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Agonism or Deliberation?

A Critical Study on the Democratic Theories of Chantal
Mouffe and Rainer Forst

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Abstract

Taking as motivation Chantal Mouffe's critique of Habermasian deliberative democracy, this thesis sets out to evaluate her conception of democracy — agonistic pluralism — in relation to the deliberative approach of Rainer Forst. The evaluation was performed with the aid of a specific conceptualization of legitimacy as to its function, source, and connection to democracy. The evaluation found that the Forstian model of democracy was more aligned to the thesis' concept of legitimacy. However, the evaluation also found that aspects of Mouffe's democratic theory was not at such odds with the deliberative approach as it would have you believe.

Keywords: Legitimacy, Democracy, Chantal Mouffe, Rainer Forst

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1. Introduction

Democracy and what it entails is the source of seemingly never-ending discussion within the field of political philosophy and theory as such endeavors themselves could be viewed as democratic. Over the last few decades, two prominent iterations of democratic theory can be found in deliberative- and radical democracy respectively. Deliberative democracy which has been championed in recent years by scholars such as Joshua Cohen, John Dryzek, Amy Gutmann, Dennis Thompson, and Jürgen Habermas, in short holds that 'democracy should [...] be considered a device in which people develop and discover their proper preferences through a process of mutual deliberation'.¹ On the other hand, proponents of radical democracy, most prominently Chantal Mouffe, hold that antagonism is an integral part of politics and as such any adequate democratic theory ought to acknowledge it, which a radical conception of democracy — such as Mouffe's agonistic pluralism — does by promoting an idea of the agonist, or the adversary, as opposed to the antagonist, or enemy.²

The deliberative and radical approach represents two vastly different views of how participation in a democracy is to be constituted. As such, it can be argued that there exists incentives for the analysis of them, which is precisely what this thesis sets out to do: to analyze one conception each of deliberative- and radical democracy respectively.

1.1. Formulating a Problem

One of the most vocal critics of the discourse theoretical—or deliberative—model of democracy as presented by Jürgen Habermas among others, has been the Belgian philosopher and political theorist Chantal Mouffe. Mouffe's critique against deliberative democracy, and in extension Habermas, can be boiled down to that the latter disregards what is constitutive of 'the political'³ or 'the dimension of antagonism that is inherent in human relations'⁴. In essence it is the view of Mouffe that the type of deliberation which Habermas' discourse theoretical model of democracy proclaims is impossible as it ignores the fact that conflict

¹ R. Harrison, 'Democracy', *Routledge Encyclopedia of Philosophy*, <https://www.rep.routledge.com/articles/thematic/democracy/v-2>, 2005, Accessed: 07-10-2018.; K. Baynes, 'Habermas, Jürgen (1929-)', *Routledge Encyclopedia of Philosophy*, <https://www.rep.routledge.com/articles/biographical/habermas-jurgen-1929/v-1>, 1998, Accessed: 07-10-2018.

² L. Thomassen, 'Hegemony, Populism and Democracy: Laclau and Mouffe Today (Review Article)', *Revista Española de Ciencia Política*, vol. 1, is. 40, 2016, pp.161-176.

³ C. Mouffe, 'Deliberative Democracy or Agonistic Pluralism', *Social Research*, vol. 66, no. 3, 1999, pp. 745-758.; C. Mouffe, *On the Political*, Routledge, London & New York, 2005.

⁴ C. Mouffe, *The Democratic Paradox*, Verso, London & New York, 2000, p. 101.

between antagonistic conceptions of the good life define *the political* and thus in extension political life. Habermas therefore takes part in what Mouffe terms 'the liberal evasion of the political'⁵, the precise meaning of which will be discussed further on.

Mouffe makes the point⁶ that social objectivity, that is what is taken for truth within a given social context, always is the result of power acting through discourse and therefore 'political' in the sense that it emerges from discursive struggle between antagonistic actors. Furthermore, Mouffe argues that one cannot separate power from identity within a political context since power is constitutive of identity and therefore part of it. Hence, the sphere of political life ought not be seen as something within which already defined identities attempt to reach consensus, in fact quite the opposite: it should be viewed as an arena in which such identities are created.⁷

From this premise, Mouffe aims a two-piece critique towards the Habermasian understanding of deliberative democracy. Firstly, Mouffe presents an Wittgensteinian argument and argues that consensus in opinion requires agreement in language and hence implies agreement in form of life. This makes impossible the separation between the procedural and substantial that is central to Habermas' approach i.e. the distinction between how deliberation ought to be structured and the ethical/specific positions held by the participants.⁸ In essence Mouffe argues that agreement in procedure implies agreement in substance, which means that the purpose of Habermasian deliberative democracy — for different substantial outlooks to reach common ground politically — is impossible to reach as there can exist no divergent substantial positions within such a political system.

Secondly, Mouffe takes cues from Lacan and Žižek and asserts that power is constitutive of discourses; in other words, without the exercise of power no discourse would be able to exist. Hence, a discourse without power in the Habermasian sense is an impossibility.⁹ In other words, since a central tenet of Habermasian deliberative democracy is deliberation free from coercion, such a view ignores the constitutive role of power for discourses i.e. the veils of understanding of which deliberations are part.

⁵ C. Mouffe, 'Democracy, Power, and "the Political"', in S. Benhabib ed., *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton University Press, Princeton, 1996, p. 247.

⁶ *ibid.*

⁷ C. Mouffe, 1999, p. 753.

⁸ C. Mouffe, 1999, p. 749.

⁹ *ibid.*, p. 751.

It is the view of this thesis that an evaluation of Mouffe's alternative — agonistic pluralism — in relation to a more contemporary version of deliberative democracy can provide valuable insights as to their tenability. The iteration chosen is the one defined by Rainer Forst, who in the view of this thesis is one of the most intriguing political philosophers working today. Forst, who in many ways can be seen as an intellectual descendant of Habermas, with his *right to justification* formulates a compelling narrative which at a brief glance might be seen counteracting and even transcending the reservations to a deliberative model of democracy presented by Mouffe; creating incentives for a closer inspection.

Forst makes the claim that all moral subjects have an absolute right to justification. In other words, the right to have all norms, decisions, etc. to which one is subjected to, justified to oneself with general and reciprocal reasons.¹⁰ In turn the right to justification requires a discourse which Forst terms 'a communal room of justifying reasons'¹¹. As it is not necessary to go into great detail at this stage, suffice it to say that Forst uses his conception of morality to define a novel understanding of deliberative democracy. Further, as Forst is working within a post-Habermasian context it is of interest to investigate his model of democracy in relation to the critique of the Habermasian model presented by Chantal Mouffe.

Mouffe's critique serves as the motivation for why the study of her theory in relation to a more contemporary iteration of deliberative democracy is interesting in the first place. As such this paper wishes to problematize how well the challenge to deliberative democracy proposed by Chantal Mouffe in the form of agonistic pluralism holds up against a more contemporary version of deliberative democracy and vice versa. This is an interesting for two reasons: first, Mouffe's agonistic pluralism arguably represents the most sophisticated critique against and alternative to deliberative democracy; second and as far as this thesis has been able to discern, there have been no comparative evaluations of the models of Mouffe and Forst. It is therefore the belief of this paper that a evaluation of these two theorists in relation to each other would provide valuable insights into democratic theory.

¹⁰ R. Forst, *Rätten till rättfärdigande: Bidrag till en konstruktivistisk teori om rättvisa*, tr. S. Hums, Daidalos, Göteborg, 2007.

¹¹ *ibid.*, p. 290.

1.2. The Purpose of the Study

As the problem formulation indicates above, what this thesis sets out to do is to evaluate two conceptions of democracy: the agonistic pluralism of Chantal Mouffe and the deliberative democracy of Rainer Forst. More, specifically, the purpose of this thesis is to evaluate the respective democratic theories presented by Chantal Mouffe and Rainer Forst against an understanding of legitimacy. Consequently the thesis' purpose involves three tasks: First, the formulation of a conception of legitimacy against which Mouffe and Forst can be measured. Second, in order to be able to evaluate the theories of Mouffe and Forst, a reading of their conceptions of democracy must be performed and presented. Third, the reading of the scholars' democratic theories will be compared to and evaluated against the thesis' conception of legitimacy. Legitimacy has been chosen as the evaluative standard since it is by many scholars — and this thesis — thought of as a condition for political authority to be able to issue acceptable directives.¹²

1.2.1. Research Question

From the purpose above the following research question has been formulated:

What individual strengths and weaknesses can be found if evaluating the democratic theories of Forst and Mouffe against a conception of legitimacy?

1.3. Disposition

The outline of the thesis following this section is divided into six parts. The first one which is entitled '2. Theoretical Framework', analyzes the concept of legitimacy with the aim of reaching a cohesive conception usable for evaluative analysis. The second, entitled '3. Method — Applying Legitimacy' explains how the chosen view of legitimacy will be applied to the democratic theories of Mouffe and Forst. The third section, '4. Previous Research' briefly reviews previous research on the work of Mouffe and Forst. The fourth, '5. Material', briefly presents and discusses the material chosen for analysis. The fifth section of the thesis, '6. A Reading of Chantal Mouffe', presents a reading of Mouffe's understanding of politics, deliberative democracy as well as her alternative, agonistic pluralism. The following section, '7. A Reading of Rainer Forst', offers a reading of Forst's views on morality and his

¹² See F. Peter, 2017. A more detailed discussion of why legitimacy has been chosen will be presented in the theory section of the paper.

conception of deliberative democracy. The section after, '8. Evaluating Mouffe and Forst', analyses and evaluates the respective democratic theories of Mouffe and Forst against the thesis' conception of legitimacy. In section, '9. Concluding Remarks', the conclusions drawn in the evaluation will be briefly discussed.

2. Theoretical Framework

In order to better be able to engage with Mouffe and Forst, a theoretical framework has been developed. This theoretical framework, or analytical tool, has been defined with the purpose of identifying those areas where Mouffe and Forst discuss similar concepts thus providing a lens through which comparative analysis and evaluation can be conducted. An initial reading of the two scholars revealed that the concept of *legitimacy* provides a satisfactory incarnation of such a lens.

2.1. Why Legitimacy?

Legitimacy, which generally 'refers to the rightfulness of a power holder or system of rule'¹³, can be thought of as the reason why a particular institution ought to be accepted as the means by which politics is constructed. Furthermore, the significance of legitimacy 'lies in the moral, as opposed to merely prudential, grounds for obedience which follow for subjects where power is rightfully acquired and exercised, and in the depth of allegiance which such political authorities can call upon in times of difficulty'¹⁴. Legitimacy as a concept dictates the 'why' in politics and as such it is of singular interest to this paper as both Mouffe and Forst supplies critical tools with which to assess political orders. In other words, Mouffe and Frost essentially provide two different views on how politics ought to be justified and hence legitimacy becomes of utmost importance.

2.2. Legitimacy — An Overview and Division

As mentioned, legitimacy refers to the rightfulness of a political entity and as such it can in essence be thought of as creating requirement i.e. '[w]hen are political institutions and the decisions made within them appropriately called legitimate?'¹⁵. On this view legitimacy can

¹³ D. Beetham, 'Legitimacy', *Routledge Encyclopedia of Philosophy* [website], 1998, <https://www.rep.routledge.com/articles/thematic/legitimacy/v-1>, Accessed: 11-09-2018.

¹⁴ D. Beetham, 1998.

¹⁵ F. Peter, 2017.

initially be divided into *legal validity* and *moral justifiability* respectively i.e. the legally *institutionalized requirements* for and moral criteria concerning the *source* or *ends* of political power. Most discussion on legitimacy has been focused on its moral aspects, arguably derived from what appears to be the prevalent view i.e. that rules and the power which they govern have to be justifiable morally.¹⁶ In other words, the moral justifiability of legitimacy is fundamental to its legal validity and as such this paper's focus will be on the former.

In addition to the above, two more reasons can be outlined in favor of using a more philosophical understanding of legitimacy. Firstly and as Beetham states¹⁷, the focus of research on legitimacy has been on aspects of the concept as moral justifiability as well as its normative implications¹⁸, suggesting an academic agreement that the concept entails some conception of morality. Secondly, Mouffe and Forst both occupy themselves with critique, that is, their respective theories serve as critical tools for assessing existing political orders and therefore includes some conception of what ought to be.

