Rule Breakers and Rule Makers: Disrupting Privileged Democratic Discourses

by

Matthew Law
B.A., Simon Fraser University, 2012

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Supervisory Committee

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Abstract

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Abstract:

This thesis explores the tensions between constitutional forms of democracy and the practice-based understanding of democracy found among ancient Greek and recent post-structural theorists. In drawing from Plato's discussion of the constitutions of varying political regimes, this thesis hones in on his assertion that the democratic city does not have a single constitution due to the freedom of its citizens. Contemporary understandings of democracy, such as deliberative democratic theory, have largely overlooked the kind of power embodied in democracy by focusing attention on deepening the forms of participation in existing practices of government. By drawing from a practice-based understanding of democracy, this thesis responds to the problems of exclusion produced by statist accounts of democracy. Taking the example of First Nations in Canada, the thesis asks whether new forms of protest, such as Idle No More, embody the spirit of democratic practice outlined by the ancient Greeks.

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Dedication

I dedicate this thesis to the wild flowers of the sub-alpine meadows along Heather Trail. Hidden beneath several feet of snow, they reclaim the landscape from late July to early September with a beauty that these words could not hope to capture.

Introduction

What does democracy mean? How one answers this question will shift how one thinks about projects of democratization, how democracy can be best constituted, and why, or if, democracy is desirable. It matters how one conceives of democracy because it shapes one's understanding of who can act democratically, what is entailed in that action, and where such actions are to take place. Yet asking what democracy means is itself a constitutive moment: to define democracy is to set boundaries around the concept, to police what is inside the understanding and what, or who, is beyond it. This thesis takes a different approach to democracy. Rather than situate an understanding of democracy in the ability of a constitutional government to extend and enhance the participatory power of its citizens, I argue that democracy must be understood as emanating from the intrinsic power of the *demos* itself; or the capacity of anyone and everyone to act politically, irrespective of whether such action is authorized by prevailing discourses of power. If the literal understanding of democracy, 'power of the people', is a power bestowed onto the people by hierarchical forms of power, the alleged people are exposed as objects rather than agents of power. In understanding democracy as an intrinsic capacity to engage in politics, this thesis calls into question the claims made about democracy by those occupying positions of institutional and hierarchical power. Specifically, it calls into question the authority of a privileged minority to determine who may participate in politics and what such action entails while, in so doing, stigmatizing and branding those who do not conform as radicals, terrorists, or criminals. Rather than privilege order and decry anarchy (*an-arche*), this thesis looks for democratic politics where the prevailing

norms and ways of being in a society are disrupted – where rule breakers confront rule makers.

How is the *demos* constituted? In other words, what is the *demos* and who are its members? The *demos* is a category that is given meaning through its constitution. It does not exist independent of the language that gives it meaning. Historically this constituted subject has undergone a series of acts of reconstitution: the citizen of the *polis* was replaced by the imperial subject, former-slaves have acquired freedom, while empires have fallen and given way to nation-states. The *demos*, or 'the people', is not a settled category. And yet the defining or constituting of the citizen, subject, or people, by appeals to nation, empire, or the *polis*, are all authorized through organizations of power. Discussions centering on democracy typically address 'the people' that fall within the sovereign territory of a constituted political entity, which suggests that it is the state, or state-like bodies, that define who are included in the *demos*; the franchise, for instance, is reserved for those who are authorized by the state by virtue of their status as citizen. This thesis refutes the idea that the *demos*, democracy, or democratic politics is constituted by hierarchically organized systems of power.

In this thesis, I argue that democracy refers to those actions that call into question the discourses, processes, and practices that confine groups of individuals to particular roles or places within society. This occurs when, for instance, women assert their equality and demand its recognition by society and the state, or when Indigenous peoples assert their right to exist as peoples (or nations) against discourses that encourage or require their assimilation to Settler cultures and citizenships. The *demos* is not merely taken to be the national citizenry, as democratic nation-states would suggest, but, rather, to those who

act as equals possessing a freedom to act politically. Therefore I take the *demos* not as a static category that designates particular people, but as a process of subjectification wherein a group *acts* as though they were equal and free.

The situating of democratic politics in actions, rather than constituted political regimes, represents a growing body of literature in democratic theory. Other democratic theorists, some of whom will be discussed in this thesis, refer to democratic politics as fugitive, fleeting, momentary, disruptive, and aversive.[1] The emphasis of this approach is on the points where contestation is introduced in and against routinized social practices that exclude, confine, or restrict the kinds of participation possible by particular groups of people. I draw most extensively from the works of Jacques Rancière and his understanding of democratic politics as a disruption of order – a moment of 'dissensus.'[2]

While democratic politics cannot be equated to the functions of state processes (elections, referenda, consultative processes, constitutional challenge, the protection of rights and freedoms), this thesis argues that the motivations and the actions preceding the introduction of the state are often sites of democracy. Lines can be drawn, then, between moments of democratic politics and their capture by constituted discourses of power, most often in the form of states. In moments where constitutions are challenged, as civil

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[1] For some recent works that situate democracy in radical practice, see Wolin, S. "Fugitive Democracy," in Benhabib, S. (eds.) *Democracy and Difference: Contesting the Boundaries of the Political.* Princeton: Princeton University Press, 1996; Wolin, S. *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism.* Princeton: Princeton University Press, 2008; Wolin, S. *Politics and Vision: Continuity and Innovation in Western Political Thought, Expanded Edition.* Princeton: Princeton University Press, 2004; Rancière, J. *Disagreement: Politics and Philosophy.* Translated by Julie Rose. Minneapolis: University of Minnesota Press, 1996; Norval, A. *Aversive Democracy: Inheritance and Originality in the Democratic Tradition.* Cambridge: Cambridge University Press, 2007; Derrida, J. *Rogues: Two Essays on Reason.* Stanford: Stanford University Press, 2005; Balibar, È. *Equaliberty: Political Essays*. Translated by James Ingram. Durham: Duke University Press, 2014; Ingram, J. *Radical Cosmopolitics: The Ethics and Politics of Democratic Universalism.* Columbia: Columbia University Press, 2013.

[2] He uses the term dissensus in contrast to consensus, where dissensus is taken to be the disruption of normalized ways of thinking, seeing, and being in the world (consensus).

rights and feminist movements have done, the processes whereby a legal system affirms or denies the legitimacy of the constitution cannot be seen itself as a point of democratic politics. In delegating authority to the state's institutions for its own reformation, democratic movements cease to practice freedom from that authority. Yet, a history of social movements – often deemed illegal – point towards an intrinsic capacity of a people to act as though they are free, as though they are equal, as though they are the *demos*. When failing to provide to authorities a designated route for political rallies, or failing to comply with legislation that shapes the permissible forms of political activity that a group may practice, a people (*demos*) demonstrates their capacity to act (*kratos*) – a capacity that cannot be given by another but only verified through action.

Why situate the constitution of the *demos* outside notions of state sovereignty and power? Put simply, if democracy is understood as the power of the people, then the constitution of the *demos* by anything other than their own actions calls into question that power or capacity. When the people's access to politics is mediated through state institutions, when the state defines who, where, when, and how politics is to be practiced, the people are acted upon as objects of power rather than as political actors. The power of the people is not evidenced through ritualized participation in constituted processes of 'politics' because such conditions render the power of the *demos* unintelligible. Instead, the power of the people is replaced by the privilege of *a* people, a constituted people that is granted freedom, rights, and equality before and *under* the law. The difference lies in a power that is intrinsic to the *demos* itself, or a power that derives from external origins in the form of a constitution, a state, and prevailing social discourses.

The challenge of understanding democracy as an institutionalized form of politics, as it is in constitutional democracies, is that hierarchical power relationships are affirmed through appeals to external origins (the laws, constitutions, or conventions), where the 'power of the people' is displaced by the power of the sovereign state. When power is privilege, granted in the form of rights and freedoms, that privilege can be revoked in the name of national security, the general interest/will, or economic imperatives. In providing an account of democracy that is situated in the freedom of action as equals, this thesis confronts the authority to bestow or revoke power in the form of privilege, arguing instead for respect of the power to act that is intrinsic to human being.

In arguing against a constitutional form of democracy that assigns or designates particular peoples, processes, and places, as political or democratic, this thesis advances the democratic claims of those typically constituted outside of 'the people'. Rather than appeal to Canadians, for instance, as democratic actors, this thesis suggests that democratic claims are advanced by those who occupy other titles: women, Indigenous peoples, environmental activists, or even some of those branded as terrorists.[3] These groups become the *demos* by acting democratically, by demonstrating their capacity to freely act beyond the boundaries of their roles. In Chapter 3, I draw attention to Idle No More as a particular instantiation of democratic politics operating largely outside the confines of a ritualized procedural 'politics' in Ottawa.

[3] When I refer to 'some' of those branded as terrorists I am referring to those who are often mislabelled under the term. Those who, such as many environmental activists, are lumped into the category of terrorism or 'eco-terrorism' as a means of deriding the validity of the claims being made. I separate these 'so-called' terrorists from those who actively use violence as a means to suppress the capacity of others to act – the suppression of the capacity of others should not be included in what I am referring to throughout this thesis as democratic politics.

In locating the ‘essence’ of democracy in the intrinsic capacity of the *demos* to engage in politics, rather than from the perspective of political regimes, this thesis can aptly be described as providing a post-structural account of democratic theory. In Chapter 1, I rearticulate Plato’s understanding of democracy as a regime (if it can be called such) that is inherently at odds with constitutionalism. For Plato, the democratic city is one where the freedom of everyone and anyone to act stands opposed to the possibility of a single constitution that would otherwise curb such freedom. This freedom to act is, I contend, indicative of an equal capacity to engage in politics – counter to the claim of inequal capacity that Plato puts forth in his *Republic*. Drawing from the works of Josiah Ober and Jacques Rancière, I put forth an account of democracy that is an-archic, or lacking in the foundations associated with constitutionalism. Instead, I locate democratic politics or moments in the points of rupture of an existing constituted order. Through this opposition to the constituted roles, procedures, and places of politics, the *demos* demonstrates its capacity to engage in creative political activity over and against the authorized forms of ‘politics’ assigned to the roles of, for instance, citizens, women, or Indigenous peoples. In breaking from their constituted positions, the *demos*, a subject constituted through political action, redefines the discursive practices that constitute its social existence.

In Chapter 2, I situate this argument alongside contemporary deliberative and post-structural democratic theory. While contemporary deliberative democratic theory has sought to overcome the top-down ways of politics that are typically embodied in liberal accounts of traditional democratic government, such attempts at reform have the effect of re-enforcing the legitimacy and power of traditional forms of power by

maintaining the state as the arbiter of inclusion. While reforms aimed at greater inclusion and consultation are an improvement on standard electoral processes, they have the effect of reinforcing the 'democratic' claim of the state at the expense of those who (actually) practice democratic politics through forms of activism or praxis. Such reforms can and should be encouraged, yet they are not constitutive of democratic politics itself. Rather, one might understand democratic politics as occurring prior to the incorporation of demands and the introduction of interests into institutionalized government.

In turning to post-structural democratic theory I confront the challenges of working with a tradition that is opposed to prescription – so as to avoid the forms of oppression inherent in the pursuit of particular ends. This thesis draws a connection between the deliberation sought after by deliberative democrats, and the disruption of discourses that is constitutive of democracy for post-structuralists. There is a common, albeit differently approached, focus for both deliberative and post-structural democrats on discursive practices (or deliberation) as moments of transformation. While the mediation of demands through dominant power discourses, typically in the form of the state, cannot be counted as a democratic form of politics, the formation of demands and identities through processes of articulation introduce challenges to the authority of such discourses. When Indigenous peoples, for instance, participate in the forms of radical politics observed in a movement like Idle No More, they challenge the prevailing discourses on what it means to be Indigenous, what is meant by politics, or where politics is to be practiced.

In Chapter 3 I draw attention to the activism undertaken by Idle No More as one example of democratic politics. Relating to Chapter 1, I argue that the activism of Idle No

More challenges several discourses that constitute power in and for particular places, spaces, and actors. In the refusal to be idle, these forms of Indigenous activism demonstrate, through action, one's capacity to act and be political over and against discourses that impose passivity upon groups and individuals. I end this discussion by linking these forms of activism with the reconstitution of discursive practices discussed in Chapter 2. While direct activism does not always correlate to specific policy enactment or reforms, these practices nonetheless contribute, shape, and alter the broader social discourses that make existing forms of oppression and hierarchy possible. Furthermore, such practices need not be confined to social movements but, given the logic of discourse, can be extended to include everyday practices of resistance that do not garner the same sorts of mass attention.

Chapter 1: Resisting Constitutionalism

Is Canada a democracy? For most, the answer is a definitive "yes". But what makes it so, and has it always been one? One could argue that it has always been a democracy but that it has become more 'democratic' as time has gone on, pointing to the first federal election, and then perhaps the enfranchisement of women, and the gradual enfranchisement of First Nations. Additional factors may be accounted for, such as the introduction of the Canadian Charter of Rights and Freedoms in 1982 or its subsequent amendments, as further evidence to support the democratic claim of Canada – and this could be repeated for any number of countries. Through quantitative analysis one could compile a list of democratic criterion and rank countries along a 'democracy index', as The Economist does, and from here one might glean an understanding of what democracy means. This thesis, however, is not immediately concerned with what conditions justify a state's status as a democracy. Rather, it calls the democratic claim of 'constitutional democracies' into question, drawing attention to what is concealed in understanding democracies as political regimes. Is it the power of the people, or the people empowered? This thesis suggests the former.

A problem in much of contemporary democratic theory, some of which will be discussed in Chapter 2, is that it presumes a connection between democracy and the state. This makes it possible to speak of 'democracies', suggesting that democracy can exist as a distinct and external entity – we can point on a world map and say, "this is a democracy" or "that is not." Associating democracy with constituted regimes allows democratic theorists to make claims about how democracy is 'best served', what is in the 'interest' of democracy, or judgements as to whether a regime is more or less democratic

insofar as it accords with certain standards. This connection between democracy and constituted regimes of government is, however, problematic insofar as it fails to provide an account of democratic action.

Struggles for emancipation and cultural existence have radically altered the landscape of constitutional democracies today. From the extension of the franchise to legal and constitutional reform, moments of radical politics have attacked the forms of oppression maintained by the state in demanding its reconstitution. How does one conceptualize the relationship between democracy and such forms of radical politics? One can argue that forms of radical politics play a part in democracy, and so the democratic state provides the necessary rights and freedoms to accommodate the existence of such action – but even here the power to act is replaced by an empowerment to act or the privilege of action. If democracy, understood as the power of the people, is to be taken as power in its own right, rather than privilege, it cannot be bound to, and under, the power of the constitutional state.

The introduction of a separation between democracy and statist forms of government does not demand the abandonment of the latter for the former. Even in the absence of actors claiming sovereign power, customs, conduct, and forms of social behaviours tend to become normalized and routinized through habitual interaction with others.[4] As contemporary deliberative theory suggests, we ought to ensure that where such formal organizations exist, they be held accountable to those in whose interests they allege to act on behalf of. To echo Thoreau, "I ask for, not at once no government but at

[4] On the creation of order through normalized action, I draw from urban theorists who highlight non-sovereign forms of social reproduction. See Magnusson, W. *Politics of Urbanism: Seeing like a city*. New York: Routledge, 2011; also Lefebvre, H. *The Urban Revolution*. Translated by Robert Bononno. Minneapolis: University of Minnesota Press, 2003.

once a better government."[5] Yet a better government, or better statecraft, is concerned primarily with and acts in accordance with principles of justice or reason, often embedded in the written constitution – principles that cannot be taken as synonymous with democracy, per se. In the work of John Dryzek, for instance, the principle of reason is embodied in what he refers to as 'state imperatives' which shape the kinds of demands that can be made of the state by interest groups.[6] Democratic politics may call into question the validity or interpretation of these principles, arguing that what goes under the name of justice has the effect of producing injustice or exclusion but when new articulations replace older ones, holding others to new normative standards, the power to act is replaced with the power to command where the state serves as arbiter. In this chapter I contend that it is not the regime, but interactions with the regime that aptly reflect the relationship between *demos* and *kratos* from which democracy gets its name.

By situating democratic power in the capacity of individuals to act, I challenge the line of reasoning traditionally held by democratic theorists, if only implicitly, which suggests that the state creates the necessary conditions for politics.[7] It may be argued that constitutionalism serves to 'constitute' the boundaries of the political.[8] By constituting politics, we are able to determine the place, space, and procedures through which politics occurs. Through our assertion that "this is politics", we can begin the task of attempting to organize and protect it through extending rights, enacting laws, and ensuring such laws

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[5] See Thoreau, H. D. "Civil Disobedeience" in Thoreau, H.D. *Civil Disobedience and Other Essays.* New York: Dover Publications, 1993, p. 2.

[6] See Dryzek, J. *Deliberative Democracy and Beyond: Liberals, Critics, and Contestations.* Oxford: Oxford University Press, 2002, Chapter 4.

[7] The relationship between the state as guarantor of the conditions for politics is explored in Hannah Arendt's discussion of stateless peoples and their subsequent loss of "the most essential characteristics of human life", of which politics is mentioned explicitly. See Arendt, H. *The Origins of Totalitarianism*. New York: Harcourt, 1976, p. 297.

[8] See Wolin, S. "Fugitive Democracy" in Benhabib, S. (eds.) *Democracy and Difference*.

are enforced. Free speech, freedom of religion, the possibility of constitutional amendment, the argument behind all is that democratic conditions are enhanced when sure measures are taken to protect the fragility of a political system that endows power to those who might otherwise find themselves oppressed by the coercive forces of the rich and powerful.

Understanding democracy as a constituted political regime that seeks to create and secure conditions of equality presupposes an inequality of capacity in the present. The statement that all are 'equal before and under the law' is telling. One is *under* the law and equal before *it*, but these are relational statements. The statement does not suggest that one is equal, as a matter of fact, but that one is equal under the conditionality of the law. It is the law that dispenses equality to 'the people' (a 'people' that is itself a category constructed through the force of law), because, presumably, the people are otherwise unequal. However it is not law, specifically, that is at issue but instead the principle behind law that compels it. We might call this principle order, but I will return to this in greater detail when I speak of *arche*. Does this perspective fully encapsulate what we mean when talk about democracy? Does democracy operate on the presumption of the equality of persons, or must the equality of persons be enforced by the constitutional state? Does one take the position of Rousseau, that "however unequal in strength and intelligence, men *become* [emphasis added] equal by covenant and right"[9] or do we, instead, presuppose that 'the people' are already equal?

This thesis provides an approach to democracy that is unmediated by constitutionalism. To assign democracy to something external to the *demos* creates the

[9] Rousseau, J-J. *The Social Contract*. New York: Penguin Book, 1968, p. 68.

possibility of its manipulation. If democracy is not intrinsic to the *demos*, but is instead concerned with the conditions and possibilities of an ordered society, a door is opened to the dangers inherent in a discourse of democratization. Democracy shifts from a *claim* about the capacity of all to a *project* that, given its association with 'justice', aims to encompass all. But what does the project of democracy entail? To speak of democracy as a project is to acknowledge the teleology behind it and with it the impossibility of democracy, content instead with visions only of democracy-to-come.[10] Is it limited to the expansion of a universal franchise and to the universal application of law as an embodiment of justice? Is it focused on realizing the supposed interests of 'the people'? Can the project be extended to assume more problematic aims: the liberalization of markets, foreign military intervention, and the overthrow of (sometime elected) foreign officials? Given the contestability of the concept of democracy, it can come to mean, or to justify, any of these things.

While the focus of this thesis centres on constitutionalism as it appears in constitutional democracies, the idea of constitutionalism encompassing both written and unwritten forms stems from an underlying central premise. Constitutionalism is understood as the process whereby a subject is constituted. It emerges where ordered logics of rule are imposed upon subjects from an origin of power separate from their own. In this chapter I turn this discussion of constitutionalism to the tensions between *arche* and *kratos*, which can be roughly understood as the tension between constitutionalism and (radical) politics. Constitutionalism is grounded on certain principles or assertions: "this is what we understand to be just, and therefore our decisions are made in accordance

[10] See Derrida, J. *Rogues: Two Essays on Reason.*

with this understanding"; or "we take these things as constitutive of 'a good life', and therefore aim to promote such things in our society." In resisting constitutionalism, as the title of this chapter suggests, I argue that democratic politics emerges against such foundational principles and assertions. Democratic politics introduces contestation over who is included in the "we" that prescribes to such principles and what is understood by them. While constitutional challenges might, then, appear emblematic of the understanding of democratic politics articulated in this thesis, the appeal to pre-constituted power in the state body highlights where this becomes problematic. Put another way, forms of direct activism that call the legitimacy of pieces of legislation into question are indicative of the power of the *demos* (anyone and everyone) to engage in politics through acts (*kratos*) of reconstitution and free interpretation, while binding Supreme Court decisions impose power, hierarchically, against the free interpretive acts that brought the challenge to its doors. In Chapters 2 and 3, I often refer to discourses as forms of constitutionalism insofar as they alter one's way of seeing and being in the world. Unlike state constitutionalism, understanding discourses as forms of constitutionalism provide insight into how relationships and processes of subordination, such as patriarchy, colonialism, or racism, become normalized.

