitimacy) and such which is what more specifically refers to the general will, in all of the ways we have been here been describing throughout the present chapter and in this section specifically. Louis Althusser (2007) Politics and History: Montesquieu, Rousseau, Marx, pg. 149. London and New York: Verso.
It is thus more accurate to say that the general will inhabits the will of all in so far as the general will potentiates the will of all and is therefore certainly entangled with it. But I agree with Honig that the take-home point is that “we cannot hope, therefore to guide our politics by such knowledge” of their disentanglement. More than this though, they can not be disentangled; the general will can only ever be discerned in what is descriptively always irreducibly marked by particularity and hence is therefore “potentially” merely a particular will. This is all to say that the general will can only be discerned in and through particularity in so far as the matter in question is particularity itself. The general will that is truly and properly general as such, imminently, is simply the formula we expressed above: that the community functions in its interdependency and interconnectedness so as to originate from and affect the community of undifferentiated equals, the people, equally and generally as a whole and is in this way that “highest level of particularity” that we remarked upon previously, and can merely be a sort of hypothetical-actual abstracted point of view of a particular community and can only ever be a perspective immersed in particularity in the last instance.

How I suggest then that we read Rousseau’s “fuzzy math” in a more principled manner is that the general will is the underlying point of commonality, the divergence and originary point in any given aggregation of one or numerous particular will(s), at whatever level of generality or particularity is in question. For instance, the general will in a particular situation might be that the people “demand” or “have an interest” (again this obviously doesn’t have to be any particularly “official” demand and is entirely indeterminate in this way) that something be done in regards to some particular issue such as education, the environment, public services, security or defense, foreign relations, or
even at that “highest level” of generality a demand that there be a particular system of political-order as such (a government, a system of positive law as such, a constitution, etcetera), with innumerable levels of greater or lesser clarity and particularity regards these interests and demands. This then would be that general will as the “sum of the differences” of the “pluses and minuses cancelling each other out,” the underlying general nature of the particular wills constituting the will of all, the particular “pluses and minuses” of it, the general will that something be done regards “education,” “national security,” or the entire system of political order as such, etcetera, that is itself the sum of the differences of the particular opinions that people might have that be done in regards to these demands/issues. Thus there are then particular suggestions- “wills,” “opinions,” “beliefs” etcetera as to what particularly ought to be done about this or that, what particular program, statute, law, public policy, etcetera ought to be done regards this underlying general common demand or interest, what the best public policy is regards this general demand; and this certainly might entail deep-seated ideological and philosophical differences in pragmatic or philosophical ways. This is the way in which these “pluses and minuses” of the particular form that these general demands take be “cancelled out” leaving the general will as “what remains” as the sum of the differences.

Significantly, this is also the way that the general will is certainly permissive of plurality and differences in an open-ended manner and is not something to be “discovered” but is something to be constructed, politically, a point that Kevin Inston is keen to point out as well as a central point throughout his entire book on *Rousseau and Radical Democracy*, and is something I have also been developing here throughout. The particular beliefs, opinions, and suggestions, the particular “wills” as to what ought to be done about this or
that demand or interest are the pluses and minuses that are to be cancelled out leaving the
general will as the sum of their differences. The general will in this way is that underlying
commonality underlying the divergences, underlying the “debate” or the “disagreement” in
question about a general demand or interests; it is the point of departure for the
particularity of the wills in question. Now again there is a certain doubling of perspective
here between the quantitative and the qualitative senses of the wills in question that
operate simultaneously but are conceptually distinct. In other words, in one sense the
particular pluses and minuses of the wills in question are particular simply by their nature
in that the matter in question is a particular one. Then the different pluses and minuses
(the different opinions about national security, education, the political order as such,
etcetera) might (“ought to be”) all be driven by the same qualititative intent, in other
words, might be simply legitimate differences in opinion over what the general will actually
is in some particular area and are simply “genuine” differences in opinion from which the
general will then emerges through the political process of debate, deliberation, etcetera.
This is what Rousseau is remarking upon in his seemingly confounding statement
regarding people simply being in error regards what the general will in fact is if their
particular opinion does not win the day when he says that “when a law is proposed to the
people’s assembly, what is asked of them is not precisely whether they approve or reject, but
whether or not it conforms to the general will that is theirs. Each man, in giving his vote,
states his opinion on the matter, and the declaration of the general will is drawn from the
counting of votes. When, therefore, the opinion contrary to mine prevails, this proves
merely that I was in error, and that what I took to be the general will was not so.”