At this stage it is beneficial to present the distinction that is made between *descriptive* and *normative* understandings of legitimacy which is similar to the division made between legality and morality. In short, a descriptive understanding of legitimacy 'refers to people's beliefs about political authority and, sometimes, political obligations'¹⁹ a line of thought which can be attributed to German sociologist Max Weber. In short, the Weberian view argues that legitimate is the political system in which people have faith. Faith is obtained by the political system either by existing for a long time, having rulers worthy of faith, or that those subjected trust the legality of it. For Weber, legitimacy is an 'important explanatory category for social science, because faith in a particular social order produces social regularities that are more stable than those that result from the pursuit of self-interest or from habitual rule-following'.²⁰

The main objection to the Weberian approach to legitimacy stems from a view that:

¹⁶ D. Beetham, 1998.

¹⁷ *ibid.*

¹⁸ F. Peter, 'Political Legitimacy', *The Stanford Encyclopedia of Philosophy* [website], E.N. Zalta (ed.), <https://plato.stanford.edu/archives/sum2017/entries/legitimacy/>, 2017, Accessed: 11-09-18.

¹⁹ *ibid.*

²⁰ *ibid.*

[...] it neglects people's second order beliefs about legitimacy — their beliefs, not just about the actual legitimacy of a particular political institution, but about the justifiability of this institution, i.e. about what is necessary for legitimacy.²¹

In other words, the approach of Weber ignores what appears to be the ethical requirements of legitimacy, that is the criteria which the concept as such undoubtedly contains. In the words of Beetham: 'a power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs'²².

On the other hand, a normative conception of legitimacy entail 'some benchmark of acceptability or justification of political power or authority and — possibly — obligation'²³. Normative legitimacy has been argued to refer 'the justification of coercive political power'²⁴ and 'the justification of political authority'²⁵. More in depth, the first view, held by Ripstein and Rawls among others, holds that the existence of legitimacy and the subsequent obligations towards a political order depends on whether or not 'coercive political power is justified'²⁶. The second view holds that political entities might be effective or actual authorities without for that matter being legitimate. Legitimacy, has on this view been described as taking the form of (legitimate) authority capable of creating political obligations. Furthermore, it has been argued by thinkers within this tradition that legitimate authority is not enough to create political obligations and that some additional normative criteria need to be met.²⁷

Worth noting is that some scholars have disputed a purely normative understanding of legitimacy questioning the stark divide between it and its descriptive counterpart. In essence, the argument holds that since too much focus tends to be on the meta-level of conditions necessary for political systems to be justified, 'the historical actualization of the justificatory process' becomes neglected²⁸. Of note is that this view is held by Jürgen Habermas:

²¹ F. Peter, 2017.

²² D. Beetham, *The Legitimation of Power*, Palgrave, Basingstoke, p. 11.; F. Peter, 2017.

²³ F. Peter, 2017.

²⁴ *ibid.*

²⁵ *ibid.*, 'Authority' is here seen as the right to rule, see F. Peter, 2017.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*

Every general theory of justification remains peculiarly abstract in relation to the historical forms of legitimate domination [...] Is there an alternative to this historical injustice of general theories, on the one hand, and the standardlessness [sic] of mere historical understanding, on the other?²⁹

Hence, there appears to exist somewhat of an understanding that one cannot escape the normative connotations of legitimacy as few scholars appear to promote a purely descriptive understanding of the concept, at least within the field of political philosophy. The question therefore appears to become whether one ought to view legitimacy as purely normative or as descriptive as well. I would argue that a conception of legitimacy ought to be first and foremost normative, so as to not lose its critical potential, while at the same time not differing from a general conception among people of what it entails for something to be legitimate — a descriptive conception derived from general understanding. In other words, while legitimacy is a normative critical concept, it does entail evaluating the justification of political orders. As such it would seem that it involves some aspect of descriptiveness as well. That is, a conception of legitimacy ought not be in conflict with how the constitution of legitimacy is experienced³⁰ as that would contradict the concepts' nature of being socially constructed.

2.3. Outlining a Conception of Legitimacy

While the previous discussion has served to highlight the disparity in opinion on legitimacy and how it ought to be viewed, this section will delve deeper into the concept with the aim of conceptualizing a cohesive view of the concept. Taking a step back and reviewing the literature, every conceptualization of legitimacy needs to answer three questions, that is what is its *function*, *source*, and *implication for democracy*.³¹

2.3.1. The Function of Legitimacy

The function of legitimacy is conceived either as legitimizing political authority, coercion, or obligations.

2.3.1.1. Legitimacy and Political Authority

This view can be traced to the work of John Locke, who argued that individuals by law of nature hold authority over their own existence, an authority which they through consent in

²⁹ J. Habermas, *Communication and the Evolution of Society*, trans. by T. McCarthy, Beacon Press, Boston, 1979, p. 205.; F. Peter, 2017.

³⁰ See the discussion on Grenholms criteria for an adequate ethical theory in the methodology section below. Particularly the paragraph dealing with the *experience*-criterion.

³¹ F. Peter, 2017.

shape of the social contract hands over to the state. Furthermore, consent is not limited to the institutionalization of political authority but also its continued existence. Consent can never be given to an authority which negates or neglects the law of nature; hence, if such an authority comes into being its commands are non-obligatory.³² The function of legitimacy on this view therefore becomes to determine the status of legitimacy of a political authority on the basis of which consent is given to it by those subjected. The problem with this approach is that it, as have already been pointed out³³, disregards the apparent fact that there exists no moment in which an individual can actually consent to authority.

Joseph Raz, on the other hand, sees legitimacy as justifying authority during the creation of so called 'pre-emptive reasons' or reasons capable of replacing reasons already held, by virtue of them being delivered by a legitimate authority. Whether these are present is decided by two criteria: first, the state depends 'on the normative reasons that apply to those under its rule directly, independently of the authority's directives'³⁴. Second, 'political authority is justified if it enables those subject to it to better comply with the reasons that apply to them anyway'³⁵ — that would be the normative reasons just mentioned. According to Raz, the second criteria serves explicates why decrees of a legitimate authority ought to be considered binding and thus obeyed by those subjected.³⁶

According to this thesis the Razian approach appears constructive —more so than the Lockean at least — since it allows for evaluation of political authority continuously regardless of a purported initial consent. That is, the Lockean view requires that individuals initially consent to political authority, which does not appear to be possible as one is more often than not born into a state without the ability to consent to its authority. This view is derived from what has been called initial 'acts of violence'³⁷ — a state appear to force its authority onto its new subjects by virtue of them not having an initial capacity to consent.

However and for reasons that will be discussed further in the section on the source of legitimacy³⁸, the Razian approach provides a somewhat contradictory understanding of how

³² F. Peter, 2017.

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ See section 4.3.2.2.

legitimate political authority might be grounded. As such, the Razian approach might appear the most fruitful at this stage but it leaves one wanting.

2.3.1.2. *Legitimacy and Coercion*

Moving forward, the second view of the function of legitimacy is as the justification of coercion which problematizes the distinction between a proper usage of political power and plain coercion.³⁹

A social-contract scholar, Thomas Hobbes argued that, since the preservation of oneself is constantly under threat in the state of nature, it is rational to agree to a contract through which a ruling entity guarantees one's protection in exchange for the authority one enjoys in the original natural state. In the absence of such an entity, one can be created through agreement. Conversely, subjugation to an already existing ruling entity by obeying its threatening power also serves as a creator for authority. Both understandings are seen as legitimate and absolute as long as the condition of protection is fulfilled. As such there is on Hobbes' view no real distinction between authority and legitimate authority.⁴⁰ This is problematic as there does not exist any criteria for continued legitimation of political coercion. Hence, if appropriate consent have been given to a state as a legitimizing factor to use coercion, there exists no means by which to question the continued use of that coercion.

A second conception is presented by Immanuel Kant who argued that political authority as such does not exist in a pre-political context. The only thing that exists is the unquestioned authority in moral terms held by individuals by reason of them being rational, as well as a subsequent moral obligation to form a state⁴¹. Establishing such a state is thought of as 'an end in and of itself'⁴². On Kant's view this is required as the first step for creating a 'moral order' thus removing the problem of free-riding⁴³ or partial compliance. The

³⁹ F. Peter, 2017.

⁴⁰ *ibid.*

⁴¹ 'State' is by this thesis seen as synonymous with conceptions of political- procedure, power, and authority wielded in a specific context.

⁴² In simplified terms a self-evident truth/rule that it is imperative to follow. See I. Kant, *Grundläggning av sedernas metafysik*, trans. J. Retzlaff, Daidalos, Göteborg, 2006 [1785].

⁴³ An economical/political term referring to when someone benefiting from e.g. public commodities does not pay for them, resulting in a deficit of said goods. For example, when an anti-democratic organization utilizes democratic institutions to promote their political agenda thus reducing the democratic surplus. See W. Baumol, *Welfare Economics and the Theory of the State*.

established state subsequently creates those rights required for protecting the equal freedom of its subjects.⁴⁴

It is at this stage that Kant's introduces his understanding of coercion, which is connected to his conception of rights. For Kant coercion limits the freedom to reach subject-specific ends and is as such not a tool usable by the state, it instead creates it:

[...] to enforce rights as defenders of an authority based concept of legitimacy [...] Instead [...] it is constitutive of the civil state. This understanding of rights links Kant's conception of legitimacy to the justification of coercion.⁴⁵

Kant argues that the social contract serves as a tool for evaluating how well a particular institution complies with affected rights. The acceptability of a state is decided by asking if it could have been agreed to by each individual — making the social contract in the eyes of Kant a standard-setting thought experiment, representing 'an idea of public reason'.⁴⁶ Interestingly enough, while Kant acknowledges the distinction between effective and legitimate authority— as the ruler is under obligation to follow public reason — mere effective authority is also capable of creating commands which those subjected are obligated to follow. It would be contrary to public reason, and thus wrongful, to disobey any commands (regardless if they are made in accordance with public reason) within a state that has been constituted by that same public reason.⁴⁷

While Kant's line of thought is clear and logical, it does create possibilities that may be hard to stomach. One example may be the moral obligation to obey the commands of a ruler not guided by public reason. More specifically, if a ruler by virtue of public reason is granted the ability to use legitimate political coercion, but then decides to go against its moral obligation to let public reason guide its commands. A development such as this would not, on Kant's view, negate the subjects' moral obligation to obey its ruler. Hence, while Kant distinguishes between legitimate and illegitimate authority, it does not make much of a difference (in relation to a Hobbesian view) apart from creating standards, which if broken by the ruler does not appear to lead to any real consequences apart from them being morally wrong.

⁴⁴ F. Peter, 2017, p. 6.

⁴⁵ *ibid.*

⁴⁶ *ibid.*; Kant's view clearly shows Rawls' inspiration for his conception of 'the veil of ignorance'. See J. Rawls, *A Theory of Justice*.

⁴⁷ F. Peter, 2017, p. 7.

Lastly, Jean Hampton provides another coercion-based view of the function of legitimacy, holding that political authority:

[...] is invented by a group of people who perceive [...] this kind of special authority as necessary for the collective solution of certain problems of interaction in their territory and whose process of state creation essentially involves designing the content and structure of that authority so that it meets what they take to be their needs.⁴⁸

On Hampton's view, coercion is the tool with which solutions to collective problems are implemented by a political authority in correspondence with a set of principles those subjected to it decided as said authority's constitution. The legitimacy of the directives from a political authority is thus determined by whether or not they are aligned with the principles which created it. One can infer that coercion — much like Peter⁴⁹ does — is legitimate only if by those authorities whose constitution is in line with the principles held by those subjected. This in turn allows for a distinction between power and legitimate political authority, where the latter represents an ability to use coercion as a legitimate form of power. Hence, coercion serves as a distinguishing factor between legitimate and illegitimate authority.

Decidedly different but in the same vein as the view of Kant, Hampton's conception does create the possibility of dissent from a perspective of obligation. In other words, it can be inferred that subjects are not obligated to obey directives which contradict the constitutive principles of the rulers ability to use coercion. Nonetheless, the question remains largely unanswered as to the nature of such obligations. Hence, the most pressing issue appears to be how legitimate political obligations are created as opposed to the creation of legitimate political coercion.