The dangers of associating democracy with constitutionalism can be avoided. There is a long tradition of democratic thought that situates the concept in practices aimed at emancipation from hierarchical relations. It emerges when individuals and groups challenge the roles and positions that they are assigned in an ordered society. History is replete with examples of these forms of politics: when 'slaves' cease to be (or act as) slaves, when African Americans engaged in sit-ins to demonstrate their equality

when such was denied to them, or more recently when Indigenous peoples have mobilized to declare themselves 'Idle No More' regarding actions that govern their lives. Understanding democracy as embodied in these kinds of actions provides us with an answer as to who the *demos* is or can be, and it provides us with an answer as to what can be done and expected with the democratic presupposition; what can be done when we presuppose that the people signified by the *demos* have a freedom to act (*kratos*).

The *demos* is not a pre-constituted subject and nor are the interests of those signified. To the extent that citizens exist, the *demos* emerges (through acting) to reconstitute what citizenship means and entails. While a government may allege to work in the interests of its citizens, the *demos* appears to call such interests into question and to redefine them through creative engagement with the prevailing norms that constrain and define. In so doing, the *demos* challenges what it means to speak of "we", revealing that the taken for granted modes of being are not themselves unproblematic, and that those who are included in the category of "we" are less included but, instead, imposed upon.

To make clear democracy's aversion to constitutionalism, I appeal to the wisdom of the ancient Greeks. In drawing this connection, this thesis brings attention to the longstanding tension between the constituted and the democratic that traces its roots to some of the earliest articulations of democracy. While it does not follow that appeals to antiquity will offer a 'true' understanding of democracy, the history of language allows us to see how, and in what context, the idea of democracy developed. Where we begin and how we orient our understandings of the concept will shape the way we act and, more, the ways we can think of ourselves in relation to institutions of government and others. Specifically, understanding democracy in an *active* way, as a type of action that

can be undertaken by anyone and everyone, avoids the exclusionary tendencies endemic to an institutionalized system that privileges particular spaces, actors, and discursive patterns.

Appeal to the ancient Greeks, or ancient Athens, within democratic theory tends to draw attention to the divide between modern representative democracy and ancient direct, or participatory, democracy – whereupon theorists are quick to note that the latter is not feasible given the complexity of modern society.[11] Before jumping to this conclusion, I explore why (direct) action figures so prominently in Plato's critique of democracy and how this relates to the etymological roots of democracy, as opposed to other forms of rule. This chapter centres around two comments, in particular, made by Plato: the first, from the *Republic*, that democracy is lacking in a singular constitution and is instead the site of a multiplicity of constitutions owing to the license and freedom of the people to do as they like.[12] The second comment, from *Menexus*, is where Socrates suggests that the Athenian polity is, and always has been, an aristocracy, owing to a separation between the government of the best men and those who give (merely) popular consent.[13] That Plato, through Socrates, finds grounds to dismiss the democratic claim of Athens, the symbol of Western democracy, should induce some reflection on the state of the democratic claims of modern constitutional democracies. Before turning to Plato, however, I draw attention to the etymology surrounding democracy and other political regimes deriving from the ancient Greek lexicon. In particular, I expand on the

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[11] See Warren, M. "Deliberative Democracy and Authority," *American Political Science Review* 90(1), 1996, pp. 46-60.

[12] See Plato, *Republic*, 557c-e. (For all references to Plato, see Plato. *Complete Works.* Edited by John M. Cooper. Indianapolis: Hackett Publishing, 1997.)

[13] Plato, *Menexus*, 238c-e.

relationship between *kratos* and *arche* through the works of Josiah Ober and Jacques Rancière.

1.1 Power as *Arche* and *Kratos*

In articulating democracy as a form of political action, I draw from the insights of Josiah Ober who connects ancient Greek political regimes with the forms of power they entail. Ober is writing in response to the proliferation of meanings that have come to be associated with democracy.[14] He grants that while democracy can be translated as "power of the people", there are still many questions that are left unanswered with such a translation. The main question that Ober seeks to address is what kind of power democracy entails.[15] In particular, he wants to distance himself from the understanding of democratic power as "[t]he power of the people…to decide matters by majority rule."[16] While he recognizes that democracy is an essentially contested concept, and so his own articulation is only one among many, he argues, that there is nevertheless some value in "returning to the source."[17]

Ober argues that the power signified by democracy can best be understood as a capacity to do things.[18] Among the political regimes discussed by Plato and Aristotle, all, except tyranny[19], share either an *–arche* or *–kratos* suffix. While both can be translated as

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[14] For a variety of other positions on this 'crisis of signification, see also Agamben et al. *Democracy in What State?* Columbia: Columbia University Press, 2012; also Mouffe, C. *The Democratic Paradox*. London: Verso, 2005.

[15] See Ober, J. "The Original Meaning of "Democracy": Capacity to Do Things, not Majority Rule" in *Constellations* 15(1), 2008, p. 3.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] To discuss tyranny extends beyond the scope of this thesis. I might suggest, as a side-note, that it belongs to a category of its own, insofar as the tyrant is not immediately concerned with the 'good' of the polis.

"power", their separation suggests that the content or meaning of power differs. Ober argues that *arche* regime-types are concerned, primarily, with maintaining a monopoly on pre-constituted political office.[20] While Ober draws attention to the multiple meanings of *arche*, there is one that we ought to draw particular attention to, namely: to speak of *arche* is to inevitably deal with origins.

Aside from mentioning that 'origin' is one of many meanings associated with *arche*, Ober does not speak of how *arche*'s association with origins shapes the form of power it takes. Admittedly, this is not the focus of his article – it is, however, an underlying theme of this chapter. The subject of *arche*, the search for an origin, was itself a major preoccupation of the pre-Socratic philosophers.[21] While it is beyond the scope of this chapter to discuss such developments and articulations of *arche* posed by these philosophers, the motivations for their search are insightful. In addition to origin, we may take *arche* as also referring to an originating force or principle. We can see this preoccupation emerge in Plato's own work when he speaks of the transcendental theory of forms. To speak of a beginning suggests that there is progression, that we have moved from the beginning and are now somewhere else; it would make no sense to speak of the beginning if there was nothing else. This 'somewhere else' is understood as a derivative from that point of origin. For Plato, "the good" exists in a plane that we are alienated from in the realm of the unintelligible, yet manifestations/derivations of "the good" can be approximated. The role of the philosopher, or the philosopher-king, is to translate "the good" and to apply such a translation in his ruling of the city.

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[20] Ober, "The Original Meaning of "Democracy"", pp. 5-7.

[21] For more on this, see Guthrie, W.K.C. *A History of Greek Philosophy Vol. 1: The Early Presocratics and the Pythagoreans.* Cambridge: Cambridge University Press, 1978.

This relationship between the authority of the source (*arche*) and its application to life is embodied within the idea of constitutionalism. A constitution is presumed to have been formulated in accordance with just principles, and while such principles are subject to change – as constitutional amendments attest – the authority of the constitution remains intact. A constitution may not, or cannot, be *equated* with universal justice, but it is *justified* and rendered legitimate through appeal to, and approximation of, such a (proposed) principle.[22] It is generally understood that our rights and legal protections stem from the just principles embodied in constitutions. Insofar as our power as citizens derives from, or is presumed to derive from, the legitimacy of a constitutional order, the connection between constitutionalism and *arche* becomes clear.

Arche is, however, a very different form of power than the one associated with democracy: *kratos*. Here lies the heart of the matter. Ober argues that "*kratos*, when it is used as a regime-type suffix, becomes power in the sense of strength, enablement, or "capacity to do things.""[23] What is being suggested, then, through labeling a regime an 'aristocracy' or 'democracy', is an assertion of who is capable of participating in politics and, alternatively, who is not. Is politics something that only the best (the *aristoi*) are capable of practicing, or is it something that anyone can practice; for the *demos* is unique in that its members have no defining characteristic beyond that which is common to all, they are neither the best nor the wealthy, nor do they have divine right or high birth, they are the other, the remainder when defining characters have been accounted for.

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[22] I am thinking, here, of what is presupposed in Habermasian appeals to the 'forceless force of the better argument.' If the force of the better argument is justification, it must be assumed that it has been justified through some appeal to a supposed universal/transcendental principle of reason/justice; to assume that consensus waits at the end of deliberations is suggestive of the existence of justice/reason in the singular. This is, certainly, problematic as the very possibility of such a universal principle cannot be proven to exist outside of the discursive practices that articulate it.

[23] Ober, "The Original Meaning of "Democracy"", p. 6.

In some respects, these questions are dealt with in Chapter 2 in which the forms of communication fit for deliberative models of democracy are discussed. In introducing restrictions on the types of permissible communication in deliberation, some deliberative democrats present a model of democracy that may structurally exclude some while privileging others.[24] For instance, one might see the privileging of rational argument as an impediment to the participation of the marginalized who deliberative democrats seek to include; resulting, perhaps, in more of the same interest-group representation that is problematized in traditional liberal or social choice theories of democracy. The deferral of decision making processes to experts, or a disdain for the opinion of the average person on the street (as demonstrated in the repression of popular protest), indicate a general reluctance to include or allow full participation by the *demos*.[25]

Another distinction that must be made between *arche* and *kratos* is the relationship between power and the self. For *arche*, power is derived from a position of exteriority, from principles of justice, moral obligations, and determinations of what is 'right'. *Kratos*, on the other hand, is not immediately concerned with questions of 'right' insofar as it is a claim of capacity. When conceived of as the capacity to engage in politics, power is not a right that is dispensed with but can, instead, only be presupposed or denied. From the standpoint of the democratic presupposition (by which I mean operating under the presumption that anyone and everyone is capable of participating in politics) any denial of the 'right' to politics can be, and often is, called into question

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[24] I return to this in Chapter 2 with John Dryzek's critique, influenced by Iris Marion Young, of the more restrictive understanding of deliberation put forth by Simone Chambers. See Dryzek, J. *Deliberative Democracy and Beyond: Liberals, Critics, and Contestations*; Young, I.M. *Inclusion and Democracy.* Oxford: Oxford University Press, 2000, pp. 36-40; also Chambers, S. *Reasonable Democracy: Jurgen Habermas and the Politics of Discourse.* Ithaca: Cornell University Press, 1996.

[25] See Rancière, J. *Hatred of Democracy.* Translated by Steve Corcoran. London: Verso, 2009.

through the acting out of that capacity. A history of social movements, direct action, and activism, even (or especially) of the criminal sort, attests to the possibility of challenging exclusion through exercising one's ability to act.

A recent example of the exercise of democratic capacity was the 2012 Quebec student protests against rising tuition where the provincial government enacted Bill 78 to regulate and domesticate the nightly protests taking place by requiring that the time, date, and routes of the protests be provided to and approved by Quebec police. By refusing to comply with Bill 78, student activists demonstrated a freedom to act beyond the limits imposed by the Quebec government – a freedom that does not rely on the protection and enforcement of government bodies but stems from the intrinsic freedom of all to act. In Chapter 3 I will return to how movements, like the 2012 Quebec students protests, are capable of altering the broader discourses of power at work in a society, resulting in a transformation of how one sees and acts in the world.

What is lacking in institutional understandings of democracy is an expression of how the *demos* is said to exercise power (*kratos*) in ways that extend beyond institutionalized privileges. In stark terms, the master may afford the slave certain degrees of 'freedom', but that freedom is a privilege bestowed by the authority of the master. It is only when the authority of the master is called into question, through acting beyond bestowed privilege, that the slave realizes both their freedom from, and equality to, the master. In Chapter 2, I extend this critique to contemporary deliberative democratic theory, arguing that only those moments of articulation or deliberation prior to their incorporation within state mechanisms can be understood as democratic politics – the rest is government as usual.

1.2 Rancière and Politics/Democracy

When speaking of politics, I draw from Jacques Ranciére in understanding all politics as democratic politics.[26] Rancière, drawing from Aristotle, argues against the understanding of politics as the exercise of power, arguing instead that political rule entails the ruling of equals, where one partakes in both ruling and being ruled.[27] The exercise of power, in contrast, undermines the political relationship by doing away with its circularity; in confining power to those who are qualified for it, regardless of how those qualifications are defined, the political relationship is undone as rulers and ruled come to occupy separate subject-positions. Politics, therefore, is undertaken in the absence of any natural order of rule that would legitimate the rule of particular subjects; an absence that is introduced when the existing logic of rule (*arche*) is ruptured. Political subjects are those who make the transition from being ruled to practicing rule, or those who move from being acted upon to actors in their own right. The transformation of the relationship between being ruled and ruling requires that one does not already rule, that one lacks the virtue that would ordinarily afford one access to power in the form of right.

The condition upon which democratic action takes place is one of *an-arche*. While *an-arche* is the term used by Rancière, the concept is shared across most agonisic and post-structural theorists who point to the conditions of the social as a void, or lacking grounds beyond those constructed through discourse.[28] In the absence of truly legitimate foundations for rule, semblances of order are produced and reproduced that ritualize or

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[26] This is articulated in Rancière, J. *Disagreement: Politics and Philosophy*; also, Rancière, J. "Ten Theses on Politics," in *Dissensus: Politics and Aesthetics.* Edited and Translated by Steven Corcoran. London: Continuum Publishing, 2010.

[27] Ranciere, "Ten Theses on Politics", Thesis 1.

[28] Two instances of this will be explored in Chapter 2 in discussing Mark Warren's idea of 'social groundlessness' and Ernesto Laclau and Chantal Mouffe's concept of hegemony.

institutionalize roles and processes which shape the internalization of identities. Owing to the fact that such constructions of order are the product of human action, and therefore lacking in transcendental character, their existence is dependent on justification and enforcement – however the two are not always mutually exclusive.[29] Arguably it is the *an-archic* nature of society that gives deliberative democratic theory its *raison d'être*, as its concern for the legitimacy of institutions suggests that their legitimacy is not self-evident.

Rancière's political subject can only be the *demos*, by which he does not refer to all the people or all citizens (at least not all of the time), because their form of political subjectivity is that of equals and therefore does not appeal to forms of power that would introduce internal division and hierarchical ordering – as would be the case for those who rule with (military) strength or wealth. The *demos*, he argues, "refers to the supplement that disconnects the population from itself, by suspending the various logics of legitimate domination."[30] The term *demos* refers to those who are both included within the whole of society but are at the same time more than what their inclusion allows. Drawing from the discussion in the last section surrounding protestors, they are citizens whose actions extend beyond what the role of (lawful) citizens includes. Yet the *demos* may be comprised of outsiders, outside the category of citizen, as members of the community who lack full status or recognition by institutionalized forms of power. In movements like No One Is Illegal that include participation by unsanctioned immigrants, those who exist outside the category of national citizenship act as members of the community in spite of a

[29] I will explore where justification and enforcement intersect in Chapter 2 when discussing appeals to universal reason and the challenge surrounding the possibility of such an idea.

[30] Rancière, "Ten Theses on Politics", Thesis 5.

framework of exclusivity (citizenship) which discounts that membership; through acting they expose the arbitrary foundations of power that divides those who live, work, consume, and participate in the co-creation of the *polis*.

In speaking of exclusions, one might think, as Rancière does, of the relationship between a slave owner and a slave, wherein the former's position is dependent on the slave's performance of his/her role as such – yet in the moments where such a relationship is called into question, where the slave acts as though he/she was a free person, the natural order is disrupted and politics can be said to have occurred. It might be more apt to say the 'natural' foundations of order are revealed to be nothing more than a discursive articulation that is, insofar as it does not precede discourse itself, not natural at all. As discursive articulations, regimes of order in a society reflect the interests of the discourses that produce them. As Rancière notes, "[t]here 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 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 at any natural order."[31]A parallel can be drawn between the capitalist and wage-labourer, and so, in place of the whip, the fragility of the relationship must be reinforced by state coercion through policing and a legal system; for these reasons, Rancière refers to the discourses and practices that enforce the existing order as "the police."[32]

Democratic politics, from the perspective of Rancière, is opposed to the role of constitutionalism as an organizing principle that determines who may govern and who are to be governed. For the democratic presupposition suggests that any allocation of roles

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[31] Rancière, *Disagreement*, p. 16.

[32] Ibid., pp. 29-31.

can be undone through the actions of individual operating outside of their constituted roles. The constitution of roles, distinctions between rulers and ruled, is created and subsequently reinforced in accordance with natural or universal principles. One learns that since we cannot have anarchy (*an-arche*), some must lead and other must follow. If some must lead, there must be reasons for their leadership to the exclusion of others. Historically, justification of rule (that is, appeals to the principle of justice) could come through appeals to the relationship of rulers with the divine (divine right / *hierarchia*), or superior blood lines (aristocracy/oligarchy); today it may be that justification comes in the form of the representation of interests, efficient use of resources, or the promise of prosperity. Whatever the case may be, it is clear that justification of rule comes through the appeal to a common externality (rather than an intrinsic capacity of all); something that is presumed to have status above partial and particular interests and articulations.

Does this mean that democratic politics must necessarily be anti-systemic? Perhaps. In moments where rule is transferred from the *demos* to figures of authority (the 'legitimate' decision-makers), the process of democracy can no longer be verified, only inferred. When political activism, for instance, is transferred from 'the street' to the courts, a favourable outcome may be a victory for the *demos* (or the particular interests of those who acted *as* the *demos*), while not being a democratic victory. When the power of action, or the power *to* act, is transferred to a body beyond the *demos* itself, the *demos* ceases to act as such – and so democracy might best be understood as a tool rather than a project. The capacity of the *demos* to act is not verified when the populace acts in accordance with what one is 'allowed' to do. Equality is never really granted but requires something more: it requires action. This is why Fanon suggests that liberation and

equality have a violent and revolutionary character to them.[33] I am not suggesting that democratic politics must be, or even can be violent in character. Such can and should be seen as the suppression of others ability to act (*kratos*) and is the kind of power to act that is peculiar not to the *demos* but with the oligarch, the monarch, or the tyrant. That being said, democratic politics must expand beyond the allowance prescribed by a constitution. The slave is not shown to be free by the allowances allotted to him/her by the master. Being granted the right to sit at the table, to speak and act as others do is merely, but not inconsequentially, to support the legitimacy of the power that dominates.[34] I turn now to Plato's dealings with the distribution of parts and its relation to justice, universality, and democracy.

1.3 Plato and Democratic Constitutionalism

At a time when everyone claims to be a proponent of democracy, Plato's critique of the concept provides a sobering double-take. Understanding why one is critical of democracy forces us to remove our rose-coloured glasses to see the ways in which democratic politics constrains our visions of grandeur and utopia by introducing the unexpected element of freedom and its disruptive implications. The disruptive freedom of Plato's *demos* is not conducive to the advancement of today's projects of democratization or democratic legitimacy, however the threat of its appearance forces such projects to take the *demos* into account. The recognition of the disruptive capacity of the people acting beyond their constituted roles imposes limits on constitutional governments,

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[33] See Fanon, F. *Wretched of the Earth.* Translated by Richard Philcox. New York: Grove Press, 2004.

[34] Another articulation of this, which I will return to in Chapter 3, is brought forth by Richard Day who calls the nature of the relationship between Indigenous peoples and Settler countries into question, as the 'gift' or 'allowance' of self-government reinforces the power/authority of the latter over the former. See Day, R. "Who is this we that gives the gift? Native American Political Theory and the Western Tradition," *Critical Horizons: Journal of Science & Critical Theory* 2(2), 2001, pp. 173-201.

requiring that government action takes into account the demands of the people within its territory. Plato, not unlike contemporary lawmakers and democratic theorists, is wary of the unchecked freedom of 'the people' to act beyond the limits of the law and social norms, insofar as that action stands in the way of the ideal, 'progress', or 'history'. In turning to Plato, I explore how democratic responses to perceived injustices are both disruptive and, in the modern context, necessary to force a perspective change.

In turning to Plato, I focus specifically on his *Republic* where he discusses the ideal constitutions of the varying forms of political regimes. In the *Republic*, Socrates seeks to provide a definition of justice, and does so through its corollary in the constitution (in speech) of the just city: the *kallipolis* (the good city). The defining feature of the *kallipolis* is that it is well-ordered, governed by the portion of society that is most fit to rule – the guardian class. Like the well-ordered soul, the just city is one where appetites and strength are subordinate to wisdom; or where the guardian class, as representatives of the *logos*, keep the auxiliary and productive classes in check. For Plato, justice in the polis is found in each member acting in accordance with their nature, that only those who are fit to rule ought to occupy the position.