86 Rousseau (n. 71), p. 206.
Now the other sense of the equation is that the particular pluses and minuses are merely private and particular wills qualitatively. And still the equation works: the general will is still at the root of, is the “sum of the differences of the pluses and minuses” of these qualitatively particular wills at the juncture at which the merely particular wills are parasitic upon “requiring” the benefit of living together in community for their very particularity, for their “abuse” of this benefit. In other words they are still parasitic upon the general will and thus still uncover the general will at their divergent point of particularity in the ways we have described. The last thing that need be said regards the “equation” is the most abstracted level of generality regards community as such, regards the social contract as such, regards the principle of community. The sum of the differences of pluses and minuses is the very phenomenon of the principle of community that we described: that it is better for each and all generally to live together than to not. This is what remains when absolutely all particular pluses and minuses, all particular merely individual wills and pursuits and interests are cancelled out as the sum of the differences, that it is better to live together in community than to not. This is the way in which the principle of community is the penultimate general will as such, referring to the “sacred right” of the social order and is the principle underlying and fueling the general will in all the ways described previously. Even the most seemingly “purely” individual will, such as perhaps fleeing into the wilderness and living a life in nature away from any and all people and away from community or whatever else one wants to conjure up, is still intimately bound up with the principle of community in so far as the individual in question has a name, has a conception of “self,” has a comparative conception of “wanting to be away from community” etcetera. More could certainly be said regards the origin of the properly
human perspective of reflection and a distinctly human or moral freedom as stemming from the confrontation with the other in that Levinasian sense described previously, but it would lead us too far afield for our present purposes. In any event, for our purposes here the principle of community is the ultimate “sum of the differences of pluses and minuses” marking the general will in the most general sense at the highest level of abstraction.

It needs to be remembered that the generality of this will is essentially in its qualitative, subjective sense of a particular type of will, namely a general one, one that values everyone and all within the given community in question equally and the community generally. In the manner in which we are describing the will as that underlying generality that underscores particular interests and demands, this underlying generality might and certainly often-times, or at least potentially always, does include the wills, demands, and interests of those not officially or institutionally represented in the law-making and governing apparatus of the political-order in question and not represented in the unofficial general political-cultural milieu of the community in question. This is again to bring to the fore that manner in which the general will by definition entails more than it ever might be identified as containing; it contains the wills of Honig’s “remnants” that are created by the very institutionalization and particularity of the political orders’ law-making and governing apparatus whose wills are institutionally, and simply in the common everyday political culture, ignored, marginalized, or actively oppressed, whether officially or unofficially.

Take, for instance, the American historical situation of that “highest level” of a particular demand, that “constitutional level” of consideration, that level of particularity that demands the creation of a political-order as such, and let us say that there is a “general
demand” from “the people” to create a political order (a State, government, a supreme law-of-the land, a system of positive law as such), and then let us say that there are particular expressions of this general demand that followed different political ideological perspectives, practical considerations, etcetera- all of the well-known debates between the federalists and anti-federalists, the whole series of compromises and debates that went into framing the Articles of Confederation and then the Constitution. Let us, following our model described above, say that these “positives and minuses,” these particular wills for the political order to be this particular way or that way are “cancelled out” leaving that general-level demand remaining for the creation of an representative government and rule of law of institutionalized political-order as such. Now, two basic considerations ensue: first; for this underlying descriptively general demand to be an expression of the general will it would need to be, by definition, a demand for a particular type of political-order. Namely as we described above, it would have to be a demand for a government legitimated by the popular sovereignty of the people, one that abides by the principle that (we) the People of a (given) community live together as a community of undifferentiated equals and for no other purpose. If the quantitatively descriptive general demand underlying the highest-level of particularity that there be a state and system of coercive law, what we have loosely called the “institutional apparatus” in a general sense, were to unify around an absolutist and/or dictatorial system of government then even if this is the descriptively general will in that sense of being the underlying commonality of the particular different expressions that manifest above it, it is not an expression of the general will. It is not a community oriented around the very perspective of legitimacy and is merely oriented around the principle of force holding together or organizing the political order.
Arguably the will in our present example of the American situation seems to generally approximate this indefinite descriptive condition. The political order might institutionally be potentially legitimate in that formal sense, which from this perspective is all that the formal criteria for institutional legitimacy might yield. Certainly this potential institutional legitimacy might itself be better or worse along a sliding scale, and it is not simply a black and white check-mark of potentially legitimate or not potentially legitimate. It is this consideration that fuels those quantitative paradoxes of foundation where “good political-order,” good government, good institutions, and a good system of positive-law is supposed to help create or perpetuate the “good people” when these “good people” are themselves the source of legitimacy for this “good political order thus generating this apparent chicken-and-egg problem. However, from our perspective developed here, this is less of a concern because from the institutional perspective the political-order is only ever potentially legitimate in any event, so there is no need to secure objectively legitimate foundations for this legitimacy. Certainly this order will need to be more-or-less “accepted” by the however-imperfectly-approximated “people” and will need to more-or-less actually refer to and stem from their underlying “will” taken in that sense of the “general demand” that we have been referring to here, but these are more or less simply empirical matters from our perspective, and in any event the legitimacy of the order in question is institutionally a matter of its formally potential legitimacy, and its “actual” legitimacy depends on the purely subjective nature of the will, which again, is always “more than” it ever might be identified as being. So, in a technical sense, the founding of any political-order along with its perpetuation is in the realm of illegitimacy as such. In any event, we
need not delve into this further here as these concerns animated our first foray into the
democratic paradoxes in chapter one.