2.3.1.3. Legitimacy and Obligation

The last function of legitimacy is often seen as the creation of political obligations i.e. that those subjected to the directives of a legitimate political authority are obligated to respect them. One conception can be found in John Locke, who held that as a result of it being rational for an individual to consent to being subjected to a state, it follows that it is

⁴⁸ J. Hampton, *Political Philosophy*, Westview Press, Boulder, 1998, p. 77.

⁴⁹ F. Peter, 2017, p. 7.

obligatory to respect other members by respecting majority decisions.⁵⁰ However, by reasons already explained, the Lockean approach has been found wanting.⁵¹

For Ronald Dworkin in contrast, the constitution of legitimate authority is seen as separated from actual political obligations. More specifically, Dworkin argued that political obligations was a fundamental normative concept in and of itself i.e. obligations spring not from political authority but from political membership.⁵² This is an interesting approach as it shifts the criteria — for determining obligation to obey a certain directive — away from the performance of the actual political authority. In other words, constitutive elements of membership determine one's obligation to obey and as such the possibility for disobeying in accordance with morality becomes possible.

An approach in line with a Dworkian understanding is presented by Arthur Applbaum, who argues that legitimate political authority does not equal political obligations. In essence, Applbaum contends that what characterizes political authority is its ability to alter

[...] the normative status of those under its rule [...] and that this capacity should be interpreted as a moral power [...], not as a [...] right to rule. But, Applbaum argues, [...], unlike rights, [they] are not correlated with duties; they are correlated with liabilities. On Applbaum's view, legitimate political authority thus has the capacity to create a liability for those under its rule but not an obligation. To be liable to legitimate political authority means to not be free from the authority's power or control.⁵³

Trying to make sense of the above, liabilities as opposed to obligations, makes one accountable to but not bound by duty i.e. one has a responsibility not to obey because it is stated by some moral imperative — as obligations require — but to subject to one's responsibility to the relevant political authority. Paraphrasing Peter⁵⁴ one is not obligated to obey by default but one might be liable to be obligated to obey.

Applbaum's view appears the most convincing conception of the function of legitimacy as it allows for the much needed possibility to depart from an obligation to obey while at the same time placing a marker for what is necessary for such a departure. Liability to a legitimate political authority thus entails that one is required to relate the constitutive principles of that authority to the implications of its directives — and from there decide

⁵⁰ F. Peter, 2017, p. 8.

⁵¹ See the section of Legitimacy and Political Authority, in this chapter.

⁵² F. Peter, 2017, p. 8.

⁵³ *ibid.*

⁵⁴ *ibid.*

whether or not there exists an obligation to obey. Hence, legitimacy functions as the creator of liability to political authority for the members of a political community and does as such determine when one is liable. The question therefore becomes from where such legitimacy comes — a question which the following section will provide an answer to.

2.3.2. The Source of Legitimacy

Much like its function, the source of the peremptory qualities of legitimacy is debated and it has as such focused on the following alternatives: consent, (beneficial) consequences, and public reason/democratic approval.

2.3.2.1. Consent and Legitimacy

During the 17th century, divine authority and natural law was replaced by consent as the source of legitimacy, as seen in the work of John Locke. The idea of consent has nevertheless, according to Peter⁵⁵, evolved since then into three main understandings as described by Joseph Raz:

[1] It may be a condition, or the condition of holding legitimate authority. [2] Or, though not a condition of legitimacy itself, those conditions may be such that only a government based on the consent of the governed meets them. [3] Finally, legitimate government may deserve the consent of its subjects. they may have a duty to give it their consent.⁵⁶

Scholars aligned with the first understanding, which is the most common, can be found in Locke and his more recent followers as well as Rousseau. On the other hand, those who align themselves with the second understanding are often proponents of an hypothetical conception of consent via certain ideal conditions — such as Immanuel Kant and John Rawls. An example of the third understanding is David Estlund's view that '[a]mong our moral requirements, there might be moral requirements to consent to authority in certain cases⁵⁷. Hence, under some specific conditions there exists no option not to consent to authority. More specifically, it is allowed for political authority to be used as an incarnation of the democratic majority's will in order to exert control over those not agreeing with 'certain democratically approved laws'.⁵⁸

⁵⁵ F. Peter, 2017, p. 9.

⁵⁶ J. Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, Oxford University Press, Oxford, 1995, p. 356.

⁵⁷ D. Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press, Princeton & Woodstock, p. 117.

⁵⁸ F. Peter, 2017, p. 10.

2.3.2.2. *(Beneficial) Consequences and Legitimacy*

Providing an alternative to the previous view, legitimacy is by the following approach based on its (hypothetical) consequences. Among them, Joseph Raz holds that viewing the source of legitimacy as its consequences is in agreement with reasons for obeying the commands of a legitimate political authority⁵⁹: 'Governments decide what is best for their subjects and present them with the results as binding conclusions that they are bound to follow.'⁶⁰ Provided that the authority is legitimate 'its directives are such that they help those governed to better comply with reasons that apply to them'⁶¹. The idea appears to be that legitimacy arises from a mutual understanding between those subjected to and the political authority itself. This understanding entails that the political authority by virtue of being legitimate, always knows what is best course of action i.e. the one with the most beneficial consequences.

The interesting aspect of Raz's account is that— even if it is accepted that a legitimate political authority is defined by its ability to issue commands through reasons that make it easier for its subject to comply with their already held reasons — it does not appear to be an argument specifically in favor of a consequence-based approach. More specifically, it appears as if Raz's view can be thought of as a consent-based approach as well. As the defining factor of legitimacy is the mutual understanding of constitutive reasons, agreement over what those reasons are appear to be least as important as their outcome. To be sure, a Razian approach might result in the best outcome for those subjected to a particular political authority but the reason for why they are the best is not the result of an estimation of their consequences — as such the outcome does not legitimize the political authority. On the contrary, what dictates their legitimacy is whether the result of them is aligned with the constitutive reasons for why the political authority is legitimate in the first place.

Furthermore, it has been argued against benefit-based conceptions such as utilitarianism⁶² that it is only convincing to those who 'win' from the calculation of happiness, not those who 'lose'.⁶³ The idea being that what results in the most happiness may only be convincing to those who stand to gain from a particular outcome. In other words, the

⁵⁹ F. Peter, 2017, p. 11.

⁶⁰ J. Raz, 1995, p. 359.

⁶¹ F. Peter, 2017, p. 11.

⁶² A prominent version of a benefit-based conception to the source of legitimacy supported by the likes of Bentham and Mill. See F. Peter, 2017.

⁶³ F. Peter, 2017, p. 11.

calculative element of a benefit-based approach done correctly may still end up only satisfying those already convinced. Therefore, it is in danger of not being able to uphold legitimacy as its ability to do so is directly correlated with how the outcome is perceived. The argument is that this in turn could create uncertainty as to the viability of the directives given by a legitimate political authority.

2.3.2.3. Public Reason and Legitimacy

A third conception of the source of legitimacy can be found in those promoting an idea of public reason thus taking cues from Kant; John Rawls perhaps most prominently.⁶⁴

Fundamentally, the Rawlsian understandings view political coercion, and thus political authority, as legitimate if it is in agreement with 'reasons that all reasonable persons can share'⁶⁵. Hence, the deciding factor of the origins of legitimacy is the hypothetical thought experiment that has been previously discussed i.e. public reason. Perhaps the most important aspect of Rawlsian approaches is that they aim to create a version of public reason that is independent of subject-specific conceptions on metaphysical questions. Hence, public reason ought only involve political principles thus restricting the sphere within which it can be exercised, which on the Rawlsian view is the political sphere only.⁶⁶

Approaches directly following Rawls are often criticized for either relying on a conception of a 'reasonable person' that is too narrow, or resulting in a consensus legitimately affecting a political authority that is too constricted.⁶⁷ The problem therefore becomes if it is possible to conceptualize a public reason approach without relying on conceptions so narrow as to reduce the potential for pluralistic conceptions of the best directives.

More recent public reason-approaches have tried to provide solutions to this problem in the form of procedural-, convergence-, and participation-based conceptions. A procedural reason-approach limits the charge of public reason to how the political process of decision-making is justified and as such does not include the demand for taking substantive reasons into consideration.⁶⁸ This in contrast to the hypothetical consensus approach that arguably creates a conception that is too broad. If the only constitutive factor of legitimacy is that it follows a specific procedure, the outcome could conceivably be a legitimate political

⁶⁴ F. Peter, 2017, p. 11ff.

⁶⁵ F. Peter, 2017, p. 12.

⁶⁶ *ibid.*

⁶⁷ F. Peter, 2017, p. 12f.

⁶⁸ F. Peter, 2017, p. 13.

authority that restricts its own legitimizing procedure. In other words, if a legitimate political authority legitimately could lower the bar for its own legitimacy, it would appear as if certain principles relating to the outcome of legitimacy ought to be included in its conception.

Those who focus on convergence, such as Gerald Gaus, contend that legitimacy arises from determining if each reasonable person will converge on a particular decision. The deciding factor thus becomes whether those affected agree that a particular political decision ought to be made.⁶⁹ This approach is narrower than its procedural counterpart as it requires that those subjected agree on a more substantive topic, namely that a decision should be made. While this decreases the possibility for legitimacy digging a hole for itself, as the proceduralist does, it does raise questions of the constitutive factors of convergence itself. In other words, what determines if one ought to converge? To the knowledge of this thesis it is not as obvious as one might like. One answer might be that one ought to converge on matters that affects oneself. If this is the case however it would seem as if the convergence-approach is a version of the participation-view, as it would serve as a guarantee for participation in the creation of legitimacy. This adds up to the convergence-approach being thought of as too unclear.

Lastly, the participation-approach holds that legitimacy is the result of a process in which all those considered relevant are allowed/guaranteed participation. Hence, '[t]hey [...] see political legitimacy as dependent on the participation or influence of all, [...], not on the will of all'⁷⁰. As the reader no doubt has already understood, this approach is considered the most convincing as it creates a standard for legitimate political authority that is neither too narrow nor too broad. If legitimacy is dependent on the continued influence and participation of those affected, it is not possible for it to create an authority that has the ability to legitimately erode its own standard for legitimacy since the promotion of claims with such a possibility would not constitute legitimate claims to legitimacy. A participation-approach hence appears to create a source for legitimacy that is indifferent to substantive values as well as their guarantor. In sum, a conception based on participation thus creates fertile ground for legitimacy to prosper i.e. creating such criteria as to not be in danger of succumbing to illegitimate outcomes drafted by the authority it has legitimized.

⁶⁹ F. Peter. 2017, p. 13.

⁷⁰ *ibid.*

2.3.3. Democracy and Legitimacy

That democracy is a prerequisite for legitimacy is a view held by numerous scholars but not all, which shows in the division between conceptions of democratic instrumentalism on the one hand and pure-proceduralist approaches on the other.

2.3.3.1. Democratic Instrumentalism

The fundamental assertion of those who promote a democratic instrumentalist-approach is 'that there is an ideal outcome that exists independently of the democratic process, and in terms of which the values of the democratic process, its legitimacy, can be gauged'.⁷¹ The most prominent defense of democratic instrumentalism is found in the so-called *Condorcet jury theorem* which

[...] assumes that there are two alternative and one of them is the correct outcome, however defined. Take the latter to be the legitimate outcome. The theorem says that if each voter is more likely to be correct than wrong, then a majority of all is also more likely to be correct than wrong. In addition, the probability that a majority will vote for the correct outcome increases with the size of the body of voters. Since democracy has greater constituency than any other regime, the theorem gives an argument for why democracy is best able to generate legitimate outcomes.⁷²

Hence, the argument for this approach is that since there always exists an alternative which represents the right course of action — an alternative which a majority of people chooses and is more likely to choose —the increased participation allowed by democracy would more often produce the right outcome.

Taking cues from Peter⁷³, one objection to an instrumentalist approach is that it needs to consider political equality as less important than what creates the standard against which the democratic process is measured. This can be unacceptable as political equality is by some seen as one of the more important values. Further, an instrumentalist view can be thought of as contradicting the view 'that legitimate procedures of democratic decision-making create or constitute political authority'⁷⁴. This thesis agrees with both views and as such a purely instrumentalist approach is abandoned as it appears counterintuitive for a conception of legitimacy and democracy to contradict certain fundamental democratic concepts.

⁷¹ F. Peter, 2017, p. 14.

⁷² *ibid.*

⁷³ F. Peter, 2017.