The foundational myths of the *kallipolis*, the myth of the metals and the allegory of the cave, serve as a way of constituting the just city. That is, their dissemination is aimed at convincing citizens that the existing order is founded on just principles. The need for convincing is, at the same time, a need for pacification. While Plato is no democrat, I would argue that he is acutely aware of what I have referred to throughout this chapter as the democratic claim, or the presupposition of democracy. In effect, we could say that Plato himself prescribes to it to some extent. The need for policing,

addressed here in the form of collective myth, stems from the presumption that the 'natural' order is not self-evident, that it is not universal, or that people do not always act in accordance with it. The threat of difference, or the threat of *acting* differently, inspires the need for particular articulations of 'the good' to be defended.

This logic of defending the privileged position, be it 'the good' or the community, is widespread. It exists today where borders are defended to keep the Other, and the difference that he/she brings, at a distance. However in order to erect defence against, one must first recognize the capacity of the Other. Here is where I suggest that Plato, albeit indirectly, writes with the democratic presupposition in mind. Implicit in his argument is the assumption that the *demos can* act politically, that its members *can* seize the city. The fundamental equality that underlies the democratic claim is recognized for Plato when he speaks of how a democracy is to come about. He notes that democracy is brought into being when the poor come into contact with the rich in a common endeavour, and the former come to realize the position of dependence that constitutes the relationship. The democratic city comes into being, he argues, when the poor realize that their rulers "are at [their] mercy; [that] they're good for nothing."[35] It is in this moment that the foundational myth that legitimates governance, the superiority of the few, begins to unravel. While he argues that it would be an injustice for the *demos* to rule, he does not refute the capacity of the *demos* to do so.

The question that Plato is engaging with is not so much about politics, in the sense I have sketched above, as it is about philosophy. The *demos* is capable of overthrowing

[35] Plato, *Republic*, 556e.

the rule of oligarchs or philosopher-kings but they are not capable of philosophy.[36] "The majority cannot be philosophic"[37] because they cannot see beyond their own interests and desires; they confuse their opinions (*doxa*) for truth (*logos*). The authority of the philosopher-king derives from his presumed relationship, as a philosopher, with the form of 'the good', a relationship that is absent in the *demos*. There is a presumption, made explicit in the justification and separation of the guardian class, that philosophy is a different kind of speech that is distinct from the 'ordinary' way that one tries to make sense of their life.[38] While this is not the place for a full discussion of what separates philosophy from other forms of thought, Plato makes clear that the absence of philosophy by the *demos* leads to a failure to provide a legitimating principle for *why* its members should rule. Simply because one *can* do something does not explain whether or not one *should*.[39]

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[36] I am hesitant to introduce the claim, as Plato's, that the *demos* is incapable of practicing philosophy. I draw here from an Arendtian perspective that sees relations to, and propositions of, truth as within the domain of philosophy – in contrast to a politics that deals with *doxai*. This is a very different reading than a Straussian one, which interprets philosophy as the search for (rather than arrival *at*) truth – a search that is always ongoing, always self-critical. A Straussian reading of Platonic philosophy, which is more in line with what is taken to be Socratic philosophy, has more in common with what I refer to throughout this thesis as politics, or 'democratic politics', owing to the challenge it presents to tradition and traditional authority. Due to limitations of space, I cannot expand in any depth on where Arendt and Strauss' interpretations of Plato differ, only acknowledge that such a difference exists. The invocation of 'philosophy' throughout this thesis is meant to refer to privileged claims of 'knowledge' that are juxtaposed with those of mere opinion – a claim of separation which, I argue, is untenable. For a Straussian reading of Platonic philosophy, see Zuckert, C. *Postmodern Platos: Nietzsche, Heidegger, Gadamer, Strauss, Derrida.* Chicago: University of Chicago Press, 1996, Chapters 4-6; also Arendt, H. "Politics and Philosophy," *Social Research* 71(3), 2004, pp. 427-454.

[37] Plato, *Republic*, 494a.

[38] One might turn to Gramsci here and his discussion of the 'organic intellectual.' But as stated, this is too a large a topic to be covered in any depth in this chapter. See Gramsci, A. *Selections from the Prison Notebooks*. Translated and Edited by Quintin Hoare and Geoffrey Nowell Smith. New York: International Publishers.

[39] I would interject that questions of *can*, or capacity, figure pre-eminently in Aristotle's conception of man as a political animal, as it is that capacity that separates the human from animals. Questions concerning *ought* or the right to politics rely on conceptions of justice or morality and, as such, are the subject of moral philosophy and deliberation. The determination of who 'should' engage in politics is premised on the background assumption that others 'should not', an exclusion that must find its own means of justification.

In many respects, the concern with the legitimacy of the people as political actors has been displaced in modern democratic theory as the system of representative government replaces the physical presence of the *demos* with the representation of the interests of the national people. While Plato's *demos* participates in the process of ruling, the national people of today's constitutional democracies defer that power to those who can best advance their interests, to those who can most effectively achieve institutional success. While necessarily hierarchical, the representation of interests provides the organizational capacity, through the limiting of effective participation, to carry out the grand-scale projects of the modern state. In this way, modern governments are able to reconcile the order of the philosopher, the modern statesman or technocrat, with the *interests*, rather than rule, of the people.

The replacement of rule by the people with rule *for* the people can be understood as a manifestation of Plato's ideal correlation between philosophy (or reason) and rule. As an exemplar of their supposed interests, the representative acts in place of 'the people', as their substitute. While the citizen[40] is not entirely displaced, their role is differentiated from the representative and a hierarchy of institutional capacity is introduced; the citizen may participate, but only within the boundaries established by elected representatives. Even when forms of citizen participation are introduced, when citizens are, for instance, consulted in the decision-making process, 'power' is transferred from those with power (the representatives) to those without, thereby maintaining the division between rulers and ruled. While, surely, such transfer of power is preferable to more explicit forms of exclusion, the possibility of a transfer of power requires the

[40] The citizen is not synonymous with the *demos*, as the latter constitutes itself through action while the former is a category produced through the act of designation by those who proclaim themselves sovereign and who maintain the right/power to designate others.

presupposition that its recipients are otherwise incapable or lacking in power; a presupposition that runs counter to the democratic claim which situates political capacity (*kratos*) within the *demos*. To the extent that the modern political representative performs their role sufficiently, curbing any desire for radical politics, the system of power that severs the relationship between rule (*kratos*) and the *demos* is maintained.

The hierarchical presuppositions necessary for a paradigm of inclusion extend to contemporary deliberative democratic theory. In Dryzek's reflections on contemporary deliberative democracy, discussed further in Chapter 2, he notes that the mere incorporation of groups within the apparatus of the state does not necessarily 'benefit' democracy.[41] He argues that in order for groups to have effective influence over state decision-making processes (one of his evaluative criterion of democracy), their interests must coincide, or be compatible with, state imperatives.[42] However, if effective influence is constrained by state imperatives, such as the growth of the economy or the defense of national boundaries, it becomes clear that power remains firmly entrenched within the constituted order. The *demos*, or the would-be/assumed *demos*, remain in a position of subordination, despite inclusion into the state apparatus (the constitutional order), as the state, an embodiment of the philosopher, is assumed to have a privileged connection to 'the good' through the defining of state imperatives. While a degree of accommodation can be made to overcome some of the exclusionary features of constitutionalism, even contemporary 'democracies' are unwilling to forego state imperatives by allowing the

[41] The invocation or assessment of events as benefitting or detracting from democracy makes teleological assumptions that the conception of democracy provided in this thesis rejects. Nonetheless, the attention given to Dryzek here points to the challenges of 'democracy' in the context of power asymmetry.

[42] See Dryzek, J. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Chapter 4.

interference of the marginalized; the people cannot act by their own accord, only within the limits prescribed.

The tension highlighted, then, is between the desire to order a society around general principles, and a disagreement over the content and scope of their universality. This disagreement, Plato suggests, manifests in civil war, where the poor kill and expel the rich from the city to establish a new regime grounded on equality. Oligarchy, a regime that divided society into the party of the poor and the party of the rich, is replaced by the free city that renders such distinctions unintelligible. Freedom, or we might call it democratic freedom, is borne out of a rejection of the claim that some are fit to rule and others to follow.

Here the tensions between justice and democracy, constitutionalism and equality, or *arche* and *kratos* emerge in the failure of the *demos* to accept the existing hierarchy of rule. The capacity of the *demos* is tied to the freedom to act. In the free city, there is no requirement that one rule or be ruled in turn.[43] Where Plato's city of justice is led by reason, we are to understand the democratic city as one led by appetites, desire, and licentiousness. Freedom, in the form of desire or license, is the injury inflicted upon the ordered political community, and it is that freedom that transcends the boundaries set before it by constitutionalism. Plato's appeals to justice as the ordering principle of the *kallipolis* is juxtaposed to the equal freedom to act possessed by the *demos*.

The defining character of the democratic city is, like the *demos* itself, its freedom. In attempting to look for its constitution, Plato/Socrates reveals that there is none to be found – at least not in the singular.

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[43] Plato, *Republic*, 557b.

> Socrates: Then it looks as though this is the finest or most beautiful of the constitutions, for like a coat embroidered with every kind of ornament, this [democratic] city, embroidered with every kind of character type, would seem to be the most beautiful. And many people would probably judge it to be so, as women and children do when they see something multicolored.
> Glaucon: They certainly would.
> Socrates: It's also a convenient place to look for a constitution.
> Glaucon: Why's that?
> Socrates: Because it contains all kinds of constitutions on account of the license it gives its citizens. So it looks as though anyone who wants to put a city in order, as we are doing, should probably go to a democracy, as to a supermarket of constitutes, pick out whatever pleases him, and establish that.[44]

The license afforded to the regime of equality creates a barrier to constitutionalism, for if all are free to do what they like, then it cannot be maintained that any single constitutional arrangement must be obeyed in accordance with a singular universal ordering principle because such a principle would hold a people captive, thereby curbing that intrinsic freedom. A Rousseauian argument, taken by deliberativists in Chapter 2, which transforms rule into self-rule may hold that it is in the perceived interests of a people to bind themselves to a constitution, yet their freedom as the *demos* cannot be verified through acquiescence as that freedom can only be inferred; the demonstration of freedom and verification of one's democratic subjectivity emerges where self-rule departs from rule, or where a group refuses to be bound to the constitutional order.

Is it, therefore, the case that justice and democracy are necessarily opposed? While Plato's particular conception of justice (where each does what is in accordance with their nature) suggests little room for the forms of subversion characteristic of democracy, perhaps *some* understanding of justice can be reconciled with the disruptive character of democracy. One might follow James Ingram, for instance, who suggests that

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[44] Ibid., 557c-d.

there is an underlying universal democratic principle to which particular moments of democratic politics drive us closer.[45] Where particular times and places can be understood as "perversions of the universal", such perversion is "effectively fought on the ground of the universal".[46] In some respects, Ingram's position is consistent with Rancière's assertion of the presupposition of equality, where such a presupposition is suggested to have universal character. However an important difference is that Rancière is not willing to concede that there is 'truth' to his claim. Rancière's presupposition of equality does not claim epistemic truth, for it is only presupposed, but is laid in contrast to the presupposition of inequality that legitimates the existing division of parts between rulers and ruled in a society. In presupposing equality, Rancière directs attention not to truth but to the possibilities made available when operating under that presupposition to those who are denied a role in constituted regimes of government. While it could be argued that the advancement of Rancière's presupposition of equality through radical disruptive politics is a struggle for justice, this justice belongs to particular (democratic) subjects and lacks universality.

There are two visions of justice that derive, accordingly, from the presupposition of equality and the presupposition of inequality. It can be argued, as Rancière does, that the better, and presumably most just, government is that which "by egalitarian logic has most often jolted out of its "natural" logic."[47] This account of justice is intrinsically bound to the non-negotiable claim that anyone and everyone is capable of acting politically, and that it is generally a good thing when they do. But this account of justice

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[45] See Ingram, J. *Radical Cosmopolitics: The Ethics and Politics of Democratic Universalism.*

[46] Ibid., p. 7.

[47] Rancière, *Disagreement*, p. 31.

does not reflect or adhere to any universal notion of justice, it is the form of justice that belongs to a particular subject: the *demos*. If, on the other hand, one begins with the presupposition that some are better suited than others for politics, then one adopts some variant of the position of Plato/Socrates in the *Republic*, where only those most fit to rule (philosopher-kings) occupy positions of government. While it is easy to critique the restrictions Plato imposes on who may be part of the guardian class, the principle that some are more capable than others at 'doing politics' remains a central feature in modern government. These divergent accounts of justice reflect who can determine the content of what is just, and while modern representative governments are, to some degree, bound to the interests of their constituents, their claim to sovereignty (their power to decide) allows for the (just) exclusion of dissenting opinions which the state can ignore without immediate consequence.

There is a stark contrast between Plato's ordered city-in-speech, on the one hand, and 'democratic Athens' on the other. In the latter, any citizen (granted, this was an exclusive category) was free to participate, directly, in politics. What this suggests, from a Platonic perspective, is that the polis was governed by those unfit to rule, those who lacked the proper education in philosophy. The democratic ideal is in direct opposition to Plato's articulation of justice and reflects his opposition to the politics of Athens. While the well-ordered city benefits from a clear division of parts, in democracy this character is found lacking as anyone may participate in the act of rule, regardless of qualification. However even this distinction between democratic Athens and the constitutionalism of Plato's *kallipolis* may be untenable. If democratic Athens is understood as emblematic of the democratic ideal, how does one interpret the existence of constitutionalism within the

regime? Are the reforms of Solon, for instance, understood as the archic foundation that democratic Athens was subsequently built upon? If Athens is, in its own way, a constitutional democracy that regularizes and legitimates forms of acceptable political conduct within the *polis*, then there exists a tension between its status as a democracy and Plato's conception of what a democracy is.

1.4 The Constitution of Democratic Athens

While democratic Athens tends to be perceived as more democratic than its modern counterpart, it does not break from the form of constitutionalism problematized in this chapter. One objection to the *an-archic* character of democracy advanced in this chapter is that it is at odds with democracy's most pronounced symbol: democratic Athens. Democratic Athens was a political regime possessing rules of conduct, a legal system, and an order according to which politics was practiced; in these respects, the constitutional nature of democratic Athens is in keeping with modern democratic governments. While the Athenian regime allowed for more expansive participation on the part of its citizens, the regularization of conduct in accordance with legal and social standards points to the existence of an overarching relationship of governance and the maintenance of a hierarchical order of governors and governed. Although this relationship is readily apparent in the exclusion of, for instance, women, slaves, and non-Greeks from the category of citizen, it is pervasive in the character of a constituted regime itself; insofar as citizenship authorizes some practices at the expense of others, or insofar as those authorized practices are confined to certain ritualized performances, the constitution itself (written or un-written) establishes citizens as the subject of its power.

Skepticism towards the democratic character of Athenian democracy is captured within Plato's own work. Plato is a known critic of Athenian democracy, however I turn attention here to a lesser known Platonic dialogue where the democratic character of the city is called into question by Socrates. In the *Menexus*, Socrates and Menexus discuss the nature of the upcoming speech that is to be given at the annual Athenian funeral oration, wherein Socrates draws attention not to Athens' democratic character – but instead to its aristocratic lineage. While Socrates' contribution to the dialogue should not be seen as a definitive renunciation of the democratic claims of Athens, it does, however, call into question the sanctity of the city as a symbol for democracy. By problematizing the taken for granted democratic claim of Athens, Plato/Socrates introduce new criterion for evaluating democratic claims.

As is the case with most of Plato's dialogues, *Menexus* is, more than anything, dominated by the contribution of Socrates. Unlike Menexus, Socrates is unconvinced that the choosing of the yet-undecided speaker will alter the character of the speech given. Instead, Socrates confirms and reiterates Aspasia's contention that these speeches can be reduced, in a formulaic way, to a fairly generic template that seeks to praise and arouse the spirits of the Athenian people. Aspasia offers Socrates an example of what such a speech might sound like, and the greater portion of the dialogue is Socrates iteration of this speech.

While the *Menexus* can be read as a piece of irony, where the speech can be interpreted as a parody that mocks the ease by which one can praise of one's own people, what is ironic are the expectations held for something Socrates argues is relatively easy. When discussing the history of the Athenian polity, Socrates states that "the polity was

the same then and now, an aristocracy."[48] In light of the speech's purpose, to arouse the spirits of Athenians, it is understandable that such a statement would be made. He continues by clarifying:

> [W]e are now governed by the best men and, in the main, always have been since that remote age. One man calls our polity democracy, another some other name that pleases him; in reality, it is government by the best men along with popular consent. We have always had kings; at one time they were hereditary, later elected.[49]

Three things are of note in this passage: (1) government by the best men is proclaimed as a point of pride, (2) the dispute over what to name the regime, and (3) the distinction made between the best men and those who give popular consent.

Given the nature of the speech, Socrates pronounces with pride that Athens is governed by only the best men – something of an ironic statement given the events of the *Apology*. Nonetheless, as the point of the funeral oration is to honour the dead and inspire the current and future generation of Athenians, Socrates attributes the virtue of Athens to its lineage. He argues that "a polity molds its people; a good one molds good men, the opposite bad. Therefore I must show that our ancestors were molded in a goodly polity, thanks to which both they and the present generation – among them these men who have died – are good men."[50]

There is no pride, for Plato/Socrates, in proclaiming that Athens is a democracy because the *demos* is not virtuous and, as such, do not provide a noble lineage. The *demos* is constituted by those who lack the defining characteristics of the *aristoi* or the oligarchs. They lack noble birth, wealth, power, or honour, the term suggests only that

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[48] Plato, *Menexus*, 238c.

[49] Ibid., 238c-d.

[50] Ibid., 238c.

which is common to anyone and everyone, what is left when characteristics of virtue have been expunged into their own categories. While the *aristoi* possess virtue, and the oligarchs have wealth, the *demos* have only the force of their bodies, the force of their existence. Calling Athens an aristocracy that is derived from good men is to be expected in these circumstances, and so we ought to view the assertion as a rhetorical statement that does not provide strong evidence against the democratic character of Athens.

The second point I have identified is the discrepancy over what to call Athens. Here Socrates suggests that one may classify a regime in any number of ways, but argues that "in reality" it is an aristocracy. While it could be argued that Socrates is highlighting the contestability of language, the rhetorical nature of the speech may suggest that the desire to establish Athens' aristocratic character stems from a general disdain for democracy – the regime where those who have no qualifications, beyond what is common to all, rule. In highlighting the contestability of language, and therefore the contestability of the democratic claim, Socrates is able to displace the existing language to serve the character of the speech.

It is the third point, however, the distinction that Socrates makes between the "government by the best men" and those who give popular consent where one might substantiate the claim that Athens is not a 'democracy'. While it may be the case that the first two points of interest could be reduced to rhetoric, the distinction between the best men (who govern), and those who give popular consent introduces the distinct relationship between rulers and ruled – a distinction which, when grounded on qualitative assessments (as the concept of the 'best men' does) betrays the democratic character of rule (a character that lacks such internal differentiation). By introducing 'those who give

popular consent' as separate from the 'best men', the former are presumed to be lacking in such qualities that would include them in the category of the latter. A division is introduced into the community as the best people, the *aristoi*, are differentiated from those others who lack such differentiation, the *demos*.

Who are the best men? The *aristoi* are presumed to be the best men, and yet we lack a universal principle from which we might assess this claim. In the absence of a universal principle, a principle that establishes criterion from which to assess someone's 'goodness' or virtue, articulations of the good become tied to contemporary relations of power that declare X to be 'good' and Y to be 'bad' – in the spirit of Thrasymachus, might (force) determines right. It is more apt, I would suggest, to refer to Athens as an oligarchy. The category of the 'best men' cannot be reduced to anything more than assertion, whereas the fact that the government of the best men is a minority and can be understood as government by the few is more easily defended. This position is taken by Rancière when he asserts that *all* governments are oligarachies.[51]

While Athens may still yet serve as a symbol for democracy, the incorporation of the city writ large within the symbol is problematic. The spirit of practices such as the drawing of lots may rightly stem from the democratic claim that the *demos* (understood as anyone and everyone) has the capacity (*kratos*) to rule, however, capturing this spirit in policies or institutions that bind action, ritualize practices, and formalize jurisdiction, creates divisions that undermine democratic aspirations. The tension between *stasis* and innovation that encapsulates the essence of democratic politics is not one to be overcome through more expansive or inclusive participation, though such reforms to the order of

[51] See Rancière, J. "Ten Theses on Politics" in *Dissensus: Politics and Aesthetics.*

things (the *status quo*) are welcome. Democracy is confined to that tension, not a state in itself, where those who have no qualification for rule act as though such qualifications were meaningless, where the hierarchical ordering of society ceases to hold; the moment order, no matter how inclusive, is reintroduced, one is dealing with the governing of conduct (government), rather than free conduct (democracy).