This leads us to our second consideration, however, and to that manner in which the
actual underlying general will in a given situation entails more than it ever actually
identifiably or effectually entails at any given time, institutionally and unofficially in the
general socio-political culture. It thus entails the demands of those ignored, marginalized,
or oppressed, in a word those excluded from any official or effective account of a general
will and the particular wills that are more or less effectually vying for influence constituting
the common difference point for particular demands and interests of the People. This is
also again, then, the manner in which the People and their general will is inherently
pluralistic at any given time and to the future in regards to its forward looking
transformative capacity. This future-oriented characteristic is not simply the obvious
manner in which the voluntaristic characteristic of the general will is going to change as the
People do in simply natural sense but also in that sense that we are talking about here that
that the current general will at any given moment is itself incomplete and entails more than
it ever is identified as entailing.

In our current example this is blatantly obvious. The “general” demand for a
political-order as such in the American founding context even in meeting the formal criteria
of potential legitimacy in that it was descriptively a demand for a representative
government deriving its legitimacy from the popular sovereignty of the people with all that
this formally and institutionally entails certainly did not institutionally, “culturally,” or
practically actually entail the entirety of “the People” of the community in question issuing
this general demand in that principled sense that we have been describing. In fact, quite
the opposite and absurdly blatantly: a large percentage of the population was not even treated as human, was actively enslaved and owned by other particular parts of the people, and their “wills” were very obviously not officially or unofficially considered in the general demand that there be a particular institutionalized political-order, a particular state-government-legal apparatus and system of enforced positive-law, nor in what particular form this order takes. And the instance of slavery is certainly and obviously only one example amongst many (I am simply taking one obvious and blatant “abuse” in this manner to highlight the point). Thus the “true” general will of the People in this principled way of the community of the American founding actually entailed a demand for a political order that certainly did not include slavery and that actually entailed a more robust sense of freedom and equality under the law and a more robust institutional and unofficial “political cultural” understanding of who “we the people” entails and clearly a more comprehensive constitutional and institutional protection and recognition of the rights of the people within the institutionalized framework of government and in the general political-cultural milieu.

In other words, very clearly, the general will of the People, following the principled character developed here, was certainly more than it was institutionally or practically recognized or self-consciously understood as entailing.

The point of this somewhat vague and overly simplified historical example is simply to describe the open-ended and transformative characteristic of this conceptualization of the People and their general will as the principle of political legitimacy for this democratic imagery. Something like this critical backward looking historical gaze needs to always be happening now, in the present, from our perspective developed here as part of the immanent recognition of an always-being-constructed democratic People's institutional
and unofficial exclusions of perspectives, identities, classes, groups of peoples, and political issues (the environment, for example) pertaining to the community, pertaining to the People, that might not be recognized at any given point in time or that are marginalizing and excluding and generally working against the idea of a political order being legitimated by the People and their general will. This again highlights the necessity for the open-endedness of the official institutionalized political-order and the always unknowable/unachievable and aspirational character of the People and their general will even though they are not merely a “regulative fiction” but are actually real and presuppositionally operative, always, wherever there is actually a community.