⁷⁴ F. Peter, 2017, p. 14.

2.3.3.2. Pure-Proceduralist Approaches

Those understandings that are purely proceduralist, on the other hand claim that a democratic decision is legitimate as long as it has been made in accordance with a properly checked decision-making process.⁷⁵ Examples of this conception can be found in the theories of both aggregative and deliberative democrats. The former could for example be an election carried out properly —that is — as a means to collect the preferences of its constituents. The latter could be represented by democratic decision-making being preceded by deliberation set up in accordance with a certain set of principles.⁷⁶

This thesis rejects an approach that is purely proceduralist on account of it not corresponding to its understanding of the source of legitimacy. That is, it clashes with the conception that the source of legitimacy is participatory by not reaching up to its standards regarding guaranteeing that all-relevant should be included in democratic process. For reasons explained in the section on the sources of legitimacy, a pure-proceduralist approach is not taken by this thesis.

2.3.3.3. Mixed Conceptions

There does exist a mix of the two conceptions presented above — the rational proceduralist understanding.⁷⁷ This conception is based on the view that mere fair procedure cannot guarantee that the decisions made are not irrational and are thus illegitimate.⁷⁸ One can infer that some additional criteria are required apart from those guaranteeing fair decision-making processes i.e. that certain moral obligations demand the process not ending with certain types of decisions. This view is more convincing than the previous two as it is compatible with the thesis' conception of both the function and source of legitimacy. Regarding the function, a rational procedural approach is appropriate as the latter demands that the democratic procedure entails something more than just correct procedures. This criterion is well suited for accommodating the requirements of legitimacy as the creator of liability. More specifically, liability as the function of legitimacy demands that a supposed political authority is able to show that its directives are aligned with its constitutive principles — if they are, the directive is legitimate. As such, the liability criterion demands some type of continual

⁷⁵ F. Peter, 2017, p. 15.

⁷⁶ *ibid.*

⁷⁷ F. Peter, 2017, p. 16.

⁷⁸ *ibid.*

analysis of the reasons for legitimacy, which appears to this thesis to be well in line with the requirement of 'something more than procedure'.

As to the source of legitimacy, the rational proceduralist conception is capable of living up to the high standard set up by the participation-approach. That is, the 'something more than procedure' that this conception of legitimacy and democracy demands, is necessary for the participation criterion to be fulfilled. In other words, as the participation-approach requires that relevant claims are continuously included in every establishment of a legitimate political authority, no other conception of democracy and legitimacy would be able to meet those requirements. This is on behalf of the rational proceduralist demanding additional legitimizing factors than procedure, something which the participation-approach also demands by requiring continual participation.

2.3.4. Arriving at a Conception of Legitimacy

Briefly summing up, this section presents this thesis conception of legitimacy. The same conception that will be used as an analytical tool in the study of Mouffe and Forst.

2.3.4.1. Function

Taking cues from Applbaum, this thesis argues that the function of legitimacy is to create liability in relation to a political authority. If the political authority is legitimate, one is liable. This entails that one is not necessarily obligated to obey a political authority but one is liable towards it — that is, one is required to subject to one's responsibility towards it; one can be held accountable.

2.3.4.2. Source

As to the source of legitimacy, the participation version of a public reason approach was deemed the most convincing. This conclusion was reached as the approach creates a standard against which the legitimacy of political authority can be tested without being neither too narrow or too broad. This is because the participation-approach constitutes the source of legitimacy as sufficiently independent from substantive values while at the same time protecting them, as well as decreasing the possibility of legitimacy being defeated by illegitimate outcomes commanded by the authority it served to legitimize.

2.3.4.3. Democracy

A rational proceduralist conception of the relationship between democracy and legitimacy is by this thesis thought of as the most compelling. As this conception is neither proceduralist

nor instrumentalist, but a mixture of both, it provides the necessary 'something more than procedure' which this thesis' conceptions of the function and source of legitimacy requires. The defining factor of the rational proceduralist conception is its understanding that correct procedure is not enough to create legitimate outcomes via democratic decision-making. This factor correlates well with the high requirements set by the function and source of legitimacy and therefore the requirements for democratic legitimacy will be thought of as rational proceduralist.

3. Method — Applying Legitimacy

Now that a conception of legitimacy has been formulated, the time has come to describe how it was used in the study of Mouffe and Forst.

3.1. Legitimacy as a Tool

As this was a critical study of the democratic *theory* of two scholars, the methodology was closely linked to the theoretical framework presented in the previous section. As such, the thesis' conception of legitimacy was used to identify those areas of the scholars respective theories where they discussed ideas that had implications for the theory of this thesis. In other words, what aspects of Mouffe and Forst's democratic theories reverberated with legitimacy.

The theory of legitimacy presented thus served as the lens through which Mouffe and Forst were read. Furthermore, as the purpose of this paper was to evaluate Mouffe and Forst, the thesis' conception of legitimacy served as the standard against which they were measured. This was possible since the conception, as mentioned, is normative and thus represented an understanding of legitimacy considered the most compelling⁷⁹ as well as descriptive in the sense that it shined a light on those theoretical aspects that may have had implications for legitimacy.

3.2. The Operationalization of Legitimacy

As shown, legitimacy is linked to political authority either as its function or as its source but it can also be connected to democracy. This thesis has provided a conceptual view of legitimacy with normative answers to each of the questions posed its function, source, and relation to democracy. Hence, it became necessary to distill that same conceptual view by

⁷⁹ In relation to the reviewed literature.

operationalizing each of its components. This was done by formulating a set of questions meant to capture the essence of each of the three parts of the chosen legitimacy conceptualization. How the theories of Mouffe and Forst answered those questions was then compared to and evaluated in relation to the thesis' conception of legitimacy, in order to conclude which provided the most satisfactory responses.

3.2.1. Function

The function of legitimacy is creating liability towards a legitimate political authority.

1. *What constitutes a legitimate political authority?*

This question probed what a particular theory considered a legitimate political authority. That is — what is required of a government, decision, law etc. for it to be considered legitimate? Therefore, the purpose of this question was to create an understanding of the constitutive elements of political authority.

2. *How is a legitimate political authority created?*

The second question on the function of legitimacy was more procedural in nature as it investigated the manner in which legitimacy is used to create legitimate political authority. The purpose was hence to understand how legitimacy is used conceptually as the creator of legitimate political authority.

3. *How is a legitimate political authority maintained/controlled?*

The third and final question dissected how the function of legitimacy is used as a way to assess the legitimacy of existing political authorities.

3.2.2. Source

The source of legitimacy is participation through public reason.

1. *From where does legitimacy stem?*

The first question had the purpose of finding how the source of legitimacy was conceptualized. In other words, what were the characteristics of a pre-legitimate state of being that require the introduction of legitimacy? Further, how and why does this conception require legitimacy?

2. *What guarantees that the demands of legitimacy are met?*

The second question aimed to answer what measures were taken to see to it that the demands made by the source of legitimacy were respected within the sphere ruled by a specific

political authority. As such, it focused on how the democratic theory at hand provided measures for the political authority to protect the source of legitimacy it is charged with protecting. In other words, what is a political authority required to do to protect the source of legitimacy?

3. *What guarantees the continued protection of legitimacy?*

This question wanted to understand what theoretical measures were taken to guarantee that legitimacy is not granted the ability to diminish itself as discussed in previous sections.

3.2.3. Democracy

The relationship between legitimacy and democracy takes the shape of the rational proceduralist conception of how legitimate and authoritative democratic decisions are made.

As such, the following questions have been formulated:

1. *What constitutes democracy?*

The purpose of this first question was as straightforward as they come: to identify how the scholar views democracy and how their theory relates to that view.

2. *How is democracy constituted?*

The second question aimed at delving deeper into the different characteristics of the democratic theory of each scholar. The purpose was to reach an understanding of the reasons why each characteristic is thought out the way it was.

3. *Why this particular conception of democracy?*

The third question was perhaps the most important one as it dived into the reasons the scholar presented in favor of their conception of democracy. This question thus highlighted those aspects of the scholars' respective theories that more readily related to questions regarding the 'something more than procedure' criteria of the rational proceduralist- approach to democracy and legitimacy.

4. Previous Research

There exists no shortage in studies addressing either deliberative democracy or radical democracy nor for that matter both. However, there does not exist any examinations of the theories of Rainer Forst and Chantal Mouffe in relation to each other. This makes it difficult to pinpoint any particular area of research apart from those studies that singularly deal with one or the other.

4.1. Chantal Mouffe

Previous research on Chantal Mouffe have focused on her work after she with Ernesto Laclau published their book *Hegemony and Socialist Strategy*. A recently published article by Lasse Thomassen⁸⁰ considers the relevance of Mouffe's by discussing how it has evolved since the publication of the mentioned volume.

Following the publication of *Hegemony and Socialist Strategy*, the concepts Mouffe and Laclau highlighted in the book — hegemony, discourse, and radical democracy have begun to see discussion beyond the realms of Marxism. The views held by the authors, widely understood as 'post-Marxist', have represented a marker for debate on not only Marxism but also identity politics and culture. Mouffe and Laclau's views are often considered post-Marxist for two reasons: first, they distance themselves from certain elements of classical Marxism such as class essentialism. Second, they engaged in a critical discussion of traditional Marxist thought, in particular how the concept of hegemony had been conceived.⁸¹

Mouffe and Laclau's view of hegemony differs from the traditional Marxist conception on account of the latter viewing it as somewhat peripheral. Mouffe and Laclau brought hegemony to the fore by arguing that it represents 'the articulation of relationships between social elements'⁸², these relationships are in turn dependent, which is why they can be articulated in a hegemonic fashion. The key point is thus that hegemony is not a concept at work at society's periphery, it 'is the way in which both politics and economy are constituted'.⁸³

Mouffe, and Laclau for that matter, have included elements of Lacanian psychoanalysis as a tool with which to explain how collective identities are constructed. The idea is that an identity is always characterized as lacking i.e. [n]o identity, individual or collective, is complete, and as a result, identification — rather than identity — becomes central category'.⁸⁴ The key insight of this approach is on their view that identities are always

⁸⁰ L. Thomassen, 2016.

⁸¹ L. Thomassen, 2016, p. 161ff.

⁸² L. Thomassen, 2016, p. 168.

⁸³ *ibid.*

⁸⁴ L. Thomassen, 2016, p. 169.

being created in an incomplete process. That is, '[c]ollective identities are constituted through a process of identification'.⁸⁵

Moving forward, Mouffe since her and Laclau's initial conceptualization of a post-Marxist theory moved on to from it formulate a novel view of democracy — agonistic pluralism. Mouffe's view of democracy is characterized by its emphasis on the irreducibility of the antagonistic elements of politics. Drawing on the work of Carl Schmitt while at the same time distancing herself from him, Mouffe highlights the former's distinction between friend and enemy in politics with a view for the democracy to acknowledge it and overcome it by transforming it into agonism instead of antagonism. In essence, Mouffe holds that the antagonist — or enemy — should be replaced by the agonist — that is the adversary.⁸⁶

Mouffe holds that her view of agonistic democracy is not compatible with the rational consensus-approach that is promoted by scholars such as Habermas and Rawls. This conclusion is made from a conception that every consensus is conflictual and thus the antagonistic/agonistic element is ineradicable. What Mouffe hence tries to do with her view of democracy is to place it between those promoting rational consensus and those who see politics as completely Schmittian, that is completely antagonistic.⁸⁷

4.2. Rainer Forst

As far as this thesis has been able to discern, most research on the work of Rainer Forst has focused on his conception of morality, that is his right to justification-theory. This is an understandable focus as the theory can be seen, according to this thesis, the prime contribution of Forst towards the field of political philosophy. Further, the right to justification serves as the theoretical foundation for his democratic theory, thus providing clear incentives to the study of it.

Forst takes flight from a Kantian perspective and holds that humans are by their nature 'rational subjects who are agents of justification'.⁸⁸ As such, practical reason on Forst's view is represented by the ability to present 'appropriate kinds of justifying reasons in response to practical questions, where "appropriateness" is specified by the kind of practical

⁸⁵ L. Thomassen, 2016, p. 169.

⁸⁶ L. Thomassen, 2016, p. 173f.

⁸⁷ L. Thomassen, 2016, p. 174.