1.5 Conclusion

The purpose of this initial chapter has been to provide another way of looking at democracy and democratic theory more broadly. In doing so, I have called into question the association of democracy with government, on the grounds that the function of the latter (to govern) undermines the freedom of action entailed by democracy, understood as the capacity to act politically (*kratos*) by anyone and everyone (the *demos*). This articulation of democracy, therefore, excludes the coercive forms of action undertaken by, for instance, military or economic elites. I do not contend in this chapter, or the thesis more broadly, that our democratic aspirations require a complete renunciation of the reified forms of government practiced by modern constitutional governments. The coercive apparatus of the state may, at times, secure the protection of rights, freedoms, and liberties that past instantiations of democratic politics aspired towards. However this acknowledgement is neither an apology nor endorsement for statism. Insofar as the practice of government reinforces the state, or *stasis*, the divisions between rulers and ruled is maintained and 'the power of the people' is kept at bay. Constitutionalism, or the aspiration to constitute, precludes the freedom of the people to act as they might otherwise, imposing a taxonomy of permissible and impermissible action in the forms of both legalism and social norms. The existence of constitutionalism, both in the form of

statism and taken-for-granted social patterns, serves as the backdrop upon which democratic struggles are brought forth.

The purpose of this distinction between order and democracy is to re-centre the *demos* in democratic politics. If one allows regimes of government and the elites who operate the state apparatus the ability to define what democracy is and to speak on its behalf, one undermines the forms of resistance practiced by the *demos* itself. Democracy is a weapon of the poor, the marginalized, and the excluded, and to allow its language to be co-opted is to sever the relationship between the *demos* and claims, based on equality, they advance. To allow order to masquerade as democracy is to allow for the stigmatization of democratic politics that seek to move beyond the limits constituted by order. Radical activism, illegal protests, non-violent direct action and civil disobedience become easy targets for the rhetoric of anti-terrorism, for what is the terrorist but one who seeks to terrorize the discourse of order that dominates through actions unsanctioned by that order?

The relationship between violence and the account of democracy articulated in this thesis is precarious. On the one hand, when violence is used to suppress the will of others and to force them to act in ways they ordinarily would not, an attempt is made to suppress the capacity (*kratos*) of others to act politically. A parallel can be made between constitutionalism and violence, where modern constitutionalism practices violence in order to restrict the spontaneous actions of those within the territory of the state. On the other hand, *kratos* means force. While Ober refers to *kratos* as capacity when coupled with its subject, the *demos*, it also means power, might, and strength. That democratic subjects have the capacity to engage in politics stems from their force, their ability to

force themselves into politics when that relation is denied – as in Plato's *Republic*, where the poor expel and kill the rich to create the democratic city. Therefore violence in the form of force cannot be entirely absent when speaking of democratic disruptions to existing discourses of power; nor can it be divorced from modern practices of government. The practice of action constitutes force relations.

The unsavoury conclusion that democratic politics requires force should not be seen as anything outside the everyday practices found in modern constitutional governments. While the ideal of public deliberation free from coercion is desirable, such conditions do not describe modern practices. For modern governments and their claim to sovereignty to function, populations must be policed, order must be imposed, laws must generally be abided, and common norms, principles, and values must be created; none of which is done without the exercise of force, often taking the form of violence (policing) and physical domination (incarceration). As Plato suggests, the democratic city cannot have a constitution due to the freedom of democratic subjects. Therefore the existence of constitutionalism in modern governments points to the un-freedom of their subjects, to the ways in which that freedom to constitute has been curbed, guided, and pacified.

The challenge of democratic politics today is to break free from the forms of subjugation reproduced by institutional governments which constrain the capacity of individuals and groups to participate in politics. By challenging parliaments, for instance, as the spaces where particular actors (representatives) practice government during particular times, groups can act democratically, as the *demos*, to assert themselves as political actors in their own right.

Subtle forms of coercion are at work in even the ‘most democratic’ societies, where the brutality of policing by the state is offset by the policing of the self, engendered through decades of socialization. These forms of coercion shape the way we are ‘supposed’ to make claims, they shape the way one is ‘supposed’ to speak, and they shape the person one is supposed to be. However this is not without resistance. In Canada, as I discuss in Chapter 3, one can and should see the changing discourse of Indigenous activism, represented most symbolically by ‘Idle No More’, as an instantiation of democratic politics, where a *demos* emerges to challenge the role of passivity that has constituted the relationship between settler and Indigenous for over 500 years.

Democracy embodies hope and possibility. Hope that forms of oppression and domination are only temporary, and the possibility that what *is* could be otherwise. For this to occur, I have limited to democracy only those actions that challenge the supposed ‘natural’ or ‘normal’ order of constitutional society. In the next chapter I will situate such an understanding in the context of contemporary discussions within democratic theory.

Chapter 2: Navigating the Waters of Contemporary Democratic Theory

In Chapter 1, I grounded democratic politics in the practice of freedom which, for Plato, characterizes the democratic (or free-) city. The freedom of the *demos* stands as a barrier to forms of constitutionalism which authorize some forms of action (or politics) at the expense of others. The policing of a constitutional order, the maintenance of the division between authorized and unauthorized action, and its personification in the relationship between rulers and ruled, all stand in opposition to the freedom of anyone and everyone (the *demos*) to act (*kratos*). By privileging particular actors and particular spaces for politics, qualifications are (re)introduced in the *polis* that displace the undifferentiated capacity which characterizes the *demos*; 'the people' is replaced with 'these people' and 'those people', whereby 'these' people occupy different positions than 'those'. While the history of democratic thought and practice continues to undergo revision, this chapter draws attention to the persistence of the *archic* form of rule in contemporary democratic theory which includes, perhaps counter-intuitively, recent attempts to make democratic politics more inclusive. The primary concern of this chapter is that the discourse of inclusion, which features prominently in deliberative and agonistic democratic theory, fails to displace the ontological privilege of prevailing discourses of authority (such as statism), while reinforcing their legitimacy; the bestowal of institutionalized privilege is taken, erroneously, as evidence of power (*kratos*).

As a dynamic stream of democratic theory, deliberative democratic theory has incorporated and responded to many of the criticisms posed against it by agonistic and post-structural theories of democracy. In response to the criticisms that deliberative theory's focus on consensus building overlooks the possibility of legitimate difference,

that difference is something merely to be overcome through the extension of rationalism, the theory has redirected its aims – not at overcoming difference, but understanding it; not at assimilation but cooperation. There is, however, something missing in deliberative democratic theory that follows from the discussion of *kratos* in Chapter 1: namely, an account of democratic practice. Deliberative democratic theory is centred on the creation and reproduction of political right rather than how the *demos* acts politically. As such, its emphasis is on the institutional rather than on the *demos* as subject.

Why should deliberative democratic theory provide an account of democratic action grounded in people's autonomous action rather than their participation in constitutional frameworks? This chapter explores how the privileging of statist forms of reason in modern institutions enforces a privileged 'democratic' practice that denies its subjects spaces for political participation beyond that afforded by its institutions. The model of constitutional liberal democracy is grounded on particular forms of political representation that potentially misrepresent political communities with different shared ethico-political commitments, such as First Nations within Canada's territorial expanse. Linking the framework of modern constitutionalism to the history that produces it reveals the exclusionary tendencies of current institutional frameworks built against those who think, see, and act differently. Re-directing the focus of democratic theory to the disruptive acts of resistance engaged in by marginalized groups challenges the presumed common logic and rationale situated in representative institutions. This chapter explores how the presumed common grounds of reason that makes deliberation successful according to some deliberative democrats is *uncommon*, creating a division between we who prescribe to such principles and they who do not.

This emphasis on the *we* assumed in a constituted political community draws attention to the *other* that lies outside the category. This is where deliberative democratic theory is ill-equipped as it privileges existing discourses of statism and citizenship. While deliberative democratic theory is increasingly capable of dealing with and accommodating difference, its ability to do so is premised on an underlying commonality and a willingness on the part of the *other* to cooperate, for the *other* to be brought within the fold of the *we* who deliberates – in this respect, difference is incorporated into the power structures of those who accommodate. There is, however, another form of difference, a paradigmatic form of difference that may prove incapable of incorporation. This paradigmatic difference, this opposition to the model of deliberation itself, contests the boundaries of a constituted society. While deliberative theory incorporates challenges to unjust policies and policy orientations, its appeal to existing political institutions has the effect of reinforcing the legitimacy of their foundations. The more interesting question, I suggest, is less about how to 'deal with' difference, thereby presuming one's authority over the situation, but, rather, how to live differently.

Not having one's difference accommodated but, instead, acting and being different is, as suggested in Chapter 1, characteristic of a democratic politics. Where accommodation is grounded on inequities of power that presume that one is in a position to accommodate the other, being and acting differently irrespective of an accommodating context demonstrates the capacity (*kratos*) of the people themselves. Throughout this chapter I argue that while the deliberative framework is a preferable one for the organization of an accommodating society that is held to account through the process of deliberation, it is not a democratic one. The turn to post-structuralism in the second half

of this chapter is intended to draw attention to the importance of acting the concept of 'democracy'. Democracy is not something that one can build a model or a framework around, and it may not be a pleasant activity, but it is important for exposing both the shortcomings of a universal logic and the existence of radical plurality.

Deliberative, agonistic, and post-structural accounts of democracy are not mutually exclusive, and neither are the exemplars chosen to represent such positions. The categories invoked are meant to illustrate the tension between constituted (*archic*) power and democratic power (*an-archic*). The argument made in this chapter is that while all examined streams of contemporary democratic thought deal with issues pertaining to deliberation and discourse, only certain forms of discourse challenge existing hierarchical ways of seeing, acting, and being in the world. Democratic politics, therefore, cannot be confined to particular spaces, places, or actors, but is always represented in the transcendence of such set boundaries. The argument that underlies this discussion of democracy is a quite simple one: things could always be otherwise. This is the power entailed by the democratic claim.

The first section of this chapter centres on theories of deliberative democracy, articulated by Simone Chambers, John Dryzek, and Mark Warren. Chambers presents a Habermasian account of deliberative democracy, which might be considered a 'classical' conception of deliberative theory that centers on creating the conditions for non-coercive public debate. In doing so, she relies on an underlying discourse ethic: an appeal to a universal form of reason that culminates in Habermas's 'forceless force of the better argument'. This, however, is a point of contention within deliberative theorists as Dryzek and Warren's accounts attest. Dryzek, in response to agonistic criticisms of deliberative

theory, opens up the framework of deliberative democracy to include forms of emotive speech that would have otherwise been excluded by Chambers' account – however, while Dryzek expands the forms of communication fit for discourse, he maintains the privileging of reasoned argument found in Chambers. Lastly, discussion Warren draws attention to the problem of foundations through his appeal to 'social groundlessness' as the condition for politics. While Warren is included here as a deliberative democrat, his endorsement of the framework is accompanied by a profoundly agonistic understanding of politics and democracy.

The second section of this chapter focuses on post-structuralist accounts of democracy that are either directly critical of deliberative accounts or that challenge the foundations of deliberative theory. The second section begins with Ernesto Laclau and Chantal Mouffe and their discussion of hegemony and practices of articulation. Laclau and Mouffe's account centres around the impossibility of both pre-constituted ends and pre-constituted identities in political struggle. Mouffe's later works are also discussed which endorse some aspects of the deliberative framework as a means of facilitating agonistic politics.

This chapter's discussion of post-structuralism ends with an exploration of Jacques Rancière's clash between 'politics' and 'the police'. For Rancière, politics comes in the form of disruption where those who have, in the ordering of a society, no role in governing act *as if* they did. I conclude this chapter by suggesting how Rancière's position can be reconciled with that of deliberative theory. While his thought cannot be 'structured' into deliberative theory, Rancière's focus on acting *as* the *demos* provides an

alternative to the hierarchical model of institutional democracy that figures so prominently within deliberative democratic theory.

2.1 Deliberative Democratic Theory

> "The strongest man is never strong enough to be master all the time, unless he transforms force into right and obedience into duty."[52]
> Jean-Jacques Rousseau

There is strong connection between deliberative democratic theory and the work of Jean-Jacques Rousseau. While the concept of the general will may prove problematic, and may find some criticism among deliberative democrats, especially those who take an agonistic approach, Rousseau's concern for legitimacy finds its modern representative in deliberative democratic theory. Rousseau's famous quote, "[m]an was born free, and he is everywhere in chains" is followed by a prognosis of the situation: "[h]ow did this transformation come about? I do not know. How can it be made legitimate? That question I believe I can answer."[53] Deliberative democratic theory is, like Rousseau, concerned with how rule can be justified and rendered legitimate – wherein deliberation, in non-coercive environments, is conceived of as a means to that end.

Rousseau's *Social Contract* has two names: *The Social Contract or Principles of Political Right;* in many ways, the second is more compelling. While Rousseau is often portrayed as the radical democrat, there is a deep skepticism that underlies his argument. He makes this skepticism clear when he asserts: "[i]n the strict sense of the term, there has never been a true democracy, and there never will be. It is contrary to the natural order that the greater number should govern and the smaller number be governed."[54]

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[52] Rousseau, J-J. *The Social Contract.* London: Penguin, 1968, p. 52.

[53] Ibid., p. 49.

[54] Ibid., p. 112.

Rousseau's project, the creation of a covenant that all would agree to, is a compromise that does not necessarily usher in a state of democracy (if such an expression can stand) so much as it requires that forms of rule be held accountable to those who are ruled; it does not upset the 'natural order', that superiors command and their subordinates follow, but seeks to transform that power into right – and right must have foundations (*arche*). This project has been taken up by modern deliberative democrats.

In Chapter 1, I argued that constitutionalism provides inadequate grounds for understanding democracy because it does not, in itself, have an explanation of democratic practice. Constitutionalism is a source of power (*arche*) that is external to the power demonstrated in the action (*kratos*) of anyone and everyone (the *demos*). In this section on deliberative theory, this inadequacy of constitutionalism appears again as the tradition's focus on legitimacy leaves aside the question of political action, or what others have called subjectification.[55] Nonetheless, if one accepts that there is an order to things – or perhaps it is better to say that patterns of social behaviour tend to reproduce themselves – then the requirement that such an order be able to justify itself is of great importance.

Simone Chambers, in an overview of the tradition, notes: "[d]eliberative democratic theory is a normative theory that suggests ways in which we can enhance democracy and criticize institutions that do not live up to the normative standard."[56] With its preoccupation in 'enhancing democracy' and its criticism of institutions that are seen as unaccountable, one can take deliberative democratic theory as a stream of theory that is compatible with, although critical of, existing representative governments. Deliberative

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[55] See Norval, A. *Aversive Democracy: Inheritance and Originality in the Democratic Tradition*.

[56] Chambers, S. "Deliberative Democratic Theory," *Annual Review of Political Science* 6(1), 2003, p. 308.

theory does not seek to alter the basis of what we might refer to as the existing 'democratic society', but rather to make it work better. Deliberative theory builds upon existing institutions, aiming to make these institutions more representative, more accountable, and more inclusive. In these ways, it is reasonable to assert that when juxtaposed with post-modern understandings of democracy, deliberative democracy is immediately more pragmatic and prescriptive.

Beyond its institutional appeals, deliberative democrats argue that deliberation is constitutive of democratic legitimacy. Democracy is defined, drawing from Seyla Benhabib, as "a form of organizing the collective and public exercise of power in the major institutions of a society on the basis of the principle that decisions affecting the well-being of a collectivity can be viewed as the outcome of a procedure of free and reasoned deliberation among individuals considered as moral and political equals."[57] Among deliberative democrats, the requirement that all-affected, or all-subjected,[58] be allowed to participate in the decision-making or deliberative process is central to combatting the forms of top-down hierarchical politics found in traditional liberal or social choice theories of democracy. What the extent of this participation entails, however, is an issue of contention as not all deliberation is linked to decision-making powers. This disconnect, between participation in deliberative process and decision-making power, is fruitfully unpacked by Dryzek, whose work is discussed below.

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[57] See Benhabib, S. "Deliberative Rationality and Models of Democratic Legitimacy," *Constellations* 1(1), 1994, p. 27.

[58] Nancy Fraser argues that the all-affected principle can be problematic as presumably all are affected in some way or another as discursive practices alter the social landscape in immeasurable ways. See Fraser, N. *Scales of Justice: Reimagining Political Space in a Globalizing World.* Columbia: Columbia University Press, 2009, Chapter 4.

Deliberative theory holds that processes of deliberation have a transformative effect on their participants.[59] While the agonistic or post-structural accounts surveyed in this chapter are unlikely to argue to the contrary, deliberative theorists stake this position in opposition to liberal or social-choice theorists who conceive of politics as the strategic ground of pre-constituted interest groups.[60] In moving past aggregative models that tally difference into majorities and minorities, deliberative democrats appeal to reasonable processes of deliberation as a learning process that may (or may not) overcome the antagonisms produced by difference. A similar position is made by Mouffe, although she is unlikely to identify as a deliberative theorist, when she speaks of translating antagonism into agonism within the public sphere of the liberal democratic state.[61] While there is widespread support of the deliberative process among varying brands of democratic theorists, deliberative democracy operates within a particular framework that maintains a teleology where deliberation is not only seen as beneficial for participants in dealing with disputes but that deliberation can be expected to tend towards 'progressive' and universalistic ends; the ends of democracy are 'advanced', and certain events can be seen as 'benefitting' democracy. As Chambers notes, "[a]lthough consensus need not be the ultimate aim of deliberation, and participants are expected to pursue their interests, an overarching interest in the legitimacy of outcomes (understood as justification not all affected) ideally characterizes deliberation."[62]

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[59] See Chambers, S. "Deliberative Democratic Theory," p. 307, 309.

[60] For more on this distinction, see Dryzek, J. *Deliberative Democracy and Beyond*.; also, Chambers, "Deliberative Democratic Theory", p. 308.

[61] See Mouffe, C. *Agonistics: Thinking the World Politically.* London: Verso, 2013.

[62] Chambers, "Deliberative Democratic Theory", p. 309.

The main accounts of deliberative theory explored here are represented by Simone Chambers and John Dryzek. While both Chambers and Dryzek identify as deliberative democrats, or in the case of Dryzek, 'discursive' democrats, each presents a slightly different normative framework that alters the scope of what one can expect deliberation to entail. For Chambers, deliberation is a more restricted process that allows for only certain forms of speech in order to maintain her thesis that deliberation ought to be free from coercion. In the end, it is reasoned argument that is seen as the privileged form of speech in deliberation – argument that is supported by Habermas's 'forceless force of the better argument'.

John Dryzek's approach to deliberative democratic theory is, in some respects, a response to the one taken by Simone Chambers that does not radically alter her normative project, yet seeks to address some of the critiques lodged against it. In order to make the deliberative process more inclusive, Dryzek's account seeks to incorporate other forms of speech such as greeting, storytelling, and, even, rhetoric.[63] Unlike Chambers, Dryzek tries to avoid the foundational status of universal reason, embodied in the 'force of the better argument', attempting to refocus on how deliberation can be seen as a way of reconciling, while respecting, difference. Dryzek's contribution highlights the ability of deliberative democracy to incorporate the critiques of agonistic and post-structural democratic theorists[64] – or in Dryzek's terms, 'difference democrats'.[65]

I conclude my discussion of deliberative theory by drawing attention to Mark Warren's reserved endorsement for the deliberative framework. While Warren does not

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[63] The inclusion of rhetoric is in stark opposition to the account Chambers provides. Dryzek makes note of her opposition to rhetoric as a coercive form of speech and provides his own reasons for rhetoric's inclusion.

[64] See Chambers, "Deliberative Democratic Theory", p. 321.

[65] See Dryzek, *Deliberative Democracy and Beyond*, Chapter 3.

argue against deliberative theory, he grounds his understanding of politics on the condition of social groundlessness. This groundlessness that defines our social interactions brings with it the inescapability of contestability (*agon*-ism). Through Warren, we can start to unravel the positions advanced by those I refer to as post-structural theorists who, like Warren, draw attention to the inherent contestability of social organization and the relationship that contestation has with democratic practice.

2.1.1 Simone Chambers and Reasonable Democracy

In *Reasonable Democracy*, Chambers defends the thesis that "the more we employ non-coercive public debate to resolve our deepest collective moral, political, and social disputes, the better."[66] She claims that a discursive political culture that maintains an ethic of discourse is one that will engender belief in the justice of institutions while also holding such institutions to account.[67] While the Habermasian discourse ethic that she appeals to is concerned with ideal conditions of discourse, Chambers contends that the closer we approximate such conditions, "the more confident we can be that the emerging consensus represents a genuine shared interest backed by reasonable convictions."[68] She argues that discursive democracy depends on the institutionalizing of the necessary procedures and conditions of communication, and the interplay between institutional decision making and rationally shaped public opinion.[69]

Chambers outlines four necessary rules or conditions of non-coercive discourse: (1) universality, which suggests that no barriers should exclude certain people or groups

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[66] Chambers, *Reasonable Democracy*, p. 13.