Conclusion

We have thus given substance to the supposed “missing moral standard” in Rousseau along with arguing for an independent principle of legitimacy that critically applies to the functioning of a community, of a political-order, both institutionally and unofficially, to assess a political-order as being more or less legitimate by this particular principle of legitimacy resting on this particular moral standard. From my reading of Rousseau’s theory of political legitimacy flowing from what I have suggested should be understood as the principle of community underlying the people and their general-will, this political legitimacy is an intrinsically open-ended, indeterminate, and indefinite process. This lack of quantifiable precision, however, is not to the detriment of political legitimacy; it rather points us towards the aspirational, open-ended, and becoming character of democratic legitimacy from this radical democratic perspective.
We have indeed suggested the strong claim that the democratic people is not just any “reasonable” or “rational” or “enlightened” people expressing some sort of “rational will,” rather, we have argued that the democratic people is a particular type of people with a particular type of will, namely the radically egalitarian undifferentiated community of equals that is never attainable as such but is always there underlying and potentiating community itself in a pre-suppositional and aspirational sense. Their general will is a particular type of will, not simply an empirical assessment of its generality or its rationality; it is that will founded upon the principle of community that it is better for each and all to live together in community than to not and to institutionally and subjectively order community precisely upon this principle and no other. This forces us to conceptualize and actualize democratic politics as an always open-ended gaze towards searching for that underlying democratic people that is always implicitly within and potentiating any and every community but that is always both more-or-less actively present and beyond the particular grasp of a community at any given time and thus forces us to understand the cost of particularity itself, the cost of an actively enforced system of political order and the law's being-in-force. This cost does not force a pessimistic outlook upon us, however, for the radically egalitarian open-endedness suggested here is equally the potential for aspirational hope and social-political transformation within and outside of the institutionalized political order as it is the sober reminder that the very processing of politics, the very particularity of political-orders themselves generates and perpetuates “remnants,” exclusions, and injustices. This sobering honesty itself can indeed aid a potentially democratic people to continually strive towards this egalitarian legitimacy.
Chapter Four: Conclusion

We began this inquiry with the simple observation that people disagree about how we are supposed to live together in community; that community is a question and a problem rather than a self-evident given. And politics is this question and this problem, perpetually so; politics concerns the fact that it is not self-evident how we are supposed to live together in community. We discussed that there are types of political philosophical inquiry that might seek to answer the question of politics, that argue that there is a "right" answer, normatively or rationally, to the question of community by arguing for natural or self-evident foundations of community, natural laws and rights, reason yielding objective and universal principles of justice, determinate laws governing the functioning and structure of society, etcetera. Or there are those perspectives that argue more from the perspective that there is no answer to the question of community, that politics is fundamental and constitutive of the human condition and community all the way down, and that there is no "right" answer to how to live together. This broad umbrella of schools of thought tends towards "relativism" or "anti-foundationalist" perspectives, perspectives that tend to argue that politics is innately culturally nuanced and conditioned, that there are no objective universal foundations in reason or human nature from which to develop the "correct" principles by which to organize and order community, no objective principles of justice by which to orient our social orders, no innate or objective birds-eye view by which to assess the natural laws governing human society and to thus "objectively" understand and/or predict social transformations and mechanisms, etcetera. These schools of thought can tend towards a range of practical political objectives and
orientations, from nihilism and anarchy, to communitarianism and identitarian politics more generally, to broadly speaking post-structuralist philosophical perspectives of Marxist political theories that might tend towards more radical egalitarian, democratic, socialist, or revolutionary politics.