⁸⁸ D. Owen, 'Series Editor's Foreword: Morality, Politics and the Right to Justification', in D. Owen ed., *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue*, Bloomsbury, London & New York, 2014, p. viii.

context in question considered as a context of justification'.⁸⁹ From this conception Forst is thought of as developing his view of a right and duty to justification which takes the form that reasons have to be reciprocally and generally justified.⁹⁰

More specifically, Forst has been seen as promoting a strategy that shifts the manner in which justice, laws, and norms are thought of into a political direction. The idea is that his conception of the space of justification creates the possibility of such a shift as it requires the recognition of 'one another as fellow humans susceptible to suffering and sharing a common humanity'.⁹¹ Forst asserts that through moral and normative perception of others we are able to realize that they must be treated compassionately. As such there does on Forst's view exist a discursive duty to justify actions or norms that affect others, a duty which as gives rise to the right to justification.⁹²

5. Material

As this thesis is a study of the theoretical work of two scholars, the material is limited to first hand sources as it is the views of the scholar's which are the most interesting not interpretations of them. Nonetheless, where necessary on account of the language-barrier, translations have been used, the problem of which the thesis acknowledges. Second, as the focus is the democratic theories of each scholar, the material has been limited to those aspects of their work which deals with precisely that.

The work of Chantal Mouffe is represented by her books *The Democratic Paradox* and *On the Political* as well as her articles 'Deliberative Democracy or Agonistic Pluralism' and 'Democracy, Power, and "the Political"'. These works have been chosen as they provide a clear and concise view of both Mouffe's critique against liberalism and in extension deliberative democracy as well as her proposed alternative conception of democracy — agonistic pluralism.

The reader might find an omission in the form of Chantal Mouffe and Ernesto Laclau's book *Hegemony and Socialist Strategy*, as the thesis of that book can be seen as a precursor to the theory of radical democracy which Mouffe calls 'agonistic pluralism'.

⁸⁹ D. Owen, 2014, p. ix.

⁹⁰ *ibid.*

⁹¹ K. Olson, 'Judgement or Justification? Two Paths for Rethinking the Discursive Turn', *Constellations*, vol. 20, is. 2, 2013, pp. 361-365, p. 363.

⁹² *ibid.*

However, *Hegemony and Socialist Strategy* in essence preoccupies itself with a marxist analysis of hegemony which by no means is uninteresting. It has nonetheless not been seen as particularly relevant to Mouffe's own theory of democracy as 'agonistic pluralism' moves beyond the theories of *Hegemony and Socialist Strategy* and engages with the theories of Carl Schmitt, Ludwig Wittgenstein, Jacques Lacan and Slavoy Žižek.

Another book by Mouffe not included is *Agonistics: Thinking the World Politically* as it by previous researches have been seen as not adding anything new to her theory of agonistic pluralism.⁹³ As such, it was thought to not providing any different insights to Mouffe's democratic theory.

The works of Rainer Forst analyzed by this thesis is limited to those who either clearly deals with his conception of deliberative democracy, or have implications for it. As such, the main work of his under analysis has been his book *Rätten till rättfärdigande: bidrag till en konstruktivistisk teori om rättvisa* as he presents a clear view of his democratic theory in it. Supplementing the book above has been his recent book *Normativity and Power: Analyzing Social Orders of Justification* as well as his chapter 'Two Pictures of Justice' in the Owen edited book *Justice, Democracy and The Right to Justification: Rainer Forst in Dialogue*.

6. A Reading of Chantal Mouffe

Renowned Belgian political philosopher Chantal Mouffe is known for her critique of and proposed alternative to liberal democracy in general and deliberative democracy in particular. Her alternative, which she dubs 'agonistic pluralism', constitutes a radical version of democracy that — via the supposed acknowledgment of politics' antagonistic nature — aims at subverting and replacing hegemonic systems of power in body politics.

This chapter concerns itself with a critical reading of Mouffe's thought through the lens provided by the chosen conception of legitimacy and as such is structured into a number of sub-chapters that sequentially discuss her critique and alternative to deliberative democracy — agonistic pluralism. As the purpose of this thesis is to compare and evaluate the chosen scholars against each other, the conceptualization of democracy will not take an immediate place in the reading of the material at this stage.

⁹³ See L. Thomassen, 2016.

This chapter will start with a discussion of Mouffe's understanding of politics and a closely intertwined critique of liberalism, followed by her more specific critique of deliberative democracy, and will conclude with a discussion of her alternative to deliberative democracy — agonistic pluralism.

6.1. 'Politics', 'the Political', and Liberalism

Chantal Mouffe launches her critique of liberalism⁹⁴ (and in extension deliberative democracy) from her view of politics as divided in two: 'politics' and 'the political'⁹⁵. Hence, understanding how and why Mouffe makes this distinction of the overarching concept is crucial for understanding her thought and critique. What follows is a critical reading of said division.

Initially, Mouffe makes the distinction in the following fashion:

[...] by "the political" I mean the dimension of antagonism which I take to be constitutive of human societies, while by "politics" I mean the set of practices and institutions through which an order is created.⁹⁶

Mouffe arrives at this view by considering the traditional placement of 'politics' and 'the political' within the fields of political science and political philosophy respectively. Where political science typically concerns itself with empirical analysis of politics; political philosophy focuses on the nature of the concept.⁹⁷ Further, Mouffe asserts, using the words of Heidegger, that the distinction can philosophically be approached by viewing 'politics' as 'ontic' and 'the political' as 'ontological'. In other words, that 'the ontic has to do with the manifold practices of conventional politics, while the ontological concerns the very way in which society is instituted'.⁹⁸ Acknowledging that this holds potential for substantial disagreement of just what constitutes 'the political'⁹⁹, Mouffe arrives at her definition cited above.

⁹⁴ Considered in this chapter as a political, and not economical, theory.

⁹⁵ see C. Mouffe, *On the Political*, Routledge, London, 2005. ; To clarify when Mouffe's interpretations are used, quotation marks will be used in this way: 'politics', 'the political'.

⁹⁶ C. Mouffe, 2005, p. 9.

⁹⁷ C. Mouffe, 2005, p. 8.

⁹⁸ C. Mouffe, 2005, p. 8f.

⁹⁹ Mouffe exemplifies this disagreement by contrasting Hannah Arendt's view of 'the political' as a room characterized by freedom and public deliberation with a view of it as constituted by antagonism, conflict, and power. Mouffe aligns herself with the second view. See C. Mouffe, 2005, p. 8.

Furthermore, Mouffe uses her definition of 'politics' and 'the political' to solidify her distinction and subsequent separation of liberal democracy from democratic capitalism, thereby viewing the former as a *regime* i.e. 'a political form of society that is defined exclusively at the level of the political, leaving aside its possible articulation with an economic system'¹⁰⁰. This is central to Mouffe's thought since viewing liberalism as a regime — that is 'a symbolic ordering of social relations' — opens it up for analysis in hegemonic terminology, and, as will be seen later in this chapter, the aim of Mouffe's agonistic pluralism is to challenge and replace existing hegemonies.

Moving on, Mouffe contends that there exists an ontological misunderstanding of 'the political' which serves as the root of a problem taking the shape of an 'incapacity to think in a political way'.¹⁰¹ Mouffe, delineates this from a contention that true questions of politics require choices between decisions that are incompatible and thus not simply to be solved by pundits. Mouffe contends that the problem stems from the hegemonic role of liberalism in understanding politics, which disregards the antagonistic essence of 'the political' on account of its emphasis on individualism and rationalism as well as its understanding of pluralism.¹⁰² Mouffe's view is that the liberal individualist and rationalist conception of politics in effect rules out recognizing collective identities and 'the pluralistic nature of the social world, with the conflicts that pluralism entails; conflicts for which no rational solution could ever exist'.¹⁰³

Viewing pluralism as both the defining and constitutive element of modern liberal democracy, it is Mouffe's view that the understanding of pluralism that liberalism proposes — while we live in a world characterized by a plethora of outlooks, all of which we cannot conceivably be able to espouse, if taken together they nonetheless amount to a cohesive whole — necessitates a denunciation of the antagonistic nature of 'the political'.¹⁰⁴ More in depth, Mouffe arrives at this conclusion from an understanding of pluralism as 'the end of a substantive idea of the good life'¹⁰⁵ in the sense of 'a profound transformation in the

¹⁰⁰ C. Mouffe, 'Democracy, Power, and "the Political"', in S. Benhabib ed., *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton University Press, New Jersey, 1996, p. 245.

¹⁰¹ C. Mouffe, 2005, p. 9.

¹⁰² C. Mouffe, 1996, p. 246; C. Mouffe, 2005, p. 10.

¹⁰³ C. Mouffe, 2005, p. 10.

¹⁰⁴ C. Mouffe, 1996, p. 245f.; C. Mouffe, 2005, p. 10.

¹⁰⁵ C. Mouffe, 1996, p. 246.

symbolic ordering of social relations'¹⁰⁶. Hence, one should not talk of pluralism only as *fact*, as one thereby would miss the point, since in Mouffe's view what is important is not to recognize it empirically but axiologically as 'constitutive *at the conceptual level* [sic] of the very nature of modern democracy and [...] something that we should celebrate and enhance'¹⁰⁷.

Moving on, Mouffe's critique of liberalistic approach to politics is largely informed by the work of Carl Schmitt (the German jurist and political theorist with somewhat dubious credentials) a noted critic of liberalism as such:

The methodological individualism which characterizes liberal thought precludes understanding the nature of collective identities. Yet, for Schmitt, the criteria of the political, its *differentia specifica* [sic], is the friend/enemy discrimination. It deals with the formation of a 'we' as opposed to a 'they' and is always concerned with collective forms of identification; it has to do with conflict and antagonism and is therefore the realm of decision, not free discussion.¹⁰⁸

Furthermore and via Schmitt, Mouffe's critique emphasizes that since consensus only can be achieved through exclusion, a completely rational and inclusive consensus is unobtainable. Mouffe relates this to liberalism, arguing that since 'the rationalist belief in the availability of a universal consensus based on reason'¹⁰⁹ is one of its central tenets, it cannot satisfactorily fathom 'the political'. Mouffe argues that liberalism needs to nullify 'the irreducibility of antagonism'¹¹⁰ because 'what antagonism reveals is the very limit of any rational consensus [...] by bringing to the fore the inescapable moment of decision — in the strong sense of having to decide in an undecidable terrain'¹¹¹.

The above can be traced to Mouffe's anti-essentialist rejection of a conception of pluralism dependent on the view of 'beings as presence' and 'objectivity'¹¹² as the property of 'things themselves' in the sense that such an understanding entails the negation of the constitutive and transformative nature of pluralism.¹¹³ In other words, Mouffe's argument states that since there exists the necessity of an antagonistic divide between an 'us' and a

¹⁰⁶ C. Mouffe, 1996, p. 246.

¹⁰⁷ *ibid.*

¹⁰⁸ C. Mouffe, 2005, p. 11.

¹⁰⁹ *ibid.*

¹¹⁰ C. Mouffe, 2005, p. 12.

¹¹¹ *ibid.*

¹¹² For an illuminating explanation on 'objectivity' see the Routledge Encyclopedia of Philosophy entry of the same name.

¹¹³ C. Mouffe, 1996, p. 246.

'them' within 'the political', the establishment of a universal consensus based on rationalism and individualism is impossible. This is because there can never exist inclusion without exclusion and as such an endeavor would require negating pluralism and 'the political'.

From her discussion above and again citing Schmitt, Mouffe points to his view that as a result of it missing what is constitutive of 'the political' there exists 'absolutely no liberal politics, only a liberal critique of politics'¹¹⁴. The premise from which this conclusion stems is Schmitt's assertion that liberalism as such can never get rid of 'the political' (an endeavor which the discussion above would suggest) because all 'the political' requires is an antithesis with enough strength to create an 'us' and a 'them'.¹¹⁵ The divide between an 'us' and a 'them' is, as can be seen, in Mouffe's view the key insight to be found within the work of Schmitt, however, it is also at this point that she distances herself from him with regards to his views on pluralism (which will be more closely examined in a following section).

To conclude this section on the theoretical foundations of Mouffe's approach, there appears to be two key aspects which inform her thought. First, her understanding of 'the political' as a space constituted by antagonistic pluralism. And second, that such an antagonism is dependent on a division between an 'us' and a 'them' which entails that the liberalistic notion of consensus is an impossibility. For such a consensus to exist the constitutive division made necessary by pluralism would have to be demolished and thereby eliminating the condition for politics.