[67] Ibid.

[68] Ibid., p. 197.

[69] Ibid,. p. 195.

from debate;[70] (2) rationality, that persuasion be a product of the 'force of the better argument';[71] (3) non-coercion, that overt coercion, bribery, or threat, be prohibited as a means of persuasion;[72] and (4) reciprocity, that discursive actors be open to persuasion and sincere in their search for agreement.[73] If these conditions are respected, Chambers suggests, we can arrive at an emerging consensus that reflects the general interest of the community.[74]

Chambers' necessary conditions of non-coercive discourse present two concerns for the argument of this thesis. The first concerns, as argued in this section's introduction, the relationship between democratic legitimacy and democracy itself. Chambers argues that in order for authority in democracies to be justified, those who rule must be able to provide reasons for why their authority is in the interests of all affected.[75] While the deliberative process extends beyond the mere giving of consent as decisions must be justified to the criticisms of those subject to them, Chambers does not seek to do away with the division between rulers and ruled. Instead, in her view, deliberative democracy seeks to turn rule into self-rule by proving, through the process of deliberation, that rule is in a general interest that is derived at through discourse.[76] But is that enough? Does democracy require that rulers give reasons that are accepted by all (the *demos*?), or is there more to the concept than this? While the penetration of coercive forms of communication may have been greater, must not the monarch or the aristocracy also

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[70] Ibid., p. 197.

[71] Ibid., p. 202.

[72] Ibid.

[73] Ibid., p. 207.

[74] Ibid., p. 204-5.

[75] Ibid., p. 7-9.

[76] Ibid., p. 8.

provide 'reasons' for their rule? Foundations of power (*arche*) figure heavily into the maintenance of ordered systems of government; divine right, for instance, is one such foundation that seeks to link rule with a principle of (divine) justice. Indeed, Chambers, among other deliberative democrats, acknowledges that one of the benefits of public deliberation is that it engenders institutional stability.[77] While the kind of reasons given to justify rule may vary when the democratic context[78] is presumed, the act of giving reasons is maintained. It does not appear to be a far stretch to suggest that if democratic legitimacy lies in the ability of institutions to provide good reasons for their rule, we could conceivably have enlightened authoritarians claiming the democratic title; perhaps we would (still) call them 'Presidents' or 'Prime Ministers'.

While it is infinitely preferable to have a ruler who generally rules in the interest of their subjects than one who does not, one must interrogate how those interests are formulated and whose interests are being left aside. It may be the case that a nation-state is capable of maintaining institutional stability by consistently appeasing the interests of a majority and ignoring those of minority groups. Can one overlook the ongoing dispossession of First Nations lands and voices when declaring Canada a democracy insofar as successive Canadian governments have been able to successfully maintain institutional stability? Even if one accepts that the Canadian government has attempted to provide reasons for its actions, and even if one accepts that these reasons are sometimes accepted by First Nations communities, the asymmetrical power relationship creates conditions where the democratic state can systematically ignore the interests of those it

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[77] Ibid., p. 10.

[78] I use the 'democratic context' here to refer to the commonplace understandings that are associated with 'living in a democracy'. More specifically, I refer to the background assumptions (in the forms of rights or social norms) of equality or liberty of persons/subjects.

can afford to police, whose resistance can be suppressed. In affirming democratic constitutionalism, one accepts that these practices are, while unfortunate, part of the process and that future concessions by the state may one day (through the project of democratization?) appease these injustices. While in practice, it may be argued that some people cannot get what they want, the systemic suppression of a group's capacity to constitute its own political community over hundreds of years is antithetic to the democratic claim – to the claim that 'the people' have the capacity for politics – and presents a serious shortcoming for streams of democratic theory that seek to ground democracy, and democratic legitimacy, in the workings of the state.

By grounding democratic legitimacy in the ability to provide justification for institutions of power, Chambers binds herself to the pre-existing constitutional ordering of society. While this may provide grounds for the bringing about of reforms to particularly oppressive positions taken by some institutions and governments, it does not call into question the relations constituted through governing. How is power embodied in the *demos* for a deliberative account of democracy? This question appears an extremely difficult one to answer for deliberative democrats, as their appeal to legitimacy and justification serves to reinforce or denounce the positions of particular rulers, rather than to question ruling itself. The problem of specifying how exactly 'the people' can be understood as having 'power' or a 'political capacity', as opposed to institutionally upheld privilege, cannot be addressed by a stream of theory that dedicates its attention to pre-constituted governmental processes. It is the blind spot of deliberative accounts of democracy.

A second concern with Chambers' account concerns her appeal to universal reason. How is one to determine whether a proposition is reasonable or not? If the claim is that those who are subject to rule must be convinced of the justification for that rule, one must call into question the grounds upon which justification is made. Is a claim justified because it is in accordance with an underlying universal principle, or principles, and, if so, how can we separate such principles from those that emerge in the context of particular places and actors? One difficulty with the position of universal principles of justice is that, even when acting as if behind the veil of ignorance, one's understanding of the concept of justice is informed by their lived experiences and by their social conditioning. While an oppressed people, for instance, may provide reasonable arguments to substantiate their claims for self-determination, they cannot, through reasonable argument, transfer the subjective experience of living as an oppressed people; they may explain how their oppression is undertaken, yet it is much more difficult, if at all possible, to show how it feels to be oppressed.[79]

Chambers, drawing from Habermas, argues that the communicative ethic she appeals to is both universally applicable and non-transcendental. She states:

> "That the rules of discourse cannot be shown to be a "fact" of reason in the Kantian transcendental sense or a brute fact of cognition in the Chomskian essentialist sense should not lead us to conclude they are not real. We do not carry these rules around in our heads. These rules describe something that goes on between communicators, not within a solitary thinker; or rather, they describe how we experience what goes on between ourselves and our interlocutors. The plausibility of the rules rests ultimately not on proof but rather on how much sense this description makes to us as communicators, given other things that we believe, know, and understand."[80]

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[79] Norval, A. "'Becoming Black': Acting Otherwise and Re-Imagining Community," in Nichols, R. & Singh, J. (eds.) *Freedom and Democracy in an Imperial Context: Dialogues with James Tully.* New York: Routledge, 2014.

[80] Chambers, *Reasonable Democracy*, p. 121.

From Chambers account, the rules of communication appear in our interactions with one another and are intersubjective. However, according to Chambers, these interactions do not produce the rules, as is the case with Wittgenstein's language games, for she argues that communicative rationality "is a conception of rationality which can account for changes through history and be applied without damage to other cultures."[81] Instead, the rules of the communicative ethic are observed and hypothesized from participation in dialogue, rather than produced by it. The rules that define communicative rationality cannot shift in accordance with different contexts, for its universality depends on its ability to be true at all places during all times.

The communicative ethic is a hypothesis. As noted in the passage above, the plausibility of the ethic itself derives from the extent to which it is applicable in real-life communication. For Chambers, changes made to the communicative ethic do not derive from changes in the actors, situations, or places involved but from a failure to adequately grasp or understand the ethic at an earlier time. Therefore, the content of the communicative ethic may change however revisions must be retroactively compatible, applying to both past and present and all contexts. While past articulations of the communicative ethic may become untenable it is only the articulations of the principle which change, the communicative ethic itself is understood to be unchanging.

Chambers does not presume that communicative rationality can be proven true, in a transcendental sense, but draws from Habermas's notion of reconstruction. We can never be absolutely certain that we have uncovered the communicative rationality, but we can offer a plausible account that is a more adequate explanation than competing

[81] Ibid.

understandings. Herein lies the problem. Why presume that what provides the most adequate explanation in *most* cases must also be true for *all* cases? When limiting herself to a singular universal ethic, Chambers must accept that deviance from the ethic results from a failure in articulating that universal – rather than accept the alternative conclusion, a plurality of ethics and a plurality of forms of reasonable discourse. Neither Chambers nor Habermas are willing to venture into the relativist conclusion that rules are applied in a certain way in one place and differently in another.

A problem with maintaining a singular understanding of reason, and therefore rational argument, is that it must, to maintain its universality, denounce competing claims to rationality. If one follows Chambers in limiting communication in deliberation to 'rational' argument, one must police the boundaries between what is rational and what is not; a function that cannot be undertaken by the participants of deliberation themselves, for each may have competing claims as to what reason is. Reliance on the 'forceless force of the better argument' overlooks the force necessary to maintain the boundaries of reason which make a 'better' argument possible. The strength of one discourse of reason, the alleged universal one, is strengthened further by its ability to propagate itself through its own institutions of education, law, culture, or government; whereas the reason, perhaps taken to be 'mistaken' or 'false' reasoning, of the marginalized or oppressed must confront the 'common sense' manufactured by experiences of the alleged universal. In the absence of any way of differentiating between universal and particular forms of reason, the determination of the status of the universal must rely on the ability to exclude competing claims – in the name of 'progress', or 'development', the oppressed must, by

threat of force, abandon their own understandings of reason and their criterion of rationality.

One example of the conflict between multiple interpretations of reason concerns movements for self-determination. Is it reasonable for groups or movements to demand the right of self-determination? One might assess a claim for self-determination on the economic, political, and social repercussions of independence, while another may appeal to the emotions, longings, and desires of a people to shape their own futures. In the case of the latter, one may ask whether there is any room for desire within rational argument – however this moment of assessment is pivotal. If the deliberative process, understood as part of (if not constitutive of) the democratic process, entails the erections of boundaries that authorize some forms of speech (rational argument) at the expense of others (emotive expression), the category of 'the people' is burst asunder, revealing those who possess the privileged form of speech and those who do not. If one cannot speak the language deemed rational by those who have the power to define rationality, one is effectively cast outside the scope of politics.[82] By enforcing a separation between desire and reason, between emotion and rationalism, the sanctity of order is maintained through the preservation of privilege in the latter through expulsion of the former. To maintain the appearance of universal reason, the contestation of its principles is dismissed as utopian fantasy and desire.

While the conditions of discourse that Chambers outlines suggest ways of improving upon contemporary practices, these conditions cannot equate to *democratic* legitimacy because their existence is suggestive of a counter-democratic claim, namely:

[82] While the focus of this thesis tends to centre on the state, 'the power to define rationality' cannot refer to the state itself. The penetration of market forces, to take only one example, imposes the rationale of economic development on the state system.

that the people must have conditions made available to them in order for them to participate in governance. An approach that stipulates conditions that, if respected, will 'ensure' democratic legitimacy is doomed to fail, as the *ability* of the *demos* to engage in politics is intrinsic, entailed in the democratic claim, or it is nothing.

2.1.2 John Dryzek and Discursive Democracy

John Dryzek's approach to deliberative democracy is more inclusive, or more open to other forms of communication, than the model provided by Chambers. Recognizing the limits imposed by a model of deliberation confined to 'reasoned' argument, Dryzek argues for the place of emotive forms of communication such as rhetoric, humour, testimony, and storytelling, on the grounds that their inclusion allows for greater participation by those on the margins. [83] Leaving aside the presumption that the marginalized are incapable of reasoned argument – insofar as reasoned argument, as suggested for Chambers, refers to a particular form of speech lacking universality – Dryzek argues that the use of emotive forms of speech can create the conditions upon which reasoned argument and deliberation can take place, where such conditions are otherwise absent. An example of this, Dryzek suggests, is the application of rhetoric by Martin Luther King Jr. to move an audience initially unsympathetic to the civil rights movement through invoking the common language of the Declaration of Independence and the American Constitution. [84]

One point of significant divergence between Chambers and Dryzek appears in their dealings with 'real' and ideal conditions of deliberation. Where Chambers' (or Habermas') discourse ethics refer to ideal conditions of communication, Dryzek's

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[83] Dryzek, *Deliberative Democracy and Beyond*, p. vi.

[84] Ibid., p. 52.

expansion of acceptable forms of communication seeks to overcome barriers that exist in non-ideal situations. In Dryzek's example of Martin Luther King Jr., the application of rhetoric is introduced to alter the background conditions upon which deliberation can take place. In this respect, rhetoric is not necessarily part of the deliberative process, but rather a way of creating conditions that most closely approximate the ideal speech situation. Dryzek makes this clear when he notes that emotion must answer to reason[85], and that "the standards to which [alternative forms of communication] are held are rational ones." [86] The privilege Dryzek affords to reason, or rational argument, is consistent with the ideal speech situation of Chambers.

Dryzek's example of Martin Luther King Jr.'s use of rhetoric presents two problems discussed here. In the first instance, attention is drawn to the Declaration of Independence and the American Constitution as the common factors which make further deliberation possible. If it is the case that the common authority of the constitutional documents creates the foundations upon which a conversation could be had, one might interpret the possibility of deliberation as grounded upon an initial submission to the logic of pre-constituted authority. In the absence of an act of submission, without the appeal to the logic (or 'spirit') of the constitution, the reasons given by marginalized persons (in this case, African Americans) fall on deaf ears; it is only through accepting the form of reason contained in the constitutional documents that one's claims are heard and seen as rational arguments. Is it, then, the case that the establishment of a common rationale (the constitutional documents) is indicative of universality? Or, instead, are interlocutors 'forced' to submit to the form of reason/rationale of the stronger party?

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[85] Ibid., p. 53.

[86] Ibid., p. 167.

Returning, again, to Chambers' ideal conditions of deliberation, one must ask whether the 'forceless force of the better argument' is grounded upon the evaluative criterion forged by the non-ideal ('real') coercive force that binds deliberation to the logic of the stronger party. As with the dispute between Socrates and Thrasymachus in *Republic*, the alleged universality of reason/justice is confronted by the reason of the strongest.

The connection between effective deliberation and establishing a common understanding of 'reason' is, albeit indirectly, noted in Dryzek's discussion of interest groups and their efficacy at the state level. He argues that in order to be effective, interest groups brought within the state apparatus "must be capable of assimilation to an established or emerging state imperative."[87] Are state imperatives, then, to be understood as a manifestation of rationality within deliberation? In the case of Martin Luther King Jr.'s appeal to the constitutional documents, the extension of the rights, freedoms, and protections of the constitution to African Americans followed from the logic and spirit of that system itself. The problem with the appeals to reason by deliberative democrats appear, in practice, where marginalized peoples are required to translate their demands or needs into the language of those imbued with institutional power, a process that thereby shapes the forms of demands that can be made. To see the extension of institutional privilege, (democratic) actors are required to translate their demands and creative practices into the language of pre-constituted power, whereby acting politically is reincorporated within the processes of government.

The necessary act of translating one's demands into the language of the form of institutional power presents a second challenge to Dryzek's position: namely, the project

[87] Ibid., p. 83.

of democratization and its teleological foundations. In conceiving of democracy as a project, one adopts a progressive lens that evaluates certain conditions as more democratic than others. Yet, returning to the argument of Chapter 1, the pursuit of conditions draws attention to institutional privileges while foregoing an explanation of how the *demos* is said to exercise power, rather than be subjects of it. While it can be argued that certain conditions best reflect the democratic claim, which suggests that anyone and everyone is capable of engaging in politics, the centrality of the claim resides in the people themselves.

Returning, again, to Dryzek's example of Martin Luther King Jr., the use of rhetoric undoubtedly opened a discussion which aided the struggle for the extension of institutional privilege within the United States, however, in advancing the project of 'democratization' Dryzek's approach leaves aside the question of means, focusing instead on the ends of social mobilization. Where Dryzek's use of democratization is concerned with equalizing institutional privilege in a political community, democracy makes a claim on who is, and can be, political. The two, democratization and democracy, are not entirely unrelated, however the former need not necessarily involve the actors upon whose name the concept is derived. In the case of the civil rights movement, the discourse of democratization may focus on outcomes, while democratic practice, on the other hand, is evidenced by the *demos* literally acting out the capacity to engage in politics, as witnessed in events such as sit-in's or marches where those who are denied the privilege, or right, to act demonstrate their capacity through acting in defiance of the rules of existing discourses of power. It may be the case that democratic practice, as a means of altering social norms, aids the process to expand the privileges afforded by

institutional sites of power (such as the state), however those privileges themselves, nor the process whereby democratic practices are incorporated within routinized governmental practices, reflect the power that is particular to the *demos;* neither the court system nor parliamentary proceedings, for instance, are places where anyone and everyone can advance their claims – let alone be in the same room.

Where Dryzek's inclusion of emotive forms of communication may allow for more expansive participation within existing structures of power, his position does not call such structures of power into question. This should not suggest that these structures are not vulnerable to critique and reformation, but instead that the existence of pre-constituted power structures as authorizing entities is taken as given and unchanging. In situating power in institutions rather than people (or 'the' people), the concern in this thesis is that the latter are subjects of power or, at best, empowered subjects, rather than agents with a power that is their own. Where Chambers and Dryzek, in their appeals to the principle of reason in deliberation, have erected their own foundations (*arche*) upon which a democratic society is to be built, I move now to theorists who call the possibility of such foundations into question and discuss the implications that 'groundlessness' has for democratic practice.

2.1.3 Mark Warren and Social Groundlessness

Referring to agonistic democratic theory as something distinct from deliberative theory can be problematic. As Chambers notes, with the move from consensus-centred aims, deliberative theory has increasingly embraced agonistic foundations and its respect for pluralism.[88] Mark Warren's introduction of conditions of social groundlessness to

[88] Chambers, "Deliberative Democratic Theory", p. 321.

deliberative theory, through Lyotard, is one such account. While deliberative theories that appeal to principles of universal reason tend to promote deliberation as a means of overcoming the conflicts and tensions arising from difference, an agonistic conception of politics tends to temper such expectations, suggesting that the process may at best turn 'antagonism into agonism'.[89] For those who take an agonistic conception of politics, like Warren, difference is 'the stuff' of politics and one cannot anticipate in advance the shape that a politics spurned by such difference will take.

Mark Warren takes a critical approach to deliberative theories of democracy. While he does not argue against the expansion of institutional mechanisms of deliberation, he cautions against the suggestion that such deliberation will produce the "Rousseauian ideal of the state as the political expression of a democratic community."[90] Warren argues that democracy is a way of responding to and organizing politics, wherein politics is conceived as operating under conditions of social groundlessness where norms and claims of knowledge are perceived as problematic and subsequently contested.[91] For Warren, democracy (as a regime) is seen as the terrain upon which the contest, that is constitutive of politics, takes place. To the extent that deliberative mechanisms exist within a democracy, contestation (politics) is channeled in ways that reduce the risk of open conflict and disruption; politics is, then, pacified through the mechanisms of (deliberative) democracy.

In contrast to those who would claim that "everything is political," Warren limits the political to the occasions wherein the taken for granted rules of our social interactions are

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[89] See Mouffe, *Agonistics*, Chapter 1.

[90] Warren, M. "What Should We Expect From More Democracy? Radically Democratic Responses to Politics," in *Political Theory* 24(2), 1996, p. 242.

[91] Ibid., p. 245.

exposed as problematic. And so while everything is potentially political, things become political through contest (*agon*). The groundlessness of the social, taken broadly, creates the conditions for contestability, as any foundations are seen as the product of discursive acts of constitution that are, in turn, subject to reconstitution. Conversely, a foundational principle (*arche*) of the social that establishes itself as universal and unchanging (where constitutions or principles become revered or sacrosanct) eliminates the *justification* of contestability; which is not to suggest that contestation cannot exist in the face of a foundational principle, but under such conditions the act of contestation appears as an injustice and criminal as the foundations in question are removed from discursive challenge.

Warren's discussion of the conditions of social groundlessness that create the possibility of politics emerges from his engagement with Lyotard and the concept of the différend. In a similar manner to Wittgenstein's language games,[92] Lyotard argues that différends appear when the common rules and norms of the social are imperfectly reproduced, or revealed to be un-common to all, thereby verifying the contestability of the social. To speak in terms of language, our ability to communicate is grounded on our capacity to understand one another through a common understanding of the rules of a language-game. When there are multiple, and competing, understandings of a used concept, such as that of democracy, the groundlessness of language is revealed. One may attempt to provide evidence in support of their understanding of a concept, as is done throughout this thesis, by appealing to an origin (*arche*) that may (or may not) provide justification for such an understanding. However the successful justification of an

[92] See Wittgenstein, L. *Philosophical Investigations*. Edited and Translated by G.E.M. Anscombe and P.M.S. Hacker. Oxford: Wiley-Blackwell, 2009.

understanding of a concept is not external to the language-game itself, and therefore cannot presuppose the existence of any universal principles, but is instead produced through participation in the game.[93]

Warren's appeal to the différend as the potentiality of politics can be understood as the constant possibility of a "breakdown of social regulations," akin to the failure to understand one another.[94] Politics emerges when the rules that govern our social conduct are challenged or interpreted in different ways. Warren argues that "[p]olitics involves struggles to find ways of expressing injustices over and against the pressure, built into social life, to routinize conflict resolution."[95] This conclusion leads Warren to the bold suggestion that "politics virtually disappears" when contestation is "ritualized and rule-bound."[96] In this respect, institutionalized representative governments that "produce relatively ordered and routine responses"[97] cannot be taken as synonymous with politics itself; or, to put it differently, the nation-state cannot be conceived as the privileged space of politics, as the terrain of politics is brought to bear through acts of contestation that lack a pre-constituted political space.