The present endeavor was oriented around carving a path between these two seemingly stark alternatives more specifically between the proceduralist perspective of political legitimacy of the deliberative democrats and the more internally dissonant and disruptive egalitarian politics of the agonistic radical democrats. I followed a certain strand of post-structuralist and post-Marxist political philosophy of the radical agonistic democratic perspective in understanding politics as essentially concerning the contingency of community and hence arguing that politics is constitutive of community at its very foundations. However, I sought to argue that there is a principled perspective for assessing a normative viewpoint on political institutions and political order premised precisely upon this theory of a politics of contingency, thus offering that anchoring perspective on political legitimacy in a principled manner that is often lacking in the agonistic accounts. It certainly does not yield the same purported "certainty" or "objectively true" foundations or principles of "getting it right," nor does it aim too. It is precisely aimed at a politics of contingency and rupture and seeks to institutionalize this very phenomenon and to positivize it into the very principled approach that we are discussing. This was the overarching aim and common thread in each chapter as we sought to flesh out the contours of this politics of contingency and its implications for the institutional perspective on politics from several perspectives.
In trying to navigate a path between these two sides of answering the question of community versus embracing the chaos, I engaged in a sort of back and forth between the opposing perspectives of the deliberative democratic tradition, on the one hand, and the radical democratic post-Marxist on the other. I initially engaged the debates of the so-called democratic paradoxes of the seemingly paradoxical relationship between good democratic institutions and the good democratic people through a critical reading and radicalization of the deliberative democratic framework of Jurgen Habermas in arguing for a theory of democratic politics as "institutionalized instability." Here I argued that democratic institutions essentially ought to serve this contingency of politics and institutionalize this instability in order to be open to an always transforming democratic people who is always more than it ever is institutionally recognized as being. I followed Habermas and Hannah Arendt in conceptualizing popular sovereignty as flowing from the "communicative power" of the deliberations of a democratic people in order to envision their open-endedness and characteristic of being "always more than they ever are."

In the second chapter I engaged the theory of the agonistic radical democrat Jacques Ranciere in fleshing out the contours and implications of a fundamentally conflictual model of politics and described the logic and processes of politics from this perspective. I described how this egalitarian theory of politics reveals community as fundamentally divided from within, as perpetually and implicitly "two communities in one," and developed Ranciere’s politics of the rationality of disagreement and the process of politics as "revealing" these two communities: first an undifferentiated community of equals and secondly a differentiated hierarchically ordered community. In again attempting to "bridge" this gap between the radical contingency of politics and a principled approach to
theorizing political institutions and political order, I argued that even this ontologically anarchic, contingent politics of disagreement still yields a principled approach to better or worse political order, namely what we developed in the first chapter as a theory of "institutionalized instability."

In the third chapter I returned to the framework of democratic paradoxes in order to investigate this time a substantive theory of the actual characteristics of the democratic people and their general will that corresponds to the descriptive institutional perspective of the democratic people wielding communicative power and always being "more than they ever are" that we discussed in the first chapter. If the first chapter engaged the objective, institutional perspective of political order, then the last chapter developed the subjective, substantive perspective in describing the actual characteristics of the democratic people and their general will. In this chapter I engaged Rousseau's classic account from the Social Contract where I argued that I follow Rousseau's guiding intuition but extend his analysis along the more contingent and open-ended direction of the theory of politics that was developed through our engagement with Ranciere in the second chapter. I argued that a "principle of community" underlies Rousseau's formulation of the democratic People and their general will, namely that it is better for each and all generally to live together than to not. I argued that this leaves us with a more radical and open-ended conceptualization of the democratic people and their general will that still provides a clear cut principled approach and critically discerning standard by which to normatively orient a political philosophical perspective.

What we are left with then after all of this from the perspective developed herein is a somewhat discouraging conclusion for some. There is no "answer" to the question of
politics. There is no objectively true principle or perspective that can provide "correct"
answers to the fundamental political questions of how we are supposed to live together in
community. The answers developed in the present endeavor certainly offer principled
approaches to these practical, philosophical, and normative questions, and suggest
principled approaches to structuring political institutions, laws, and practices, and do not
abandon principle to mere decisionism, violence, revolutionary aspirations for epochal
transformations, or mere cultural relativism and the like. But these "answers" are, from
this perspective, more questions, more disagreements, and are calls for the egalitarian and
democratic practice of politics itself to flesh out and create these answers. My argument
for the egalitarian politics of contingency and disagreement does not yield principles that
can simply supply objectively true answers to political questions as if they are merely math
problems with logical answers. Political problems, disagreements, and questions are never
merely logical questions with merely logical answers. From this perspective, politics is
constitutive of community and continually generates and regenerates fundamental
questions over how we are supposed to live together in community, questions that do not
have clear-cut objectively "right" answers but which create new and varied practices that
generate new and varied disagreements.