6.2. Mouffe and Deliberative Democracy

Chantal Mouffe presents agonistic pluralism as an alternative to deliberative democracy, which begs an answer to the question of why she believes the latter to be lacking. Mouffe's general objection to deliberative democracy is that by rejecting an aggregative model of interest and preference accumulation in favor of a conception constituted by reason and rationally guided argumentation, it simply substitutes an economic understanding of politics for a moral one. This does in other words entail a shift from viewing questions of politics through a lens inspired by the market to approaching them from a moral perspective and thus

¹¹⁴ C. Mouffe, 2005, p. 12.

¹¹⁵ *ibid.*

possible to answer rationally. From this Mouffe asserts that a consideration of 'the political' is lacking in both the aggregative and deliberative conceptions of democracy.¹¹⁶

The above shows promise for interesting implications for this thesis conception of legitimacy. As legitimacy is thought of as a normative concept and thus grounded in morality in the way that it implies what one ought to do, an objection to the notion that politics always involves such aspects most likely provides fertile ground for interesting discussions.

6.2.1. Mouffe's Reading of Deliberative Democracy

From the view that it represents the most sophisticated and developed conception on behalf of its elaboration of the public sphere, Mouffe launches a focused critique against the Habermasian understanding of deliberative democracy, which she sees as the amalgamation of Jürgen Habermas and his intellectual descendants. In Mouffe's reading, the aim of Habermasian deliberative democracy 'is to propose a reformulation in communicative terms of the classical notions of democratic theory, especially the concept of popular sovereignty'.¹¹⁷ As an example of this, Mouffe highlights the work of Seyla Benhabib, which seeks to reconcile legitimacy with rationality:

According to the deliberative model of democracy, it is a necessary condition for attaining legitimacy and rationality with regard to collective decision making processes in a polity, that the institutions of this polity are so arranged that what is considered in the common interest of all results from processes of collective deliberation conducted rationally and fairly among free and equal individuals.¹¹⁸

From the above Mouffe infers that legitimate categorical power of democratic institutions arises from a presumption that decisions by those same institutions are representations of an unbiased outlook with equal concern to all. Further, the decisions should result from a deliberative process structured in accordance with the Habermasian model i.e. a prerequisite for valid claims is that they have been agreed to by all those affected in a deliberative process regulated by a specific set of principles:¹¹⁹

¹¹⁶ C. Mouffe, 'Deliberative Democracy or Agonistic Pluralism?', *Social Research*, vol. 66 no. 3, Fall 1999, pp. 745-758, p. 746.

¹¹⁷ C. Mouffe, 1999, p. 746.

¹¹⁸ S. Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy' in S. Benhabib ed., *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton University Press, New Jersey, 1996, p. 69.; C. Mouffe, 1999, p. 746f.

¹¹⁹ C. Mouffe, 1999, p. 747.

1. Participation [...] is governed by the norms of equality and symmetry; all have the same chance to initiate speech acts, to question, interrogate, and to open debate;
2. All have the right to question the assigned topics of conversation;
3. All have the right to initiate reflexive arguments about the very rules of the discourse procedure and the way in which they are applied or carried out. There are no *prima facie* rules limiting the agenda or the conversation, nor the identity of the participants, as long as each excluded person or group can justifiably show that they are relevantly affected by the proposed norm under question.¹²⁰

Mouffe contends that in the effort to base what is legitimate on that which is rational, deliberative democrats have to make a key distinction between "mere agreements" and "rational consensus"¹²¹, where the latter would be the result of a discourse theoretical procedure. In Mouffe's reading this distinction is what feeds the principles according to which the deliberative process is to be structured, which in turn leads the deliberation towards generalizable and legitimate results i.e. 'the process of public discussion can be guaranteed to have reasonable outcomes only to the extent that it realizes the conditions of ideal discourse'¹²².

Mouffe further discusses that Habermasian deliberative democracy does not deny that there exist hurdles for the realization of its conception of politics. However, these hurdles are found empirically leading to the conclusion that the 'ideal speech situation' should be thought of as regulatory, a standard against which to measure empirical phenomena. Social life is thought to be constructed in such a way that it would be impossible to become completely unburdened by one's own conceptions. On Mouffe's reading the Habermasian approach hence acknowledges that certain issues ought to be kept outside the democratic process such as 'existential issues that concern not questions of justice but of the good life'¹²³. Nonetheless, the Habermasian approach is according to Mouffe still convinced of its ability to decide political issues rationally.¹²⁴

¹²⁰ S. Benhabib, 1996, p. 70.; C. Mouffe, 1999, p. 747.

¹²¹ C. Mouffe, 1999, p. 747.

¹²² C. Mouffe, 1999, p. 747f.

¹²³ C. Mouffe, 1999, p. 748.

¹²⁴ *ibid.*

6.2.2. Mouffe's Critique of Deliberative Democracy

Much of Mouffe's critique against the Habermasian understanding of deliberative democracy has already been presented via the problem formulation of this thesis. Nevertheless, it is still beneficial to review it at this stage so that it is still fresh in mind when Mouffe's alternative, agonistic pluralism, is presented.

6.2.2.1. Wittgenstein

Mouffe's critique of the Habermasian approach firstly takes cues from Ludwig Wittgenstein and his understanding of language. In the words of Mouffe: '[f]or Wittgenstein to have agreement in opinions there must first be agreement on the language used and this, as he points out, implies agreement in forms of life'¹²⁵.

The underlying assumption made by Wittgenstein is that procedures, such as democratic procedures, only consists of complex amalgamations of practices. Practices, which should be interpreted as 'specific forms of individuality and identity that make possible the allegiance to the procedures'¹²⁶ Hence it is because they are constituted by specific and shared forms of life that procedures come to fruition. As such, procedures cannot be seen as criteria set up by certain principles and then used in a specific sense, such as an ideal speech situation. Procedures are always constituted by practices and therefore by forms of life.¹²⁷

Mouffe uses the above to contend that the Habermasian view of the ideal speech situation as necessarily free from conceptions of the good life, is impossible to preserve. The reason given is that such procedural conceptions by way of Wittgenstein always involve substantial conceptions of the good life.¹²⁸

6.2.2.2. Lacan Through Žižek

The second major critique which Mouffe directs at Habermasian deliberative democracy is informed by the work of Lacan via Žižek. In essence, Mouffe's critique problematizes whether the very idea of an ideal speech situation as a regulative standard is at all a possibility.¹²⁹

Discourse, as a context in which meaning is created, is itself always created by the intervention of a so-called 'master signifier' or in other words power. As such power is

¹²⁵ C. Mouffe, 1999, p. 749.

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ C. Mouffe, 1999, p. 751.

constitutive and therefore there exists no possibility for discourse to exist without power. Mouffe relates this to the Habermasian conception of the ideal speech situation, arguing that such a discursive space is an impossibility.¹³⁰

6.3. Agonistic Pluralism

As was briefly touched upon in the first section of this chapter with respect to its relation to 'the political', a significant aspect of Mouffe's thought is her view on pluralism — as the name of her conception of democracy, 'agonistic pluralism', would suggest. While she takes inspiration from Schmitt, Mouffe opposes the view on pluralism put forward by him, who argued that democracy as such has no place for pluralism as it requires the demos to be homogenous and thus there exists 'an insurmountable contradiction between liberal pluralism and democracy'¹³¹. Mouffe instead proposes approaching pluralism by thinking 'with Schmitt against Schmitt'¹³², in an effort to conceptualize a novel view of liberal democracy.¹³³

On Mouffe's view, the chief contribution made by Schmitt is his assertion that identities of a political nature are composed of an 'us/them' relation, or more specifically, a relation between friends and enemies that emerges from 'very diverse forms of social relations'¹³⁴. Hence, the key assertion of Schmitt according to Mouffe is that political identities are relational in nature, which she subsequently argues can be seen as an anticipation of certain theories, such as post-structuralism, which emphasize that identities are all relational. It is from this junction that Mouffe sets about her project; that is the junction between her agreement with Schmitt concerning the relational nature of political identities and disagreement with him over the impossibility of reconciling democracy with pluralism.¹³⁵

Mouffe approaches the issue with the aid of Henry Staten and his interpretation of and distillation of Jacques Derrida into the overarching concept of the 'constitutive outside'. The assertion of the 'constitutive outside' is 'to highlight the fact that the creation of an identity implies the establishment of a difference. A difference which is often constructed on

¹³⁰ C. Mouffe, 1999, p. 751.

¹³¹ C. Mouffe, 2005, p. 14.

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ C. Mouffe, 2005, p. 15.

the basis of a hierarchy'.¹³⁶ From this reading of Derrida by Staten, Mouffe asserts that affirmation of difference as a prerequisite for identity as well as the understanding of identity as relational, better allows one to acknowledge the constant possibility that antagonism arises from a particular social relation.¹³⁷

With the reasoning above, Mouffe does not aim to propose that antagonism — in the sense of a 'friend/enemy' separation — is characteristic of every division between an 'us' and a 'them' but rather that one should admit that such a divide remains a possibility. An antagonistic relationship between identities arises when a 'them' is regarded as challenging and endangering the survival of the identity of an 'us'.¹³⁸ On Schmitt's view, being political required that the relation between 'us/them' was that of 'friend/enemy' and as such could not be allowed in a body politic; something which Mouffe opposes. In opposition to Schmitt's view, Mouffe instead asserts that a 'friend/enemy' division is but one way in which 'the antagonistic dimension [...] constitutive of the political'¹³⁹ can be expressed.

From the view expressed in the paragraph above, Mouffe makes the following assertion that can be viewed as the aim of her democratic theory:

We can also, while acknowledging the ever present possibility of antagonism, imagine other political modes of construction of the we/they [us/them]. If we follow this route, we will realize that the challenge for democratic politics consists in trying to keep the emergence of antagonism at bay by establishing the we/they in a different way.¹⁴⁰

In other words, Mouffe aims to provide an answer to the question of how the division created by 'the political' can be addressed within a pluralist democracy. Mouffe's answer begins with the presupposition that 'the other' should not be considered an 'antagonist' — that is, an enemy to be defeated — but an adversary i.e. 'somebody with whose ideas we are going to struggle but whose right to defend those ideas we will not put into question'. Acknowledging that this view does not fully eliminate the possibility of antagonism while at the same time distinguishing it from what she calls 'the liberal notion of the competitor', Mouffe introduces her view of the adversary as an 'legitimate enemy'.¹⁴¹

A legitimate enemy is on Mouffe's view:

¹³⁶ C. Mouffe, 2005, p. 15.

¹³⁷ *ibid.*

¹³⁸ C. Mouffe, 2005, p. 15f.

¹³⁹ C. Mouffe, 2005, p. 16.

¹⁴⁰ *ibid.*

¹⁴¹ C. Mouffe, 1999, p. 755.

[...] an enemy with who we have in common a shared adhesion to the ethico-political principles of democracy.’ But our disagreement concerning their meaning and implementation is not one that could be resolved through deliberation and rational discussion, hence the antagonistic element of the relation. To come to accept the position of the adversary is to undergo a radical change in political identity, it has more of a quality of a conversion than of rational persuasion [...].¹⁴²

Hence, the whole purpose of Mouffe’s agonistic pluralism is to turn antagonistic relations into agonistic ones, where agonism represents her view of the adversary i.e. the legitimate enemy. The aim of democracy on Mouffe’s view is not to delegate conceptions of the good life to the realms of privacy or to remove passions in favor of a rational consensus. Instead, the aim is to assemble conflicting views into cohesive representations that promotes democracy.¹⁴³

Acknowledging that a democracy characterized by pluralism demands a certain level of consensus, Mouffe insists that this is only necessary in regards to what she terms ethico-political principles. She further stresses that the existence of such principles can only be sustained ‘through many different and conflicting interpretations’ and therefore ‘such a consensus is bound to be a ”conflictual consensus”’.¹⁴⁴ As such, any democracy claiming to be pluralistic must provide ample room both for dissent and those institutions necessary for guaranteeing such dissent.¹⁴⁵

The question therefore arises what the ethico-political principles that Mouffe refers to, are. Mouffe describes them as ‘liberty and equality for all’¹⁴⁶ but she does not give any apparent further explanation of them other than that they should be thought of as underlying the agonistic model she promotes.¹⁴⁷ This is clearly problematic in relation to this thesis conception of legitimacy, as it does not seem to provide a clear answer to the question of its source or function.¹⁴⁸ Nevertheless, Mouffe presents an interesting take on democracy and its purpose, an approach that will no doubt provide interesting challenges and insights when evaluated with the thesis’ conception of legitimacy.