Warren identifies democracy as "a good way of responding to and organizing politics."[98] He argues that it is "not an expression of community, but a response to

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[93] In this respect, the focus of this thesis on the meaning of 'democracy' is part of a language-game. I cannot prove my claims 'true', but by drawing attention to the disconnect between power (as capacity) and (institutional) privilege, I can attempt to provide a convincing case as to how contemporary usage of the term undermines the form of power (*kratos*) embedded in the term democracy.

[94] Warren, *What Should We Expect From More Democracy?*, p. 246.

[95] Ibid., p. 246.

[96] Ibid., p. 246.

[97] Ibid.

[98] Ibid., p. 244.

conflict,"[99] wherein conflict can be understood as what is at the essence of the political. Democratic responses to politics are argued to be the "only true political response" when contrasted to theocratic, technocratic, or totalitarian regimes that appeal to foundational claims of the transcendental, reason, or otherwise.[100] Democracy, according to Warren, presupposes the agonistic nature of politics and seeks to create conditions that allow for contestation to take place. Politics begins, then, under conditions where the right to rule by the virtuous (*aristoi*), the wealthy (oligarchs), or the divine (theocrats / monarchs), are denounced as fictitious and the political equality of the *demos* is subsequently affirmed.

As the process of politicization of the self involves the taking of risks that expose oneself to the dangers inherent in becoming/creating the *Other*[101], Warren appeals to the mechanisms of deliberative democracy as a means to make entrance into politics more accessible. With the extension of consultative and deliberative processes, governmental regimes are able to mediate conflicting interests that limit the exposure of risk to actors by affording spaces for "politics" to take place. As Warren identifies politics with the rupturing of pre-constituted practices, the expansion of deliberative processes is representative of the depoliticization and pacification of contestation, thereby making 'politics' both more accessible and less disruptive. The creation of these (deliberative) institutions, additionally, serves to generate trust in the authorities that maintain them, as deliberative process requires the giving of justification of positions.[102]

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[99] Ibid., p. 256

[100] Ibid., p. 247.

[101] For Warren, becoming political involves the creation of contestation which presupposes a difference between claimant and audience. See also Saward, M. *The Representative Claim*. Oxford: Oxford University Press, 2010.

[102] Warren, "What Should We Expect From More Democracy?", p. 259-60.

Warren reserves the term ‘politics’ for conflict/contest (*agon*), and conceives of democracy as the terrain upon which politics may occur, however this distinction is problematic as the spatial metaphor of democracy confines the agonistic character of politics. As Plato’s account, discussed in Chapter 1, indicates, democracy has less to do with the constituting of a terrain than it does with the contestation of such a terrain; it represents a challenge to the authority that underlies the constitution and designation of “political space.” While Warren argues that politics operates under conditions of groundlessness, such a condition can only operate in the absence of an entrenched foundational principle (*arche*). While he acknowledges “democracy” to be the only regime that is truly political, is not all politics democratic? Put another way, are not all grounded societies (monarchies, totalitarian regimes, theocracies, etc.) revealed to be groundless when those grounds are challenged in practice? As a claim of political capacity, democracy is latent within oligarchies and monarchies, existing as a repressed capacity whose realization threatens the order of *stasis* put in place by the rules of order in *archic* regimes.

Where Warren ha conceived of democracy as a noun, this thesis, in drawing from Plato’s democratic city, takes democracy as a verb, designating the acts of freedom particular to the *demos*. In this respect, what Warren calls politics, can be taken as both politics and democracy – the two are inseparable. Within a constituted society, to act democratically is always to act politically; the demonstration of one’s capacity to act over and above what one is ‘authorized’ to do introduces contestation both to the division of rulers and ruled as well as in response to the perceived wrong or injustice that compels action. However, the larger problem may lie in showing how all political action is

democratic. While politics is agonistic, not all contestation is political. In *Politics*, for instance, Aristotle refers to political rule as that of freemen and equals - a form of rule distinct from the monarchies over household and slave.[103] What distinguishes the political relationship from others is the reciprocity stemming from the equality of its subjects; the political subject, or the citizen, both rules and is ruled in turn.[104] In contrast, the introduction of contestation by means of violence and coercion replaces the rule of equals with the rule of the strongest, whereby politics is replaced with order or government.

Democracy is not a regime, a framework, or a method, that "holds open the space"[105] within which society can be built but rather the deterritorialization of political space through acting beyond constituted spaces, practices, and roles. To speak of, as Warren does, 'democratic contexts' is to presume that there could be otherwise, that there could be 'undemocratic contexts.' Admittedly, the widespread belief in the democratic claim creates contexts more sympathetic to democratic practices, reducing (while not eliminating) the risks undertaken in acting politically. Yet if we hold that democracy signifies the capacity to act of anyone and everyone, democratic politics can emerge anywhere, irrespective of a pre-constituted environment from which such action ought to take place. This suggests that a democratic politics is always incumbent, capable of being practiced within, and against, the most repressive of governments. Therefore, contra Warren, it is not that democracy is a preferable way of dealing with politics, but that acting democratically is the only way of *acting* politically. If one is to act politically, to

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[103] Aristotle. *Politics*. Translated by Benjamin Jowett. New York: Dover Publications, 2000. Book 1, 1255b.

[104] Ibid., Book 3, 1277b.

[105] Warren, "What Should We Expect From More Democracy?", p. 255.

introduce contest into one's social relations, the very action itself denies the legitimacy of the rule of others and verifies one's own capacity to act.

In conceiving of democracy as a mechanism for 'dealing' with politics, Warren erects a democracy explicitly *against* politics. He argues, "the best defense against the uncertainties of politics is a democratic response."[106] The assumption is that we must be defended from politics because politics is dangerous, disruptive, and counter to an ordered and predictable society. The mechanisms of (deliberative) democracy are seen as a way of defending against the harms of the unpredictable; as a way of defending oneself from the Other. Warren's argument is that politics is undesirable and should be avoided; however when it does emerge, adequate deliberative processes should be in place to curb the disruptive character of politics. Does the erection of such mechanisms not set limits on what may be contested and how it may be done? If what is being contested are the procedures themselves, does participation in such deliberative processes serve to reinforce their legitimacy?

While deliberative mechanisms might encourage one to introduce contestation, such mechanisms are not themselves democratic. As argued in Chapter 1, the democratic claim concerns the capacity of the *demos* as agents of power, a capacity that cannot be demonstrated through participation in the privileges afforded by the power of institutional bodies. This means that to act democratically, or to act politically, is to take risks; it entails forcing one's position from the margins to plain sight. The existence of a constitutional (*archic*) state that mediates contestation may allow for dissenting voices, but that allowance imposes an element of control upon dissent, transforming freedom

[106] Ibid., p. 261.

without to freedom within. While the broadening and extension of participatory measures within the constitutional state can promote stability, safety, and peace of mind – all of which are typically desirable – the focus of this thesis is on democratic politics as the disruption of such conditions. Democracy may not be desirable from those who benefit from the stability and safety of the constitutional state – it is not for everyone. Safety and stability are built on the suppression of that capacity to act embodied in the term democracy (*demos* + *kratos*), yet some are unwilling to have their voices silenced, despite the risks. Democratic politics, the exercise of the capacity to be political, is for those who have had their histories erased so the dominant narrative could be sanitized, for those who toiled for little or no pay so others could enjoy more leisure, or for those who cannot be as they are or choose to be. The possibility of difference lies within the democratic claim.

2.2 Post-Structural Democratic Theory

Deliberative democratic theory takes a structural approach to democracy insofar as its theorists take democracy as an institutionalized form of government. As a form of constituted politics, deliberative theory's statist ontology can be associated with *arche*. There is a temporality to *arche*, one that lends well to discourses surrounding projects of democratisation, reform, and expansion. To begin (*arche*) implies progression through time and space: a constitution gives birth to a nation-state (it 'constitutes' it into being), governments build upon the principles of the constitution, subsequent governments build upon the foundation of those that preceded them, and so on. Post-structural democratic theory takes a different approach.

Post-structural theories of democracy are *an-archic* insofar as they challenge the existing structured (*archic*) spaces of politics. Rather than attempt to create or reform structures of government, post-structural theories of democracy are concerned with acting democratically or acting beyond the structures which regulate conduct. In recognition of the way that discourses of power shape and inform one's actions, post-structuralists typically do not advocate for structures of their own, drawing attention instead to the agency and creativity of individuals and their ability to transcend such power-discourses. There are two major implications to be drawn from this: the first, that we cannot build a model for a democratic society from post-structural theory. The creation of the 'model' society binds the forms of action that can be undertaken within it, forcing, as Rousseau suggests, subjects to be 'free'. The second implication of drawing from post-structural theory is that it operates from an ontology that centres more prominently on individuals. Rather than seek to impose upon subjects through the coercion of institutionalized power, post-structural accounts of democracy situate their analysis on resistance and change – whereby one shifts from an object of power to an agent with power. When individuals act out their freedom beyond the allowances provided by contemporary power discourses, they threaten the illusion of stability, security, and safety, that passivity engenders; in this respect, one cannot speak of the 'ends' of democracy because the freedom of the *demos* to act creates a multiplicity of outcomes to be arrived at (if only temporarily) by the *demos* itself.

This section focuses on the works of Ernesto Laclau, Chantal Mouffe, and Jacques Rancière. Laclau and Mouffe draw attention to processes of articulation by parties that shape both identities and the ends of political action. Laclau and Mouffe

reject the possibility of pre-constituted identities or aims of politics, bringing both within the fold of discursive practices. For Rancière, I unpack the relationship between politics and "the police" which will expand upon the distinction between *kratos* and *arche* discussed in the first chapter. Furthermore, I draw attention to what Rancière refers to as the "partition of the sensible", as a way of expressing the constituted patterns and order of a society that extends beyond the statist ontology that has tended to predominate discussions of democratic theory.

2.2.1 Laclau and Mouffe: Hegemony and Discursive Practices

This section engages primarily with Laclau and Mouffe's *Hegemony and Socialist Strategy*, while incorporating some of Chantal Mouffe's later works on "the political" and "agonistics." Emphasis given to Chantal Mouffe's later work illustrates a pragmatic, and perhaps increasingly deliberativist, turn in her work. The deliberative turn in Mouffe's work, like Warren's, is reflective of overlapping tendencies in deliberative and agonistic theories of democracy. However, what is at issue, and where Laclau and Mouffe distance themselves from deliberative democratic theory, is their aversion to the possibility of deliberation leading to a consensus that is assumed to have any justification or status external to the hegemonic process itself.

Laclau and Mouffe, in *Hegemony and Socialist Strategy*, are writing in response to a theoretical crisis of the socialist Left. As pluralistic struggles are increasingly waged by diverse identities with diverse demands, the traditional privileged class position is called into question by new forms of social mobilization. The insight of Laclau and Mouffe is as prescient now as it was then, as the mobilization of movements like "Occupy", "Idle No More", or mass protests in response to draconian neoliberal policies attest. What these

movements have in common can be negatively construed as an absence of an explicit class character. This is not to suggest that class elements are entirely absent but that the traditional "working class" identity ceases to offer a totalizing narrative of struggle; or rather, that the *archic* projection of historical materialism, to be realized, must be made "real" through the propagation of its discourse. What is asserted is that "there is no logical and necessary relation between socialist objectives and the positions of social agents in the relations of production."[107] The working class, according to Laclau and Mouffe, cannot hold ontological privilege as the historical agent that will, necessarily, bring about the ends of socialist revolution but instead the argument is that both ends and the agents bringing such ends about are determined in the process of articulation itself; a process constituted by struggle and whose outcome cannot be *a priori* asserted.

A key insight for approaching democratic theory through Laclau and Mouffe is their problematization of the possibility of pre-constituted identity; specifically, this calls the subject of "the people" (*demos*) into question. If "the people" (*demos*) signifies everyone and anyone *at any and all moments*, the category fails to signify anything in particular as its totalizing character leaves no room for an exteriority to which it could be defined against.[108] Alternatively, the understanding of 'the people' (*demos*) that is most commonly asserted, that which is synonymous with a national populace constituted by symbolic, territorial, and social demarcations, lacks any epistemological foundation and can be understood as a hegemonic construction. Insofar as an identity is a construction, it

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[107] Laclau, E. & Mouffe, C. *Hegemony and Socialist Strategy: Towards a Radically Democratic Politics.* London: Verso, 2014, p. 76.

[108] Perhaps it could be asserted that "the people" exists in a relation of exteriority to non-human life or inorganic matter, but such an extrapolation is relatively inconsequential to politics – insofar as politics is concerned with speaking beings that can communicate with one another; for more on the distinction between the subject and that which is excluded from it, see also Walker, R.B.J. *Inside/Outside: International Relations as Political Theory.* Cambridge: Cambridge University Press, 1993.

follows that what is constructed can be deconstructed – that which was created, and therefore non-fixed, cannot be understood as an essential category and, as such, is subject to the possibility of reconstitution.

The impossibility of the essential category, for Laclau and Mouffe, stems from the discursive nature of identity, categories, and language more broadly. Referring to Wittgenstein's *Philosophical Investigations*, they assert that linguistic and non-linguistic elements combine to create a discourse when a signifier (linguistic) is given to the signified (non-linguistic or material subject)[109]; put another way, a discourse can be understood when a name is given to a thing. It is possible, if desired, to draw borders around a territory and capture those who fall within the lines under the category of "citizen", or "the people", but such a category cannot be sustained in the absence of the discursive act of drawing lines – an act which is inherently non-essential. Laclau and Mouffe refer to the linguistic practice of signification as "articulation."[110] In the absence of foundations, or under what Warren refers to as conditions of "social groundlessness", the contest for signification becomes infinite.[111]

While the essential category/identity cannot be maintained, this is not to suggest that categories or identities are devoid of any meaning; instead, what is being argued is that any meaning is subject to contestation and reconstitution; "[e]ven in order to differ, to subvert meaning, there has to be *a* meaning…the social only exists…as an effort to construct that impossible object."[112] Processes of articulation that attempt to partially fix meaning to the signified are undertaken against existing significations, and therefore

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[109] Laclau & Mouffe, *Hegemony and Socialist Strategy*, p. 94-5.

[110] Ibid., p. 93-5, 100.

[111] Ibid., p. 98.

[112] Ibid., p. 98.

against early instantiations of articulation. To a considerable degree, the subversion of existing significations and their rearticulation occurs within the institutional and legal mechanisms of the nation-state. However an analysis of the changing interpretation of principles within the state must take into account the exclusivity of its processes; the right to establish binding interpretation by such institutions, derived from state sovereignty, systematically marginalizes and delegitimizes varying interpretations occurring outside state bodies. The processes of signification and articulation occur in power-laden fields which shape their dissemination.

In combining the insight of Laclau and Mouffe with a deliberative framework, one might argue that Chambers' four conditions of deliberation are conditions that are useful, but not universal. The project of deliberative democracy may be an attempt to create a framework that is reflective of the normative visions held by those it seeks to contain (national citizens or the populace). This project is to be understood as challenged by articulatory processes of subversive identities that respond to injustices or shortcomings of the normative vision of the framework at large, and it is through articulation – which could conceivably be understood as part of the process of deliberation – that the framework is reconstituted in ways that closer approximate the interests of the represented.

In her more recent work, Chantal Mouffe has argued that "instead of trying to bring about a consensus that would eliminate the very possibility of antagonism, the crucial task both in the domestic and international domain is to find ways to deal with conflicts so as to minimize the possibility that they will take an antagonistic form."[113] However

[113] Mouffe, *Agonistics*, p. 23.

Mouffe recognizes the difficulties in establishing an agonistic framework outside of the domestic political community (the liberal democratic state), as the international lacks "shared ethico-political principles."[114] One concern with Mouffe's work is the presumption that such a political community exists at the domestic level. It may be the case that members of a nation-state understand one another as participants in a common community, however the presupposed unity of the domestic sphere and the anarchy of the international is a product of the hegemonic claims of national/international discourses and the ability of these discourses to penetrate and alter the "common sense" of their subjects. In the case of Canada, for instance, it is clear that maintaining/creating the political community has required the suppression of movements which threaten its sovereignty, particularly those of First Nations and the Quebecois. The construction of a political community, especially in a country as geographically expansive as Canada, requires a thorough dissemination of the idea of national identity to create a sense of commonality across groups that may never encounter one another. Mouffe's suggestion that 'political communities' exist at the domestic level requires, then, that we accept the ontological privileging of statism as the terrain of agonistic politics.

While the position in *Hegemony and Socialist Strategy* calls the privileging of specific political spaces into question, Mouffe's later work accepts an agonistic model of the liberal democratic state as a necessary space for engagement. In her defense, however, this gap may have less to do with the theory of hegemony and articulation in *Hegemony and Socialist Strategy*, and more to do with an increasing concern for achieving particular institutional ends. She notes of social movements: "[w]ithout any

[114] Ibid.

institutional relays, they will not be able to bring about any significant changes in the structures of power. Their protests against the neo-liberal order risk being soon forgotten."[115] This shift in Mouffe's position suggests a preoccupation with creating ideal frameworks for agonistic politics that, while open to reconstitution, reconstitute a stable and ordered society. In turning to Jacques Rancière, I explore how this shift from disruption to reconstitution follows moments of democratic politics, yet marks, at the same time, a return to passivity on the part of the *demos*.

2.2.2 Jacques Rancière, Politics, and the Police Order

The reason for drawing attention to Rancière's concept of the presupposition of equality is this: where we start will, in large part, shape where we end up. When discussing democracy, it matters whether or not one accepts, as a starting position, that individuals are capable of exercising politics independent of a pre-constituted state apparatus (or not). If politics is understood as something that can be practiced in the absence of state protections, then politics and democracy can be interpreted as things that are internal to human being – as something that we do; and if this is the case, it does not stand to reason that politics, which denotes a particular kind of *action*, must reside in particular state-sanctioned spaces. If, conversely, one argues that the nation-state is *necessary* to create the conditions that enable us to engage in politics, then politics is externalized from the individual, situated in a constitutional body (supported by its purported monopoly on the legitimate use of violence). If, as Rancière suggests, politics is not reserved for the operation of pre-constituted state power, one can situate politics,

[115] Ibid., p. 77.

democratic politics, as something that is literally available to anyone and everyone at any time. This is a radically emancipatory starting position.

While Rancière's *Disagreement* is generally taken as his principle work in democratic theory, the ideas found within draw from an earlier work, *The Ignorant Schoolmaster*, where he makes the radical claim that everyone is of equal intelligence.[116] In making this claim, Rancière is arguing against both against traditional pedagogy, which operates on a hierarchy of teacher over student, and the Aristotelian division between the reason of the freeman and the slave. Like Aristotle's slave, Rancière contends that traditional pedagogical practice operates on the assumption that the student "participates in reason enough to apprehend, but not to have reason".[117] The student must be led and instructed by the instructor because the student is not capable of instructing him or herself. "The pedagogical myth," he argues, "divides the world into two…[i]t says that there is an inferior intelligence and a superior one."[118] In challenging the logic of this relationship, Rancière aims to reject any form of vanguardism that seeks to privilege the 'reason' of the few at the expense of the many.[119]

The equality of intelligence that Ranciére refers to can be understood as an equality of capacity; this equal capacity of intelligence serves as the background condition for democracy, or the capacity (*kratos*) of the *demos* to act politically. What is being highlighted is that one learns through one's experiences, as a product of the application of will; the *need* for the subject of knowledge to be "translated" into more

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[116] See Rancière, J. *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation.* Translated with Introduction by Kristin Ross. Stanford: Stanford University Press, 1991.

[117] Aristotle, *Politics*, Book 1, 1254b.

[118] Rancière, *The Ignorant Schoolmaster*, p. 7.

[119] We might also see this statement as symbolic of Rancière's break from his own "schoolmaster", Althusser. See also Rancière, J. *The Philosopher and His Poor*. London: Duke University Press, 2003.

accessible terms by a superior intelligence admits the incapacity of the student. In focusing on the application of will, Rancière suggests that the manifestations of intelligence may vary, but the capacity of one to learn, to interpret, and to understand, extends to everyone. One could read Ranciére's argument into the use of textbooks, rather than source texts, in university courses as indicative of such processes of "stultification"[120], where the student reading the textbook is presumed to be incapable of understanding the original journal articles and books from which the textbook's material is derived. What is suggested, in the justification of textbooks, is that the material must be presented in more 'accessible' ways in order for undergraduate students to understand; this can be understood as stemming from the presupposition of *inequality*.