I have suggested that there are indeed better and worse ways to live together and
order our communities, however. I have argued that it is better for us to live together in
communities that institutionalize this contingency into our very political structures and
into our political-cultural norms and identities; it is better that we live together in
communities that are open to transformation and change, and that we live together in
communities premised upon the principle that it is better for us each and generally to live
together than to not and to premise our communities institutionally and "culturally" upon this egalitarian premise and indeed upon no other. I further argued that this premise conditions and is an irreducible potentiality of the very phenomenon and practices of community itself and is in this way grounded in the very existential possibilities of community. This is certainly a principled answer to the question of community that politics itself perpetuates, but it is an answer premised upon the contingent and open-ended practice of politics and political disagreements themselves.
From this Levinasian interpretive lens this is the manner in which I understand freedom and liberty in Rousseau’s logic. The famous terms of the problem to which the social contract is the answer, that we must “find a form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself and remains as free as before” (italics added) yields a slightly different interpretation than usual from this point of view. The freedom that remains “as much” as before is a different type of freedom than it was before the social contract. The freedom that the subject has after the social contract she only gets via the social contract which is to say via sociality as such, or in Levinas’ terms the “confrontation with the other,” as remarked upon previously. This is also the exact nature of the transformation that Rousseau is describing in the passage from the state of nature to civil society. The freedom that the subject has before the social contract and before the civil state is not moral freedom, is not “fully” human freedom, it is simply the same “lack of restraint,” negative form of freedom enjoyed by all natural animals, enjoyed by man’s “dumb ignorance” in the state of nature.

The subject’s distinctly human liberty and freedom, her “civil liberty” premised upon the social contract driven by the principle of community, therefore, is only enjoyed within community or at least premised upon sociality. This does not make of this freedom a merely communitarian form of liberty, subjugating the individual to the community or some such; it is simply to note the co-constitutive nature of liberty with and within community and in relation to one’s fellow moral subjects in community. Again this is how we ought to understand Rousseau when he says “This passage from the state of nature to the civil state produces quite the remarkable change in man, for it substitutes justice for instinct in his behavior and gives his actions a moral quality they previously lacked.” Only then when the voice of duty replaces physical impulse and right replaces appetite, does man, who has hitherto taken only himself into account, find himself forced to act upon other principles and to consult his reason before listening to his inclinations. Although in this state he deprives himself of several advantages belonging to him in the state of nature, he regains such great ones. His faculties are exercised and developed, his ideas are broadened, his feelings are ennobled, his entire soul is elevated to such a height that, if the abuse of this new condition did not reduce his status to beneath the level he left, he ought constantly to bless that happy moment that pulled him away from it forever and which transformed him from a stupid, limited animal into an intelligent being and a man” (Rousseau, 1987: pp 150-51). This is also, therefore, the way in which we must understand the social contract itself. The social contract distinctly does not find any particular government, it is merely the “result,” so to speak, of the very perspective of legitimacy brought to bear upon the phenomenon of community and social order as such before the government is instantiated in that sense that either a social order is maintained merely via force or also legitimately.

The social contract underlies the very possibility of community as such and thus does not actually form the people, but presuppositionally underlies the existence of a community from the perspective of legitimacy brought to bear on the question of political order. It is what follows from the principle of community that it is better for each and all generally to live together than to not, and the principle of legitimacy follows from precisely this and distinguishes the very precise terms of the social contract that Rousseau says although they have likely “never been formally promulgated” are “everywhere the same” and “everywhere tacitly accepted and acknowledged” (italics added) (Rousseau, 1987: p. 148). This “tacit” acceptance is their pre-suppositional character, the perspective and question of legitimacy brought to the bear on the problem of community itself, to which Rousseau’s famous and controversial answer for the terms of the social contract boiled down to their essence is hence “the total alienation of each associate, together with all of his rights, to the entire community.” So far from legitimating an authoritarian state is this, as many commentators particularly in the mid-to-late 20th century lamented, that it is really quite literally the complete and utter opposite.

The tricky term “alienation” that fuels these misinterpretations is most likely the culprit, but this “alienation” of each individual to the community is simply that exact manner in which it is better for each and all equally to live together than to not and is hence in reality the fuel for the Kantian notion that each human being is an end in himself and never a means (something that Kant himself acknowledged quite openly), that each individual equally alienates himself is what makes it impossible for the abuse of the benefits of living together in community where each generally and equally gains the moral perspective as such, and hence moral freedom and liberty, and is elevated from a “dumb beast” into a “man” and all of those transformations and benefits remarked upon previously. This alienation therefore is in reality the
precise term that prevents the abuse of individual rights and prevents a community from functioning upon merely force.