¹⁴² C. Mouffe, 1999, p. 755.

¹⁴³ *ibid.*

¹⁴⁴ C. Mouffe, 1999, p.756.

¹⁴⁵ *ibid.*

¹⁴⁶ C. Mouffe, 2005, p. 31.

¹⁴⁷ *ibid.*

¹⁴⁸ This line of thought will be developed more fully in the comparative section below.

7. A Reading of Rainer Forst

Like the previous chapter on Chantal Mouffe, this section of the paper concerns itself with reading selected works of a certain theorist, this time German political philosopher Rainer Forst, a noted deliberative democrat. Being a prominent intellectual descendant of Jürgen Habermas, the examination of Forst's conception of deliberative democracy in relation to Mouffe holds great promise for valuable insights into the tenability of both theorists. This chapter will delineate those aspects of Forst's thought that pertain to his conception of democracy and thus the purpose of this paper.

7.1. Forst's Conception of Morality

The underlying basis for Forst's theory of deliberative democracy can be found in his understanding of *reason* and *reasons*. On the one hand, when he talks of reason, Forst refers to the ability to make sense of one's opinions and action, to be guided by reasons or justifications; while on the other, reasons denotes the foundation upon which reasonable agents can rest those same opinions and actions.¹⁴⁹ Because that for which one argues will be met by the opinions of others, and in order for it hold up against such opinions, the reasons for one's thought or action becomes publicly owned. Hence and in other words, the foundation built by reasons ought to be 'a shared, common basis for well-founded thinking and action'¹⁵⁰ because while 'reasons can relate to very specific convictions and actions, as reasons they are principally accessible to all'¹⁵¹.

Forst asserts that rational convictions and actions necessarily requires a foundation consisting of reasons, which in turn requires that the *space of reasons* within which everyone exists¹⁵² is structured as well as constantly examined in accordance with certain formal rules. Forst proceeds to the presentation of such rules for practical contexts i.e. contexts where one needs to provide reasons for actions.¹⁵³ An example of which arguably can be thought of as Forst's conception of deliberative democracy.

¹⁴⁹ R. Forst, *Rätten till rättfärdigande: Bidrag till en konstruktivistisk teori om rättvisa*, tr. S. Hums, Daidalos, Göteborg, 2007, p. 247.; R. Forst, *Normativity and Power: Analyzing Social Orders of Justification*, tr. Ciaran Cronin, Oxford University Press, Oxford, 2017, p. 3.

¹⁵⁰ R. Forst, 2007, p. 247f.

¹⁵¹ R. Forst, 2007, p. 248.

¹⁵² By virtue of the public nature of *reasons*.

¹⁵³ R. Forst, 2007, p. 248.

7.2. Forst's Model of Deliberative Democracy

Rainer Forst defines justice as 'the human virtue and moral-political imperative to oppose relations of arbitrary rule or domination'. As such, 'a just social order is one to which free and equal persons could give their assent [...] based on institutionalized justification procedures'.¹⁵⁴ This is a foundational point of Forst and he emphasizes the recursive implications of this. Implications which follows from his view 'that what is at stake in political and social justice is norms of an institutional basic structure which lays claim to reciprocal and general validity'.¹⁵⁵ The foundation of Forst's model of deliberative democracy can thus be found in the following:

[...] since those norms that needs to be justified by reasons will transform into *reciprocally* and *generally* binding and legally applied norms, those reasons which grant them legitimacy must themselves be justified *reciprocally* and *generally*.¹⁵⁶

As can be seen, the key concepts of Forst's understanding of justification, and in turn deliberative democracy, are *reciprocity* and *generality*. By *reciprocity* Forst refers to the contention that one cannot make a claim for something that one denies someone else, which means that the claim itself must be formulated such as to be open to questioning not for solitary decision-making. By *generality* Forst asserts that all those who are affected by the norms in question must have the same opportunities to present claims and arguments, that is 'the "justification-community" must be identical to the "validity-community"'.¹⁵⁷

Moving forward, Forst acknowledges that this line of thought represents two important similarities to the liberal approach on the constitution of public reason: Firstly, it demands that citizens translate their claims to a mutually agreed upon language of deliberation; and secondly, it requires that the citizens differentiate between what they consider good and what they consider possible to support reciprocally and generally.¹⁵⁸

However, Forst stresses that his approach does not require that one transcends oneself in an extraordinary fashion. Forst holds that one is only required to acknowledge the difference between two contexts of justification: the *ethical* and the *general*. The ethical

¹⁵⁴ R. Forst, 'Two Pictures of Justice', in D. Owen ed., *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue*, tr. Ciaran Cronin, Bloomsbury, London & New York, 2014, p. 21f.

¹⁵⁵ R. Forst, 2014, p. 21.

¹⁵⁶ R. Forst, 2007, p. 96.

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

context contains those claims that despite not reaching general validity might still be legitimate. The general context of justification does on the other hand require that all claims are made in accordance with the generality and reciprocity criteria. Hence, there exists the possibility for disagreement about the correct course of action but if a claim is raised which does not meet the criteria of generality and reciprocity that claim does not reach the criteria of public reason.¹⁵⁹

Continuing, Forst holds that regarding questions of fundamental justice, the demands of public reason — generality and reciprocity — have to be interpreted literally; in other words, issues which define the basic and initial subjection to political authority have to be tested morally against the requirement of equal respect created by generality and reciprocity. Hence, questions with no immediate implication for the fundamentals of justice can be rejected on a different set of principles, provided that they do not contradict the fundamental demands of generality and reciprocity. In other words, as long as the process has been informed by generality and reciprocity, the outcome might not be considered the best by some but it is nonetheless legitimate.¹⁶⁰

It is according to Forst imperative that deliberation is informed by the criteria of generality and reciprocity, as they form the standard against which legitimate claims are measured. As long as the criteria are respected disagreement in substantial questions will be possible without running the danger of negating each subjects unquestionable *right to justification*. This concept which is an imperative in the Kantian sense¹⁶¹ entails that everyone has the undeniable right 'to be respected as an autonomous moral person with the ability to justify and an indisputable right to demand justifications'.¹⁶² The determining factor for legitimacy in the Forstian conception of deliberative democracy is thus whether the criteria of generality and reciprocity as the function of the right to justification have been followed.

As shown, one of Mouffe's central critiques of Habermasian deliberative democracy is her view that agreements on form of life are required for the type of deliberation promoted by deliberative democracy, thus negating its supposed ability to reach consensus on substantive issues. Forst approaches this issue from an understanding that a common

¹⁵⁹ R. Forst, 2007, p. 97.

¹⁶⁰ R. Forst, 2007, p. 97ff.

¹⁶¹ I.e. it is always morally wrong to act against it. See. I. Kant, *Grundläggning av sedernas metafysik*.

¹⁶² R. Forst, 2007, p. 101f.; R. Forst, 2007, p. 134f.

conception of justice and responsibility is shared by those participating in a specific deliberative process. Forst insists that such an agreement does not necessarily entail agreement on ethical views only that justice dictates that no one promotes their view of the good life in contradiction to the criteria of generality and reciprocity.¹⁶³

More specifically, if one accepts the right to justification, this entails that one has certain responsibilities. First, one must be guided by generality and reciprocity in deliberation. Second, one must be willing to assume responsibility for the actualization and consequences of the outcomes of such deliberation. Third, one must be willing to take responsibility for collective decisions and their consequences for non members of the political community. As such, democracy on Forst's view rests on the mutual trust of its constituents as a result of this common conception of justice and responsibility. Forst further stresses that this conception is equal to a comprehensive view on political ideology, instead it is a representation of the communal view that there 'exists no public and official shared understanding of the good life and that justice prohibits the promotion of such understandings contrary to the principles of generality and reciprocity'.¹⁶⁴

Reciprocity and generality determines the extent to which democratic institutions are deliberative and as such an idea of their constitution becomes necessary for Forst's deliberative democracy to function as a critical tool. Forst holds that one ought to look to the so-called public sphere i.e. the sphere of public argumentation, information and opposition inhabited by a plethora of actors and gatherings. This sphere functions as an influencer on more specific processes of deliberation by distilling conceptions held by actors or gatherings into reasons affecting those deliberations. It in other words 'determine[s] the space of reasons within which social or political relations are being framed'¹⁶⁵. As such the public sphere is capable of wielding a form of power which Forst calls the *noumenal power to rule* i.e. to be able to alter not only the space of justifications but also the aforementioned space of reasons.¹⁶⁶ Hence a critique which highlights the manner in which 'dominant political discourse shuts out and distorts the views and claims of certain groups', is required.¹⁶⁷

¹⁶³ R. Forst, 2007, p. 104.

¹⁶⁴ R. Forst, 2007, p. 104f.

¹⁶⁵ R. Forst, 2017, *Normativity and Power: Analyzing Social Orders of Justification*, tr. Ciaran Cronin, Oxford University Press, Oxford, p. 49.

¹⁶⁶ R. Forst, 2017, p. 49.

¹⁶⁷ R. Forst, 2007, p. 106ff.

Regarding the establishment of political authority, such as via a constitution, it has two requirements. Firstly, it has to guarantee the rights necessary for securing each citizen's right to justification. Secondly, it has to determine the principles and rules for a just deliberative process. As such any particular constitution needs to perform two tasks: determine whether political decisions are made generally and reciprocally and to audit the procedures of political participation so that they are inclusive and justifying.¹⁶⁸

Furthermore, Forst stresses that the most important aspect of any constitution is that it provides the unhindered ability to express opposition to decisions on grounds of them not being reciprocally made. Forst makes this assertion while acknowledging that there will always exist the likelihood that complete participation in deliberative decision-making is not achieved. Therefore the possibility to challenge those decisions must be guaranteed.¹⁶⁹

Moving forward, the paragraph above touched upon the more empirical guarantees that are needed for Forst's conception of deliberative democracy. On Forst's view, in order to be able to follow the criteria of generality and reciprocity, and thereby securing each person's right to justification, a minimum level of certain resources needs to be secured. In Forst's words: 'to achieve "effective social freedom" that makes possible participation a complex set of abilities needs to be backed by an adequate set of goods'.¹⁷⁰ These goods might be healthcare, education etc., while the abilities could be the respect of others as autonomous and equal citizens.

In conclusion, Forst's model of deliberative democracy serves the purpose of self-criticism and creates the ability for recursive processes of justification i.e. continuous testing and questioning of justifications to see if they could have been better. Forst stresses that the standard against which critique is performed is not some objective epistemological knowledge of political truth. Instead it represents an independent and normative marker for existing procedure that is itself dependent on procedures which are more reciprocal and general. As such, the right to justification which serves as the standard of procedure is a part of those procedures. More specifically, since a strictly reciprocal and general justification defines democratic justification itself, it consists of an intrinsic ability for critique of justificatory processes with the end result being continually better justified outcomes. The

¹⁶⁸ R. Forst, 2007, p. 108f.

¹⁶⁹ R. Forst, 2007, p. 109.

¹⁷⁰ R. Forst, 2007, p. 109f.

moral right to justification thus demands the institutionalization of generally and reciprocally justifying processes. In Forst's words: 'A just and justified societal foundation is comprised of those rights which free and equal persons must grant and guarantee each other, while at the same time institutionalizing the forms for reciprocal justification'.¹⁷¹

8. Evaluating Mouffe and Forst

Now that the democratic theories of have been presented, how do they fair against this thesis' conception of legitimacy? The discussion is structured as follows: Under each aspect of legitimacy the views of each scholar as they relate to it will be presented and subsequently discussed. At the end of each discussion the merits that scholar whose approach was deemed most in line with the thesis conception of legitimacy will be highlighted.

8.1. The Function of Legitimacy

After reading Mouffe and Forst it appears as if the most sophisticated version of legitimacy's function is to be found in the latter. As legitimacy's function on this thesis' view is to create liability in relation to a particular political authority, which at first look appears to work well with Forst's criteria of generality and reciprocity. As shown, in order to be liable towards a political authority its directives have to be aligned with its constitutive principles.