In starting from the presupposition of equality (of intelligence), Rancière challenges the conception of equality as an end; if equality is conceived of as an end, one is forced, by definition, to reject an equality of the present in favour of an equality that is always to come. Despite the tendency of post-structuralists, broadly speaking, to avoid appeals to universal categories, Rancière is explicit in founding his argument on a presupposed, and therefore pre-discursive, notion of equality. However with this foundation comes the acknowledgement that the presupposition cannot be proven. He argues that the problem isn't to prove that all intelligence is equal, but instead to see "what can be done under that supposition. And for this, it's enough that the opinion be possible – that is, that no opposing truth be proved."[121] So while Rancière's argument asks one to presuppose equality, this is posed against the presuppositions of inequality

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[120] In the original text, Rancière uses the term *abrutir*, meaning "to treat like a brute" or "to render stupid." Stultification is taken from the English translation by Kristin Ross.

[121] Rancière, *The Ignorant Schoolmaster*, p. 46.

that we currently harbour. What makes his account tenable is that equality is intrinsically linked to discursive practices. In defense of this thesis, he argues:

> Here is everything that is *in* Calypso[122]: the power of intelligence that is in any human manifestation. The same intelligence [that] makes nouns and mathematical signs. What's more, it also makes signs and reasonings. There aren't two sorts of minds. There is inequality in the *manifestations* of intelligence, according to the greater or lesser energy communicated to the intelligence by the will for discovering and combining new relations; but there is no hierarchy of *intellectual capacity.* Emancipation is becoming conscious of this equality of *nature*.[123]

The equality of intelligence is understood to be an equality of kind, rather than of degree. "We can never say: take two equal minds and place them in such and such a condition. We know intelligence by its effects."[124]

What makes politics possible, for Rancière, is the underlying equality of capacity by anyone and everyone; just as everyone is capable of instructing themselves, Rancière suggests that everyone is capable of challenging the rule of those who claim to govern. Where this argument is made in *The Ignorant Schoolmaster* in terms of intelligence, it is extended in the form of politics in *Disagreement.* Politics refers to the moments when the discourses, practices, and institutions that order our society (which Rancière refers to as "the police" or "the logic of the police") are disrupted by "the part that has no part." By "the part that has no part", Rancière is referring to those who are excluded from the process of governance through the assigning of roles as governed and governor. Mark Warren articulates a similar conception of politics when he states, "[p]olitics involves

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[122] Reference to "Calypso" is from Fénelon's *Les Aventures de Télémaque*. *The Ignorant Schoolmaster* is Rancière's account of an instructor, Joseph Jacotot, recently exiled from France, who finds himself teaching French to Flemish students despite not knowing the Flemish language. Jacotot provides a bilingual copy of *Télémaque* to the students, whereupon they learn to read and write French without his instruction.

[123] Ranciére, *The Ignorant Schoolmaster*, p. 27.

[124] Ibid., p. 46.

struggles to find ways of expressing injustices, over and against the pressure, built into social life, to routinize conflict resolution."[125] However what separates Warren and Rancière's approach is how they conceive of democracy.

For Warren, democracy involves the holding open of space (for deliberation) and its ability "to move the contested into the realm of the merely contestable."[126] While Warren's appeal to social groundlessness, the absence of *arche*, creates the possibility of politics, that politics is to be mediated through the regime of democracy. Rancière may accept Warren's premise of social groundlessness, however, an appeal to institutions does not provide an account of how the *demos* actually acts, and therefore how its *kratos* is demonstrated.

Rancière's approach to democracy, by situating power (*kratos*) in people themselves, provides a perspective that allows for a dissociation between constituted governments and those who are marginalized by that form of organization. In removing the democratic title from the constitutional state, Rancière's approach requires that one re-evaluates their assumptions of government; the modern constitutional state is not representative of the "power of the people", but a form of (hierarchical) organization used to achieve particular ends which, in turn, makes a certain way of life possible. The form of organization embodied by the modern constitutional state can, and does, exclude people. Democratic politics is a reaction to the exclusions of constitutional government, where acts of disruption by the *demos* force the state, and its citizens, to recognize that exclusion.

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[125] Warren, "What Should We Expect From More Democracy?", p. 246.

[126] Ibid., p. 262.

While deliberative democrats argue for the inclusion of those who have been excluded from the process of governing, their inclusion stems from the principle of right embodied in the existing order of government. Inclusion may entail the extension of rights to participate in routinized forms of political practice, but it does not extend to a critique of those practices or a right, for the excluded, to organize themselves. In drawing from Rancière, the extension of institutional privilege from the constitutional state is replaced with the forceful emergence of the *demos* as a disruptive force capable of constituting itself.

2.3 Conclusion

Deliberative democratic theory may provide the most practical and preferable solutions for living in common. If one is to live in an ordered society, it is preferable that those who govern such a society are able to best reflect the interests of those who are governed. However the statist form of organization assumed allows for the possibility of a "democracy" that systematically excludes marginal groups and thereby reproduces circumstances where such groups are continually deprived of any meaningful power. If democracy is understood as "power of the people", the statist framework of democracy must be critically assessed: the privileges afforded to the people by the state must be separated from the capacities of people to operate outside the state.

If the statist ontology of democracy is maintained, one must be willing to accept the systematic exclusion of some as an unfortunate consequence of living collectively. Additional institutional mechanisms may be introduced to offset these exclusions in the form of, for instance, the devolution of powers of self-government, but the model of the democratic state remains. Powerlessness, therefore, becomes a facet of constitutional

democracy for minorities in countries around the world. Constitutional democracies empower their subjects to the extent that the hierarchical power of the state, the sovereign origin of power, defers power to its subjects. The problem with taking constitutional democracies as sites of democracy is that power comes to mean privilege, and privileges are exclusive.

The interests of 'the people' are not unified. The language of the people and their interests that has been adopted by statist forms of democracy conceals, undermines, and attacks the position of those who do not conform by subsuming them within the unified "we" of the national polity. The subject of the national people and their general interests are disrupted by the extra-political, non-institutional, actions of those who are both physically within the nation but beyond its constructed interests. Democratic politics, as disruption, reveals the "we" of a supposed general interest to be an exclusive category that marginalizes those who do not conform to its trajectory. Democracy emerges when the "we" of national politics is exposed as insufficient, when the reach of the claim of "we" reveals an Other that was presumed to be part of the "we".

Can processes of deliberation account for this difference that culminates in democratic politics? This question warrants something of a complicated answer. On the one hand, the expansion of deliberative mechanisms increases the number and diversity of voices that may factor into the decision making processes of the state (or other decision-making bodies). However participation in deliberation presumes a certain commonality that is not, itself, unproblematic. When one is called upon to justify their opposition to the force of the state, the authority of the state, the power relations that render 'the people' subordinate to that force become apparent. To participate in the

deliberative process requires, at the very least, an acceptance of one's subordination to the power of the state. If we take the foundations of democracy, or the democratic claim, to be the freedom of anyone and everyone to live how they want, the demand that difference be justified presents itself as a form of domination.

Democracy, as disruption, will not create ideal model political communities. It will, however, force existing communities to address the threat of dissenting political action. The final chapter of this thesis turns to new ways of conceiving of constitutionalism, situating democracy not in the constitution itself but in the freedom and aspiration to constitute. Envisioning constitutionalism as a democratic practice requires the abandonment of the *archic* center of statist thought that establishes an exclusive right to constitute, to judgement, and to power.

Chapter 3: Indigenous Resistance and Democratic Practice

By defining democracy as a claim that pertains to a particular form of action, one abandons, like Plato, the search for *the* democratic constitution, as the capacity to be free is always a threat to an ordered society. Yet the argument of this thesis has not been to abandon constitutionalism (or to suggest that a society free of order is even possible), but rather to recognize the limitations of constitutionalism as the site for democratic politics. That the democratic claim sets the background conditions of our society, that anyone and everyone is capable of practicing politics, that we operate under "conditions of social groundlessness", or that all our institutions are malleable and subject to reconstitution, is a liberating starting position. The idea that individuals can act differently threatens constitutions (both written and unwritten) that regulate the way one is expected to act, and so those who have sought to exercise control over others have acted to suppress that power. While this act of suppression is typically associated with the history of colonialism, colonialism is not a thing of the past; it persists internally within contemporary nation-states. This chapter explores how the struggles of First Nations within Canada can both embody democratic practices and serve to reconstitute order in meaningful ways. In drawing from these experiences, this chapter provides a new way of approaching constitutionalism that dispenses with the exclusivity entailed by modern sovereign states.

Constitutionalism is unavoidable in some form or another. As people interact with one another, even in conversations on the street, they reconstitute their relations with one another, their experiences reconstitute their ways of being in the world, and in acting (or

acting differently) they constitute the world they live in.[127] This form of constitutionalism, of constituting the world into being through one's actions, embodies the *ethos* or spirit of democracy discussed in this thesis, insofar as the actions that constitute them are situated in the everyday practices of everyone and anyone. What has been at issue throughout this thesis have been those forms of constitutionalism, such as that enacted in the name of the state, which suppress the freedom of the *demos* to engage in political action beyond the institutions where the ability to (re)constitute is policed.[128] How might constitutionalism look differently?

One aspiration for constitutionalism, highlighted in Chapter 2, is that the discursive acts that bring it into being take place in a context free of coercion. While surely this is part of the aspiration towards a constitutionalism more sympathetic to democratic politics, as coercion forces individuals to abandon their capacity to act freely, the appeal to a 'forceless force of the better argument' slips a standard of reason into constitutionalism that may reflect the values of those who benefit from an asymmetrical relationship of power within the state. As Chantal Mouffe's argument suggested, the ability to turn antagonism to agonism rests on 'shared ethico-political principles' upon which reason can be counted among. While this does not suggest that reason cannot be found, it does call into question whether groups with, for instance, nationalist aspirations and a history of oppression can accept the standards of reason set by their oppressors –

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[127] While I have chosen to draw attention to contemporary Indigenous acts of resistance, the idea of constituting a society into being through the overlapping and innumerable acts of individuals and groups is expressed by urban theorists who have influenced my thoughts on the subject. See Magnusson, *Politics of Urbanism*; also Lefebvre, *The Urban Revolution.*

[128] In his book, *Strange multiplicity*, James Tully refers to the imperial tendencies in national constitutionalism as 'modern constitutionalism'. This is contrasted with contemporary constitutionalism, taken to be a more naturally occurring form whereby constitutions are reconstituted through practices at a 'sub-constitutional' level. See Tully, J. *Strange multiplicity: Constitutionalism in an age of diversity.* Cambridge: Cambridge University Press, 1995.

often tied to 'national interests' that exclude their own.[129] While deliberation may produce ideal outcomes, the ability of the process to achieve them requires that parties find common ground.

Another aspiration for constitutionalism is found in the desire for inclusivity. If all within a society are bound to a constitution, and standards of justice do not allow coercion and assimilation to a singular ideal, then those who are governed by rules ought to have a role in (co)creating them. By expanding multicultural policies or devolving powers of local self-government, those who live within a broader national community are given greater opportunities to participate and shape its politics. But what does that inclusion mean, and, more importantly, what are the power dynamics at work within constitutionalism that frame inclusion as something to be given?[130] Can current claims of state sovereignty allow for a form of constitutionalism that is truly a collective enterprise, rather than a privileged field of action monopolized by politicians, lawyers, and lobby groups? If democracy implies a freedom of action (or perhaps a freedom to constitute) on the part of the *demos*, then a constitutionalism that reflects the democratic ideal is incompatible with the state as sovereign – or at least where sovereignty is understood in terms of exclusivity and the exclusive right to decide.

Chapter 1 situated democratic politics in the acts of resistance to the discourses of power which work in the form of constitutionalism to suppress the freedom of the *demos*,

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[129] Tom Flanagan, for instance, suggests that First Nations, to achieve their economic, political, and cultural goals, must assimilate more deeply within the liberal capitalist democratic state. The basis for his argument is the assertion that liberal market democracy is the best system we have, and any variance with it slows 'progress'; see Flanagan, T. *First Nations? Second Thoughts.* Montreal: McGill-Queen's University Press, 2008.

[130] One concern is that in extending the privilege of inclusion to others, the state reifies the relationship that places itself as sovereign actor and the recipients of privilege as objects that are acted upon. See Day, R. "Who is this *we* that gives the gift? Native American Political Theory and *The* Western Tradition."

of anyone and everyone, to act. One way of looking at resistance here may be through the lens of sovereignty. As individuals exercise their own form of sovereignty, found in the capacity to act (*kratos*), the sovereignty of the constituted nation-state (*arche*) is called into question. When framed in this way, struggles by sub-national groups for sovereignty challenge both the constitutional order which renders them subjects of, rather than participants in, government, in addition to the sovereign claim of the nation-state. Beyond the constitutional state, the focus of this chapter on the resistance of First Nations draws attention to less overt forms of constitutionalism, to social patterns which alter the way one experiences life as a woman, or as a colonized subject. These patterns of social reproduction constitute, in their own way, the norms that inform our interactions, embedding in our collective consciousness ideas about race, gender, nation, or culture.

Chapter 2 explored the work of several contemporary deliberative democratic theorists and their attempts to overcome the power asymmetries which contemporary statist 'politics' exemplifies. In this chapter I hope to draw from their motivations, those of inclusion and non-coercion, through an account which affirms the power of the *demos* to reconstitute. Insofar as the people submit their claims to a power other than themselves, so that such claims may pass the test of reason, democracy is foregone for the security and stability afforded by statism. Yet there are costs, as this chapter suggests, of security and stability that are not borne evenly by those within the state's sovereign territory. In Canada, peace and stability in the domestic sphere is made possible through a long and ongoing silencing of Indigenous histories, cultures, and peoples. In looking towards the possibilities of a constitutionalism that reflects democratic capacity, a

constitutionalism tied to sovereign right must be abandoned for one that affirms the freedom to act and the resulting possibilities for difference.

This chapter is divided into two sections that are not unrelated but provide emphasis to two different aspects of this thesis. The first section, focusing on Idle No More and activism, is primarily concerned with the disruption of existing forms of constitutionalism through democratic practices that are grounded in the capacity of Indigenous peoples to act independently and outside of the privileges and restrictions set in place by the state. This discussion of Idle No More centres largely on its theoretical aspect rather than on particular events at certain spaces or times, focusing on the logic of resistance and the inspirations for the movement. The second section looks at claims for autonomous Indigenous nationhood and the ways in which the language of constitutionalism and sovereignty is used and used differently.

3.1 Social Movements and Idle No More

Social movements are disruptive by nature. The term itself invokes ‘movement’ to signify the desire for change: to move from where we are now, to where we could be. However attaching the democratic claim to any and all social movements can be problematic. On the one hand, one could consider the means used by social movements to advance their cause. While the mass protest, for instance, presents itself as a counter to the apathy typically associated with citizens and the normalized uses of public spaces, it may also operate within the boundaries afforded by the state apparatus. The protection of free speech allows for protests to occur, and collaboration with police regarding routes, times, or turnout may ensure the maintenance of public order and security. In situations where the state maintains control over the protest itself, for instance, it cannot be shown

that the *demos* is exercising a capacity to act (*kratos*) that is intrinsic to being. Rather, the mediation of movement by the state affirms its sovereignty as the focal point (*arche*) of power and authority. Disobedience, as the negation of rule and authority, must play a dominant role in social movements if they are to be representative of that capacity to act.[131]

One point of concern, when seen from the vantage of the democratic claim, is the role of leadership and the presence of internal hierarchies within democratic movements. The introduction of hierarchies (*hier* + *arche*) within social movements that separate a vanguard elite from the undifferentiated mass constitutes an internal ruler/ruled relationship that may suppress the freedom to act by the latter. It may be the case that 'leaders' present themselves as exemplars of the logic of the movement, as individuals who are capable of translating the ideas, motivations, and emotions of a people to an audience that may be otherwise unsympathetic. Yet, the ability of an exemplar to translate or articulate the movement can suggest the existence of a unified discourse that may otherwise be lacking, potentially drowning out the voices of those who have dissenting opinions. While I cannot resolve this tension here, I would suggest that exemplars may be valuable in advancing the interests and position of those concerned, while not embodying the distinctly democratic character of social movements aimed at disrupting entrenched discourses. While they may be useful, they may also reinforce the elite-centric norms of exclusive constitutionalism.

The form of organization that a movement practices may substantially alter the possible outcomes of action. In the case of elite-led movements, activism may be geared

[131] This does not mean that authorized rallies in support of particular causes do not create change or that they are not promoting some sense of good, but they are not explicitly democratic insofar as they do not challenge the relationship between rulers and ruled reified by the state.

towards attaining particular ends from the governments or organizations they appeal to. In such circumstances, order can be imposed within the movement to ensure that the actions undertaken by activists are well-supported and palatable by the dominant society.[132] By enforcing uniformity among activists, hierarchically organized movements are able to maintain their image, orchestrate resistance over a longer period of time, and engage in negotiations with state elites in a way that masses cannot. While elite-organized social movements may be more effective at negotiating with the state, the danger of such movements is that they reproduce a form of hierarchical politics that marginalizes and depoliticizes their members. As is the relationship between the citizen and the state, the activist becomes a subject to the power of the elite whereby the right to be political is afforded to the latter.

Leaderless movements that organize horizontally, rather than vertically, promote a form of activism that affirms the equality of its members. In this respect they are democratic insofar as members are internally freed from hierarchical constraints. The freedom of leaderless movements changes the character of a movement from singular to plural as their members freely organize themselves in concert with some and against others. The so-called "tent cities" of the Occupy movement are suggestive of this form of mobilization, as the cultural space of the "city" itself gives rise to the creation of sub-groups with varying interests and objectives that need not conform to any uniform message. The possibilities for such movements have, in recent years, been threatened by the policing of 'public' spaces and enforced evacuation of the cultural space necessary for the reproduction of the movement. It is, in other words, difficult to assess the potential

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[132] Eisenberg, A. & Kymlicka, W. "Bringing Institutions Back In: How Public Institutions Assess Identity", in Eisenberg, A. & Kylicka, W. (eds.) *Identity Politics in the Public Realm: Bringing Institutions Back In.* Vancouver: UBC Press, 2011, p. 3.

that such movements, which rely on the availability of safe public spaces, have to change dominant power discourses.

How does Idle No More fit within this thesis? While there may be those who consider themselves leaders, either of the movement or of their communities, Idle No More can be interpreted as a claim that gestures towards the kind of disruptive action practiced. What does it mean to be *Idle* No More? To act, to rebel, to speak and have those words heard; the claim is one of reckoning, a claim that addresses a history of colonial mistreatment where Indigenous peoples have been treated as passive objects of power with a demonstration of their own power to act. It is a reversal of the depoliticization of a specific group of subjects. Rancière argues, "if there is someone you do not wish to recognize as a political being, you begin by not seeing them as the bearers of politicity, by not understanding what they say, by not hearing that it is coming out of their mouths."[133] Idle No More is the undoing of a longstanding process of colonialism, whereby the colonized have been forcibly removed from politics, denied the right, or recognition, of the capacity to freely constitute their own communities. Idle No More is constituted by a series of actions which affirm the principle of the democratic claim that anyone and everyone can exercise political capacity.

Idle No More aspires towards the development of sovereignty through the resurgence of nationhood. It is a response to the colonial narrative that has undermined the sovereignty, and therefore the right to act politically, of First Nations in Canada – although, the movement is not confined to Canada. The move towards nationhood or sovereignty does not preclude those involved from engaging with the Canadian state

[133] Rancière, "Ten Theses on Politics", p. 38.

especially where the latter introduces policies pertaining to Indigenous peoples and territories,[134] however in aspiring towards more than a consultative role in Canadian policies, their engagement does not stop with the government either. While there may be those who occupy leadership roles outside of the movement, or perhaps within (if we privilege particular sites as constituting 'the' movement), Idle No More is grounded on grassroots participation, experience, perspectives and concerns. The experiences of its participants, those who live as colonial subjects, who are racialized, and who are pushed to the margins of Canadian society, give the movement its sustenance.

While the focus of this thesis is centred on the constituted relationship between rulers and ruled found within the state, understanding Idle No More requires taking into account an intersectional perspective that recognizes not only statism, but racism, sexism, and colonialism. In the case of Indigenous peoples in Canada, the history of the Indian Act, for instance, points to the many ways in which race and gender have been used as grounds for constitutional exclusion. However, even before one looks at the way race or gender became institutionalized within Canadian policy, one must look at the creation of the category of "Indian". By creating the category of "Indian" or "Status Indian", the Canadian government constituted both a subject and a means through which to apoliticize Indigenous peoples. Part of Idle No More's struggle, then, means revoking the state's authority to categorize through articulating for themselves what it means to be Indigenous.