This is also then clearly the manner in which I argue we ought to understand that equally controversial notion of Rousseau’s that “whoever refuses to obey the general will will be forced to do so by the entire body. This means merely that he will be forced to be free” (Rousseau, 1987: p. 150). First, this is to note that man only gets her distinctly human and moral freedom via community (the social contract) in all the ways we just described, and hence is only ever acting freely if she is abiding by the general will, at least in its side-constraint nature, which is to say in line with the social contract and the principle of community from which the moral perspective and point of view flows. So this “refusing to obey the general will” is really best understood as violating the principle of community, of violating the notion that it is better for each and generally to live together than to not, and that to abuse this sacred foundation is really the ultimate source of “crime” in the civil state from the perspective developed here. What underlies this notion is essentially that if someone is acting in a fundamentally “anti-social” manner that has a directly negative impact (the specific nature of this “negative impact” is not the purpose of the present endeavor but can obviously be much more specifically delineated) upon the broader society and community as such, which is the only manner in which this behavior can be understood to be a “refusal to obey the general will,” then she is in reality acting “irrationally” in so far as she is acting inconsistently or parasitically upon the premises of the entire possibility for her “anti-social” behavior in the first place. In other words, whatever the anti-social “will” is that constitutes the “refusal” to abide by the general will, is by definition, from our perspective developed here, inconsistent with the principle that it is better for each and generally to live together than to not, it is a will that is premised upon the refusal of this principle or acknowledgement and hence is an abuse of the social contract.

Furthermore, whatever this particular will is that is abusing the general will, if it constitutes a refusal of obeying the general will, then it is in fact parasitic upon this general will. It is parasitic in the sense that the content of the will that is violating the general will is only possible via the general will, via the fact that it is better for us to live together than to not. A simple example can flesh out this intuition: let’s take “theft” in its most general sense, from the perspective developed here theft would constitute a refusal to obey the general will and the thief could hence be forced to obey the general will, i.e. punished somehow; the will to steal only gains its specificity within civic society (one can only steal what someone else has proprietary right too, etcetera) and hence the will to steal is parasitic upon the social contract, the will to take from someone else what is by right theirs, is inconsistent with the very desire to want to have something of someone else’s that is only possible via the social contract. (We are not concerned here with the legitimacy of private property itself in a more abstract sense, nor does the generalized illegitimacy of theft need to be considered in these terms. In other words, the simple notion that you can’t take what is others does not need to be wrapped up in a system of private property.) There is this sense, then, of being “forced to be free” in this particular let’s say criminal sense, in that sense of broadly legitimating the enforcement of the laws of a community, of legitimating force as such.

There is the other, let’s say it “political sense,” in regards to being forced to abide by the majority vote that is relevant to this point when Rousseau says that “when, therefore, the opinion contrary to mine prevails, this proves merely that I was in error, that what I took to be the general will was not so. If my private opinion had prevailed, I would have done something other than what I had wanted. In that case I would not have been free” (Rousseau, 1987: p. 206.). We will delve into this in more detail in the remainder of the chapter in fleshing out the actual substantive nature of the general will, but for now, suffice it to note that first, this points towards the fact that general will is not simply the will of some sufficient quantitative number of votes or wills (this is Rousseau’s distinction of general will from the will of all to which we will devote attention later in the chapter) but is a particular principled type of will, namely the general one, the nature of which we will examine in what follows. Secondly, this points towards the way in which citizens “ought” to vote in a particular manner, not the particular content of their voting, but their orientation, namely with the general will as their directive, rather than voting for what they want for their merely particular personal and private benefit (they would in fact not be acting freely in this way, anyway, in the sense in which we have been developing this in the previous analysis, etcetera). In other words, from the perspective developed here, a voter ought not upon grounds of political legitimacy vote for what they personally want (to lower taxes because it saves them money, to vote against gay-marriage because they are not gay or simply don’t like the idea of homosexuality or think its immoral etcetera, or to vote for some piece of legislation based upon the effect it has on merely their own life, et cetra).
and again a point that will be developed extensively in what follows, this points towards the way in which institutional features can make a political system “potentially” more or less legitimate, the way in which a political system might enjoy the presumption of legitimacy or not, which entails formal institutional features and subjective features, again a point that will be developed extensively throughout the rest of the chapter.
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