On Mouffe's view the constitutive principles of legitimate political authority is that it accepts two things: the constitutive role of pluralism and antagonism in politics as well as the ethico-political principles which guide political life. In relation to the first of the two, there does not on the thesis' view exist any real obstacles for viewing the function of legitimacy as the acceptance of a certain constitution of politics. On the contrary, such an acceptance is most likely an ever present necessity of over-arching conceptions of legitimacy.

However, Mouffe's ethico-political principles leaves something to be desired as it would be impossible to test them against a political authority to determine if one is liable towards it. Mouffe's principles of liberty and equality, which according to her ought to inform every instance of politics, have no normative status and as such are unable to give any weight to their 'ought'. This is obviously problematic as it does not provide any real standard against which political authority can be assessed and as such any claim to legitimacy and subsequent

¹⁷¹ R. Forst, 2007, p. 114ff.

liability would be an arbitrary guessing game. As such, Mouffe's view of legitimacy's function is not able to create the liability necessary for it to be considered legitimate according to this thesis.

Forst's view of a political authority is somewhat clearer than that of Mouffe as it is conceived as that authority which has justified its existence reciprocally and generally. As such a legitimate political authority is created through acts of justification showing equal respect to those affected whereas its continued existence is also dependent on such justification. Forst's view appears to align itself well with the understanding of legitimacy's function as liability. If the function of legitimacy is to create liability — a function which is dependent on continued testing in order to see if one is liable to a particular authority — the criteria of reciprocity and generality provides the tools with which such a liability can be tested. Reciprocity i.e. that a claim cannot justifiably be made for something which is denied to someone else; as well as generality i.e. all affected needs to be guaranteed the same ability to raise claims, appears to approximate the thesis' view of legitimacy's function. In order for a political authority to be able to hold those subjected liable it must be able to show that its directives are not in violation of its constitutive principles. If one then applies Forst's view of reciprocity and generality to, it becomes evident that liability demands reciprocal and general justification on behalf of the political authority for it to be legitimate and create liability.

More specifically, since one is constantly required to relate the criteria of reciprocity and generality by way of a moral obligation to adhere to them in questions of political justice, it might be considered a small step to reposition that requirement to a political authority thus creating liability. This reading is based on the recursive nature of both reciprocity/generality and liability i.e. that they both require continual evaluation as to their tenability. As such it would appear as if the constitutive principles of Forst's right to justification mirrors the anatomy of the liability-approach. Hence, Forst's view of democracy seems to be more aligned with this thesis' conception of legitimacy's function.

8.2. The Source of Legitimacy

As presented, the source of legitimacy is on this thesis' view based on the participation version of public reason.

Mouffe's contentions appear to be relatable to the thesis' conceptualization of legitimacy. Mouffe's view, that an incapacity to think politically ignores the constitutive

function of pluralism, connects directly to the first question¹⁷² on legitimacy's source. The source of legitimacy, on Mouffe's view, appears to be first the recognition of pluralism and second accommodating its continued existence. As such the legitimacy of a political authority is dependent on recognizing the constitutive nature of pluralism i.e. legitimacy's source. In relation to this thesis' view of legitimacy's source, such a view could be accommodated by the participation-approach. More specifically, the source of legitimacy is dependent on the recognition and continual safe-guarding of the participation of all relevant subjects. Legitimacy's source is hence is able to accommodate pluralistic conceptions of a legitimate political authority, as the legitimization of such an authority depends on such an accommodation.

However, legitimacy's source as conceived by this thesis might be seen as contradicting Mouffe's approach since it requires a level of inclusion that could be considered impossible on Mouffe's view. A major point of Mouffe's conception is that inclusion without exclusion is impossible and thus the participation-approach's demand for the inclusion of all relevant subjects would be unobtainable. However, this would be a hasty conclusion. While it is true that a participation approach requires the inclusion of all relevant subjects, such an inclusion is not a contradiction to the constitutive nature of antagonism and pluralism.

More in depth, the virtue of the participation-approach is that it demands the continual influence of relevant subjects when questions of legitimacy arises. As such it is also required that the constitution of those subjects also is under continued evaluation to determine their relevance. This suggests that exclusion takes place as it stands to reason that all are not relevant all the time — to be somewhat coarse. Thus, the source to legitimacy favored by this thesis is compatible with Mouffe's view of the constitutive elements of politics. This is an interesting implication as it shows that a conception of public reason is compatible with Mouffe's rejection of political theories based on reason and all-encompassing inclusion.

Shifting the focus to Forst, his conception of deliberative democracy intuitively holds great promise for meeting the demands set up by the participation version based on public reason championed by this thesis. As mentioned in the theory section, legitimacy on this thesis' view is dependent on the continued influence and participation of those affected and

¹⁷² From where does legitimacy stem?

therefore it is not possible for it to create an authority that has the ability to legitimately erode its own standard for legitimacy.

In relation to Forst's right to justification, which can be thought of as the source of legitimacy for his democratic conception, the source of legitimacy as participation appear analogous. Legitimacy stems on Forst's view from the undeniable moral right to justification i.e. to have claims aimed at oneself reciprocally and generally justified. More in depth, there does according to Forst exist a pre-political aspect of human nature — that is to give and receive reasons — that creates the moral right and obligation to give reasons in such a way as not to deny anyone's right to them. This is the right to justification which in turn is guided by reciprocity and generality.

While the fundamental right to justification on Forst's view holds promise for the thesis' view of legitimacy's source, as it provides a moral foundation which in effect demands participation, the two criteria he emphasizes seem to have the biggest implications. Beginning with generality, which requires that those affected ought to be included in any process of justification, the parallels to the participation-approach are clear. For example, let us say that a political authority wishes to legitimize itself, which entails that all relevant subjects are allowed to participate in that process — how can then generality be linked to this? As legitimization processes entail reason giving to and from all relevant, the generality principle which demands the same inclusion in questions of justification in effect has the same demands and is thus analogous and comparable to the participation approach.

The second criteria, reciprocity (that one cannot raise a claim for something one denies to others) meets the further demands set up by the participation-approach i.e. that no claim can be made which holds the potential for eroding the future possibility of making legitimacy claims. In other words, it would according to Forst's reciprocity criteria be unjustifiable to promote a claim which would deny the possibility for others (or oneself for that matter) to present justification claims. As such the reciprocity-criteria is synchronized with the participation-approach as they both hold the same demands for the continued possibility to raise legitimacy/justification claims.

8.3. Legitimacy and Democracy

This thesis sees the connection between legitimacy and democracy as rational proceduralist — that is, merely correct procedure or appropriate outcomes are not enough for legitimate

democracy. This view does on first glance appear to function well with both Mouffe and Forst, but the answer remains to be seen.

On Mouffe's view an appropriate democracy first of all needs to take into account constitutive roles of pluralism and antagonism in politics. Political life is on Mouffe's view characterized by a plethora of competing identities which by means of exclusion are able to create themselves in relation to those they are not. Political life is thus always constituted by a division between an 'us' and a 'them'. The task for democracy therefore becomes to overcome the potential for antagonistic relations that this characteristic of politics give rise to. Mouffe acknowledges that the us/them division and its potential for antagonistic relations is problematic, and she therefore introduces her understanding of the adversary or the agonist. An agonist is, as described, one with whom one has such a fundamental disagreement that agreement is unlikely, but whose right to defend those ideas one cannot question. As such, the respect of the agonist requires that one follows the so-called ethico-political principles — liberty and equality for all. On Mouffe's view if democracy follows these principles and acknowledges its antagonistic features, it is able to bring together conflicting views into cohesive conceptions thus promoting democracy via agonistic pluralism.

It would appear as if the demands set by the rational proceduralist approach are met by Mouffe's conception as it clearly shows the need for something more than procedure. However, the substance of this something more — the ethico-political principles — appear somewhat lacking. While Mouffe provides a compelling theorization of her view of the agonist as well as how it relates to democracy, she does not give any clear reasons as to why one is required to follow her ethico-political principles. They are simply there to be respected. The supposed reason for this can be inferred as Mouffe stresses that she does not wish to ban conceptions of the good life from politics — as such the ethico-political principles should be thought of as normatively independent and not informed by substantive values. This thesis finds this hard to accept in relation to its view of legitimacy and democracy.

While Mouffe's ethico-political principles might meet the requirements of the rational proceduralist approach in the broadest sense, as they do technically represent something more than procedure, they do not appear very compelling. Since the principles do not provide any reason for why they should be respected, there can exist no real obligation as to why they should be respected. This is a major problem for legitimacy as there in effect does not exist

anything else on Mouffe's view than the procedural insights of agonism and pluralism for the legitimization of authority within a democracy. In other words, Mouffe provides an enticing view of politics as constituted through pluralism and agonistic procedure but she does not provide any compelling reasons for why those procedures ought to be followed.

Rainer Forst's conception of democracy is, as mentioned several times, deliberate. Hence, democracy ought to be constituted in accordance with the right to justification which entails that someone affected by a certain decision, norm, and so on, has the undeniable right to have that institution justified to them in accordance with reasons that are general and reciprocal. As such there does on Forst's view exist a moral foundation as to why his conception of democratic politics should be accepted, something which is lacking on Mouffe's view.

In relation to this thesis conception of legitimacy and democracy, Forst's theory of democracy fairs better as it clearly requires something more than procedure for it to be able to create legitimate outcomes — that is, legitimately authoritative outcomes. While Mouffe provide principles and thus reach beyond mere procedure, she does not provide any fundament on which they rested, which in contrast Rainer Forst clearly does. By grounding his conception of democracy on a specific view of how one needs to give reasons for actions, Forst is able to provide a moral foundation for democratic legitimacy in the form of his right to justification.

Forst's criteria generality and reciprocity provide the standard against which legitimate democratic claims are measured, and while they may appear similar to Mouffe's ethico-political principles liberty and equality, they are fundamentally different as they are moral and thus normative in nature. This conception is well aligned with the thesis' conception of democratic legitimacy as rational proceduralist on account of two reasons: first, generality and reciprocity constitute a concise conception of democratic procedure; second and perhaps more importantly, reciprocity and generality represent not merely procedural demands but also moral and normative demands.

More specifically, on this thesis' view generality — that is all affected must have the same opportunities to present their claims — and reciprocity — one cannot make a claim for something which one denies others — in relation to democratic legitimacy represents both procedure and the 'something more'. Procedurally, generality and reciprocity functions as the

rules according to which claims are to be presented. They do however represent something more than procedure i.e. the evaluative criteria for every subjects right to justification. A standard against which every claim has to be measured prior to procedure.

In sum, it would thus appear as if Forst's conception of deliberative democracy aligns itself well with the thesis' view of the legitimating aspects of democratic procedure. This entails that the Forstian conception of democracy is deemed more compelling than the one provided by Mouffe.

9. Concluding Remarks

While reviewing the democratic theories of Mouffe and Forst it has become clear that the latter is more aligned with the conception of legitimacy promoted by this thesis. On first look it may be argued that this is the result of a conception of legitimacy that favored one scholar over the other. However, that argument could most likely be made against any conception of legitimacy that is normative, as it by way of definition involves evaluation among alternatives. Nevertheless, some interesting results were obtained, perhaps most prominently in relation to Mouffe and the source of legitimacy.

What was interesting with the evaluation of Mouffe in relation to the source of legitimacy was that her conception of it appeared perfectly compatible with a public reason-based approach. This is interesting as Mouffe is known to reject the possibility of such approaches, this thesis presents one of her critiques for example, the implications of this finding are nevertheless difficult to interpret any further. This invites further study into possible parallels between Mouffe's agonistic pluralism and theories of public reason.

Overall the democratic theory of Rainer Forst was deemed the most compelling as it was able to provide answers to the questions of legitimacy when Mouffe's conception was not. This is no doubt due to the clear moral and normative foundation found in Forst's theory, which helped it when evaluated against a normative conception of legitimacy. Mouffe's theory did not fare as well on behalf of its hollow ethico-political principles which were considered unable to provide the normative force they were meant to.

In conclusion, this thesis can be thought of as having provided two insights of equal importance. First, the democratic theory of Chantal Mouffe is not necessarily incompatible with theories based on a conception of public reason. Second, in order for a democratic

theory to be legitimate it needs to provide an adequate moral and normative foundation for its guiding principles.

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