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[134] Marc Woons identifies the beginning of Idle No More with reductions in environmental protection of land and water in Indigenous territories by the Canadian government. See Woons, M. "The "Idle No More" movement and global indifference to Indigenous nationalism," *AlterNative*: *An International Journal of Indigenous Peoples*, 9(2), 2013, pp. 172-77.

The logic of constitutionalism affects innumerable aspects of our lives, and can appear both in written and unwritten forms. While legislation may be passed, for instance, that seeks to overcome racist or sexist policies in the workplace, in the home, or in politics, we know that these forms of oppression are not confined to their institutional forms. Norms that penetrate our conscious and subconscious mind, that influence our actions and dealings with one another, constitute a way of being and seeing in the world symbolically, socially, and culturally. The image of woman as nurturing, emotional, sexualized, and fragile is juxtaposed with man as leader, strong, and stoic. In grappling with colonialism, Taiaiake Alfred draws attention to the ways in which the project of decolonization and nationhood requires the challenging of contemporary attitudes and norms concerning Indigenous women. At the forefront of this challenge, he notes, are Indigenous women exercising leadership, independence, competitiveness, and confidence, confronting sexism through their own accord.[135] With the prominent position of women in Idle No More as organizers and leaders, Indigenous women have continued to reconstitute their position, both within their communities and within Western Settler society. This form of disruption, through the oppressed exercising their power to act, interrupts the logic of a hierarchical constitutionalism which separates subjects and agents of power – it represents a way of acting democratically.

The experience of colonialism for First Nations represents both the negation of recognition of a people's (*demos*) right to rule themselves (*kratos*), in addition to the enforcement of a racialized division between "Indians" and Canadians. While some critics argue that the 'introduction' of race into politics is an affront to the liberal

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[135] Alfred, T. *Peace, Power, Righteousness: An Indigenous Manifesto*. Oxford: Oxford University Press, 2009, p. 62.

democratic model, the two are inseparable within the context of colonialism.[136] Decolonization requires the recognition of race and its pervasiveness in Settler society – one cannot be 'colour-blind'; it requires confronting the social, cultural, political, and economic consequences of policies both past and present.[137] To this effect, movements, like Idle No More, that strive towards nationhood and sovereignty reassert, through action, the capacity of racialized persons to engage in politics, challenging the state-imposed category of "Indian" that has incorporated Indigenous peoples as subjects of the Canadian state.

How do we judge the success of a movement like Idle No More? This will depend on the criterion of the spectator. As for associating the claim with democracy, it does not matter to that argument whether Indigenous peoples are able to achieve a form of separation from the Canadian state or whether they are capable of utilizing the movement for gains within the framework of government. In exercising 'civil disobedience', by organizing their communities and by publicly acting out their dissent towards the Canadian state, Indigenous peoples have acted out that power to act, independent of any 'right' ordained by the state to do so. The impossibility of a single constitution in Plato's democratic city is the product of the freedom of its citizens – that those belonging to the city possess a freedom to act beyond the constituted boundaries of constituted society. By acting out their resistance, rather than confining themselves to the privileged forms of action within the institutional order, participants in Idle No More have asserted

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[136] See Flanagan, *First Nations? Second Thoughts*, p. 194.

[137] Paulette Regan addresses the need for Settlers to recognize the ways in which their actions reinforce a colonial narrative to create the possibilities of decolonization amongst themselves. See Regan, P. *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada.* Vancouver: UBC Press, 2010.

themselves as the *demos*. The bigger question may lie in whether Canadians, as such, qualify as democratic subjects in Plato's democratic city.

3.2 Indigenous Nationhood

When Chantal Mouffe argues for the creation of agonistic frameworks in government, she is skeptical that such a framework can be extended internationally. What makes an agonistic politics possible, according to Mouffe, is a common ethico-political framework that both parties are committed to. While an argument could be made that a common framework already exists within Canada, and perhaps that those arguing for nationhood and sovereignty are misguided or lack appropriate or adequate reasons, I will presume that those advocating such a position are not under a form of 'false consciousness'. To take such a position suggests that there is an impartial or correct way of understanding identity, something I argue against in Chapter 2 with regards to universal reason. In this section I explore how the existence of a common framework, or a common understanding of ideas and terms, contributes to the desire for autonomy, sovereignty, and nationhood, and how this desire may differ from Western understandings of such terms.

Why avoid the liberal democratic framework currently on offer within the Canadian state? To accept the framework of the liberal democratic state, at least as it appears in Canada, is to accept its foundations in individualism, its understandings of (private) property, its connection with capitalism, and the commodification of nature that is a product of such positions. One may carve out reforms and allowances, one may, for instance, appeal to the state for fishing and hunting rights, advance a claim for the protection of lakes and forests or for rights over burial spots, but the extension of such

privileges by the hand of the state do not, radically, alter the framework itself; at best they slow the process of the commodification of land, air, and water, at worst they tie Indigenous peoples to a process of appeals which strengthen the sovereign claims of Canada. Alfred argues:

> [Indigenous peoples] need to realize ways of thinking that perpetuate European values can do nothing but ease the pain of colonization and return us to the harmony, balance, and peaceful coexistence that were – and are – the ideals envisioned in all traditional Indigenous philosophies. In fact, it is *not possible* [emphasis added] to reach those goals in the context of Western institutions at all, because those institutions were designed within the framework of a very different belief system to achieve very different objectives.[138]

Through working outside Western institutions, Alfred looks to the possibilities offered by a return to Indigenous traditions and conceptions of government. In doing so, by working outside the Western framework, Indigenous peoples create, for themselves, models that reflect, rather than merely accommodate, their social and cultural formations.

One point of variance between the cultural framework of mainstream Western society and Indigenous ones, Alfred notes, is the idea of justice. He argues that while Western notions of justice are rooted in an individualist and materialist notions of equity and sameness, or equal treatment, Indigenous conceptions are rooted in an ideal of balanced coexistence among all humans, animals, spirit beings, and the Earth.[139] In this respect, Indigenous justice, according to Alfred, means restoring justice – rather than, for instance, exacting retribution through jail or fines. The implications of the inclusion of non-humans in Indigenous conceptions of justice means that the protection of the environment is imperative, not merely for anthropocentric reasons, but for its own sake.

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[138] Alfred, *Peace, Power, Righteousness*, p. 65.

[139] Ibid.

Another significant point of variance regards the way decisions are made. Against the agonistic and adversarial model that Mouffe champions, Alfred argues that Indigenous decision-making aims towards consensus or, where consensus is unattainable, compromises that reflect the voices of dissenting opinion.[140] One could argue that this already occurs, to some extent, within the liberal democratic model as parties attempt to attract votes, however Alfred points toward the disregard of those who are not seen as potential party supporters. For instance, if a party does not expect to attract environmentalists, and environmentalists are rare among party supporters, it may be 'safe' for a party to disregard that position. While I am wary of consensus models of decision-making, Alfred's abandonment of the liberal-democratic state model may limit the degree to which dissenting opinion is suppressed as groups may be smaller – and perhaps more homogenous. Alternatively, it could be that leaders do not harbour the same ideals of individualism and, therefore, are more integrated with their communities – they cannot flee to Ottawa, they must run into their 'constituents' on a daily basis.

When speaking of Indigenous nationhood or sovereignty, I draw from Taiaiake Alfred's philosophy of "anarcho-indigenism."[141] While this form of nationhood may not be what all those seeking autonomy have in mind, it does evoke a very different notion of sovereignty and inter-nationalism than traditional Western articulations of the concepts. This is not to suggest that dissenting positions within the Western tradition have not articulated similar ideas, but that anarchism, for instance, does not occupy a prominent role in informing contemporary practices of government. By combining anarchism with

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[140] Ibid., pp. 69-70.

[141] Alfred, T. *Wasase: Indigenous Pathways of Action and Freedom.* Toronto: University of Toronto Press, 2009, p. 45.

Indigenous cultural and social traditions, Alfred's articulation of anarcho-indigenism is "fundamentally anti-institutional, radically democratic, and committed to taking action to force change" in ways that reflect the traditions of Indigenous nations.[142] The association of anarchist philosophy with Indigenous struggle suggests that Alfred's concept of nationhood or sovereignty differs fundamentally from the constitutionalism that I have associated with the modern liberal democratic state. The object is not to replace the rule of the existing Canadian state with a new, or many new, Indigenous state(s), but to overcome the forms of hierarchy endemic to that form of organization.

In a similar vein, Richard Day draws a connection between the form of autonomy envisioned in the 'Two Row Wampum' and the federalism of Pierre-Joseph Proudhon.[143] The symbolism of the 'Two-Row Wampum' is of two boats travelling side by side through a river, where one boat is to represent Indigenous peoples and their ways of being, while the other represents white people and their own ways of being. The message behind the Two-Row Wampum is that while the two boats are travelling together, side by side, in the river, they are travelling in two separate boats with neither trying to steer or control the other.[144] Likewise, as Day notes, the Proudhonian notion of federalism draws on the idea of a "plenitude of autonomies", whereupon each grouping is tied together on an equal and reciprocal basis.[145] "In federal systems based on a plenitude of autonomies, there is no 'hovering sovereign' that would be capable of devolving or granting rights or privileges to subordinate entities. Rather, *the constituent entities grant certain limited*

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[142] Ibid.

[143] Day, "Who is this we that gives the gift? Native American Political Theory and the Western Tradition".

[144] Ibid., p. 190.

[145] Ibid., p. 191.

rights to the larger and broader levels of the federation."[146] This conception of power displaces, to some extent, the *archic* nature of contemporary states where power derives from the centre, the nation-state/constitution, and is subsequently distributed (in the form of privilege) to lower orders of government.[147]

Given the present context, there are some problems with realizing the forms of anarchist organization put forth by both Alfred and Day. One prominent challenge is the incompatibly of anarchist organization with contemporary capitalism. In the absence of state coercion and force, the stability and security of contracts necessary for the reproduction of capital are put at risk. It would, foreseeably, be challenging and costly for private interests to exploit natural resources on the territory of others without their consent in the absence of coercive agents of the state, such as police, the military, or the legal system. While the victims of such everyday violence may not object, it is imaginable that those who have not experienced these forms of coercion may see such disruption as a halt to "human progress."[148] However these are theoretical problems. In practice, Alfred and Day's ideas of nationhood are aspirations that are forged through negotiations, conversations, and compromise.

Another significant challenge for democracy is the threat of reproducing the same forms of hierarchical organization in Indigenous nationhood as exists under Western notions of sovereignty. Furthermore, constructing a nation suggests the creation of an

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[146] Ibid, pp. 191-192.

[147] I recognize that this claim may be problematic depending on the ways in which the smaller groups of Proudhon's federation are organized. They may, for instance, mimic the state at a micro-level. Presumably a federation of organizations would negotiate forms of asylum in the event of localized tyrants, but this is purely hypothetical. The critique of things that have not come is often used to justify an always less-than-perfect present into complacency. In speaking of democracy as a freedom culminating in infinite possibilities, I am weary of the dogmatic defenders of progress.

[148] See Flanagan, *First Nations? Second Thoughts*, Chapter 10.

imposed and constraining logic which curbs the freedom of its members by enforcing a degree of uniformity. There is a tension, then, between the democratic moments of disruption found in the activism of Idle No More, and the constructive tendencies associated with nationhood. It is unrealistic, however, to try to situate democracy, as it has been described in this thesis, within emerging Indigenous nations as the possibility for doing so is tied to a constitutional understanding of democracy. Instead, the democratic politics of Idle No More contributes to the possibility of nationhood by altering existing discursive conditions while the task of constituting a political community that breaks from existing forms of exclusion marks a return to *archic* politics.

In Chapter 1, I argued that democratic politics is characterized by a reversal of subject positions. It involves moving from a subject of the rule of another, to possessing the capacity to rule oneself. In overcoming the existing colonial distribution of power, Indigenous peoples must create their own futures: the extension of rights of self-government does not address the asymmetrical power relations upon which the relationship is based. Glen Coulthard, in drawing from Fanon, argues a similar point, noting that empowerment for Indigenous peoples comes alongside critical individual and collective self-recognition through transformative "on-the-ground practices of freedom."[149] This does not mean that there will not be negotiations: there will. But that negotiating power from the source, from the state, reifies that source as a site of power – the point of this thesis has been to dislocate it, to exercise the power intrinsic to the *demos*.

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[149] Coulthard, G. "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6, 2007, p. 456.

While I have spoken of some aspirations for Indigenous nationhood, these aspirations are not divorced from contemporary conditions. The state exists, it is a site of power, and it will affect the lives of its subjects; it is important that institutional privileges are preserved. One concern, following Chantal Mouffe, is that approaches of critique that withdraw from institutions leave themselves open to re-articulation by 'non-progressive' forces.[150] In other words, while one critiques the role that the Canadian state has in perpetuating the colonial relationship for Indigenous peoples, to disengage from that state is to leave themselves open to its power. If Indigenous peoples abandon struggles within the institutional mechanisms of the state on the grounds that doing so diminishes their claim to autonomy, they leave their current positions vulnerable to one-sided policies that go against their interests. Mouffe's concern for building a 'progressive' political movement may prove useful for the mobilization of Indigenous resistance, however the argument of this thesis has not been about how to best realize ideal conditions. One may build a highly effective movement for achieving a favourable position within existing institutions but that movement need not be democratic. As suggested earlier, it may be that hierarchically organized movements are better at achieving such ends.

3.3 Conclusions

The importance of democracy is not to get from A to B, nor to realize certain ideal conditions, but to displace privileged claims to politics which deny the political nature of their subjects. It may be that Idle No More does not translate into sovereignty or autonomous nationhood. It may not even translate into policy reforms, but a focus on

[150] Mouffe, *Agonistics*, pp. 73-4.

ends should not preclude us from looking at the importance of means. Idle No More hints towards the endless realm of possibilities made available through democratic practice. The power to act, or the capacity to act, is not something that is given by constitutional states – it is suppressed. The democratic city cannot have a singular constitution unless its citizens abandon their freedom to act and cease to be the *demos*.

The freedom to act politically may be, at the same time, a freedom to constitute that is subsequently restricted by the constitutional order of the modern state. This freedom to constitute, to participate in the discourse, competes with those claims which reserve politics for certain forms of speech, by particular actors, in given spaces, but, because that freedom is equated with one's being a human in possession of consciousness, the use of freedom reveals its suppression as belonging only to the claims backed by the powerful – lacking, therefore, any pre-discursive foundations.

It may be that the form of democratic politics I have articulated in this thesis is unappealing for most. However the point of writing this was not to appeal to the majority but to locate a point of tension between the concept of democracy as it was presented by Plato and the one we receive today. In many ways, Plato's distaste for the idea has been reconciled by modern constitutionalism, as the freedom of anyone and everyone to act how they like has been suppressed in the name of 'the people', freedom, and equality; but not all are convinced by this sleight of hand. The struggles of Indigenous peoples against rule in the form of colonialism, racism, sexism, and statism, suggest that the kind of action characteristic of Plato's free city can still be found wherever people find themselves helpless to act within the constitutional order; where they are forced to act beyond it.

In avoiding a focus on achieving particular ends, this thesis may leave something to be desired. I have not, for instance, argued for a greater redistribution of wealth, the extension of environmental protections, or the protection of certain rights or privileges. These are all important, but they belong to another project. In viewing democratic politics as a disruption of taken-for-granted sites of politics, the existing frameworks of power are called into question. What gives states the authority to grant rights? What constitutes a state? That a form of power, the capacity to act politically, is not derived from others, allows oneself to challenge the points of privilege where, for instance, issues regarding the distribution of wealth or the protection of the environment are settled. As a threat, democratic politics demonstrates how the transformation from idle subjects to agents of power jeopardizes the possibility of hierarchical power, forcing it to concede and submit. While the *demos* may not control the institutional apparatus, the actions of its members may force, by threat of disruption, their inclusion into decision-making processes.

Conclusion

The problem this thesis has addressed is one of signification: what does democracy mean? By conceiving of democracy as a constituted political regime, modern nation-states have displaced the *demos* as bearers of the democratic title by replacing an intrinsic capacity for politics with the extension of the privilege to participate in institutionalized mechanisms of government. However in situating democracy outside the people themselves, the statist ontological perspective allows for the possibility of democracies that systematically exclude marginalized populations from the right to rule. Insofar as modern democratic states rule in the interest of the represented, it stands to reason that some dissenting and marginal voices which fail to conform to the supposed 'general interest' will be excluded. When democracy is translated as "the power of the people", the experience of those who are continually excluded from the process of ruling in "democratic" societies seems counter-intuitive. One must ask whether this is a failure of practice that can be reconciled with appropriate reforms, or whether the problem lies in the way we are defining democracy.

This thesis has been concerned with displacing the statist ontology of democracy in contemporary democratic theory. More specifically, it is directed at the abolition of the 'right' to politics. When Aristotle refers to man as a political animal by nature, his appeal to nature signifies something intrinsic to human existence – specifically, it is the capacity to speak and to articulate a conception of the good. Aristotle's assertion does not rely on a system of rights or pre-constituted political regimes, politics is something that we, as human beings, do when we come together in the *polis*. For Aristotle, politics is bound to our actions. Likewise, Plato's insistence that democracy does not have a singular

constitution because the *demos* is comprised of free subjects whose license precludes their submission to a singular logic of rule ties the political regime of democracy to the character of its subjects. In Plato's account, it is the free actions of the *demos* that define the democratic regime, as opposed to a constitution constituting its subjects. The aim of this thesis has been to reintroduce the *demos* as the defining character of democracy and to do away with the exclusivity of politics inherent in the sovereign statist approach to democracy.

When democracy is taken as an intrinsic capacity of the people, it must be separated from the privileges afforded by powers external to it. The *kratos* of the *demos*, the power of the people, can only be demonstrated through actions that go beyond what is deemed permissible by the nation-state. As such, this thesis has tied disruptive forms of political practice, such as social movements and protests, to the freedom of the *demos* as an embodiment of democracy. In the absence of disruptive political activism, the capacity of the *demos* can only be assumed *in absentia*. By acting beyond the boundaries of national citizenship, those who partake in disruptive politics act as though they were free, embodying the character of the citizens of Plato's free democratic city. In turn, they exercise the capacity to define themselves against the definitions that have been imposed upon them by hierarchical discourses of power.

While deliberative democratic theorists have sought to make modern representative governments more accountable and to deepen the level of participation for those affected by decision-making processes, these theorists have largely adopted the state as the *archic* centre of power. In doing so, they have taken for granted the state's sovereign claim to politics which affords the nation-state the legitimate right to determine

binding policies for the populations within its territory. In spite of the just grounds for expanding and deepening representation within constitutional democracies, the role of state mechanisms in introducing such reforms reinforces the apolitical nature of modern citizen-subjects. While the normative framework that deliberative democrats advance suggests improvements for those who are currently marginalized by national democracies, the inclusion of those who are marginalized involves a degree of submission to the logic of the state and its imperatives.

Post-structural accounts of democracy are insightful in their emphasis, drawing from the ancient Greeks, on processes of resistance and subjectification. A problem, however, with drawing from post-structuralist analysis is translating a critique of contemporary understandings of democracy into alternative ways of living that do not reproduce the same patterns of hierarchical organization. While the argument can be made that hierarchical organization is undemocratic by nature, it is unclear what a non-hierarchical democratic society would look like. If Plato's democratic city provides one model, the potential dangers inherent in unrestrained freedom suggest a reluctance to embrace democracy for democracy's sake – or, in the context of existing hierarchical government, disruption for disruption's sake.

In the last chapter of this thesis, the turn to new forms of constitutionalism in Indigenous movements like Idle No More provide one possible alternative to existing constitutional practices. However this turn to new non-exclusionary forms of sovereignty poses its own problems to the extent that new political communities may reproduce the same forms of hierarchical ordering that form the basis of exclusion. On the one hand, the creation of communities that break free from the old forms of exclusion, such as

colonialism, provides the potential situation where the right to politics and the right to constitute have not been entrenched. On the other, the creation of new constitutional orders can constrain members from acting out the freedom which is characteristic of the *demos*. It is, however, getting beyond the core of what is democratic to determine the shape of the political community, as democracy is limited to the moments of disruption and the dislocation of existing discourses.

Democracy, the claim that anyone and everyone is capable of practicing politics, is a response to its absence. It emerges in response to the contrary claim: that the right to politics is reserved for specific actors, spaces, and times. However it may be misleading to suggest that democracy emerges so much as its subjects, the *demos*, appear in moments where groups act in resistance to their exclusion. When the members who make up the *demos* disengage from action, the moment ends – only to begin again in response to new circumstances.

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