

REPRESSED DEMOCRACY: LEGITIMACY PROBLEMS IN WORLD SOCIETY

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RESUMEN

La democracia parece ya no ser autoevidente. Colin Crouch y otros autores describen un creciente sentido de alienación en la política: las instituciones y procedimientos democráticos podrían estar trabajando adecuadamente, pero podrían promover valores no democráticos tales como la tecnocracia, la oligarquía, el elitismo. Para los ciudadanos, solo persiste una ilusión de democracia. Este artículo argumenta que el debilitamiento de la democracia en la práctica espeja el desvanecimiento de la democracia en la teoría política y la filosofía. Podríamos enfrentar una crisis de la política democrática como resultado de una crisis de la teoría democrática. La teorías predominantes de la democracia no consiguen, en su mayoría, reflejar adecuadamente las condiciones sociales cambiantes en las sociedades democráticas ni ofrecer una concepción de la política democrática que pueda abordar los actuales déficits de legitimidad. Este artículo discute enfoques teóricos destacados (teoría ideal vs. realismo; consenso vs. teoría del desacuerdo) y sostiene que todas tienen dificultades para conceptualizar posibles recursos para la democratización que sean adecuados para las condiciones y problemas contemporáneos. Una nueva versión de teoría política es esbozada y defendida. Se trata de una teoría que se construye sobre una redefinida noción de soberanía democrática y poder comunicativo, lo bastante compleja como para reflejar la realidad sociológica de la política actual e ir más allá del formalismo de la democracia.

Palabras clave: democracia radical, legitimidad, poder comunicativo, represión, lo político

ABSTRACT

Democracy seems to be no longer self-evident. Colin Crouch and others describe a growing sense of alienation in politics: democratic institutions and procedures may be working properly, yet they themselves promote non-democratic values such technocracy, oligarchy, elitism. For the citizens, only an illusion of democracy persists. The article argues that the weakening of democracy in practice mirrors the vanishing of democracy in political theory and philosophy. We may face a crisis of democratic politics as a result of a crisis of democratic theory. Predominant theories of democracy fail, for the most part, to adequately reflect the changing social conditions in democratic societies and to offer a conception of democratic politics that would address current legitimacy deficits. The article discusses prominent theoretical approaches (idealist theory vs. realism; consensus vs. Dissent theory) and points out that all have difficulties conceptualizing possible resources for democratization adequate to contemporary issues and conditions. A new version of political theory is outlined and defended, such that builds upon a redefined notion of democratic sovereignty and communicative power, complex enough to reflect the sociological reality of today's politics and to reach beyond the institutionalized and formalized setting of democracy.

Key words: radical democracy, legitimacy, communicative power, repression, the political

Democracy seems to be no longer self-evident. Colin Crouch and others describe a growing alienation in politics: global neo-liberal politics has lead to a “colonisation” of state institutions by élites which represent private economic interests. Democratic institutions and procedures may be working properly but important decisions are taken behind closed doors, domestically and, to huge extent, internationally (Crouch 2004). For the citizens, only an illusion of democracy persists.

On the other hand, citizens in Europe and elsewhere seem to be far from being politically demotivated. We witness mass protests in many European cities, riots in London, and revolts

in Northern Africa. It is safe to say that, besides all context-specific differences, what these uprisings have in common is that citizens are reclaiming political self-determination. In a period of time in which the euphoric ideas of global democracy were long gone and the global financial and economic crisis is in full swing, the citizen is back on the stage.

So we are confronted with two developments which –at first glance– aim in different directions: the repression of democracy, on the one hand, and the subversion of the existing political systems (be they democratic or non-democratic) through political action, on the other. Democracy seems to be both in decline and to rise from death at the same time. But questions come up. Are protests, riots, and revolts democratic? And what notion of democracy, if any at all, can be defended with a view to these developments? Do we even need to think –against all odds– of transnational democracy or at least of transnational democratization? And what conception of political philosophy is appropriately equipped to avoid the pessimistic decline of democracy?

My starting assumption here is that democracy is not only under pressure in political practice but that it is marginalized in political theory and philosophy as well. The weakening of democracy in practice mirrors, in my view, the vanishing of democracy in theory. The eclipse of democracy has many faces: democracy for a globalised world, it is said, is declared as being normatively too demanding, with no institutional backing in reality; it is lampooned as not being very efficient and is theoretically watered down to technical ruling, or reduced to accountability, or transformed into rational deliberation -the list of reservations towards democracy has grown long. But are the reservations justified? In this paper, I want to argue that they are not, and, moreover, that they neither meet the empirical reality, nor the appropriate normative standards.

The point I wish to highlight in the first section of this paper is that some of the predominant theories for the most part either fail to reflect the changing social and political con-

ditions adequately or fail to offer a concept of legitimate democracy that overcomes its current deficits, or sometimes even both. To overcome some of the prevailing deficits (undoubtedly not all of them), I argue in a second section that we should start with two lines of argumentation: First, I think that, despite the many difficulties that democracy faces, we need to expand the notion of democracy rather than minimize it. I defend a renewed conception of radical democracy, which is based upon communicative power and includes protests and other forms of resistance. Second, a theory of democracy should be based upon an international social theory. It is not “freestanding”, to use a Rawlsian term, in the sense that it can be legitimized without a systematically reference to social conditions. Instead, a theory of radical democracy needs to link up with an analysis of the social and political obstacles to political participation. It is only then that theory regains its grip upon the reality of democratization. I will conclude by defending this approach against some objections.

1. Four (not so convincing) answers to globalisation

Criticism of democracy is not new. The idea of democracy has been under attack since its very early appearance. Plato defended the leadership of the best and had strong reservations against the Aristotelian idea of the authority of the masses. The masses -he thought- would be easy to manipulate because of a lack of competent political judgement caused by educational deficits and the hardship of daily work (Plato, *Politeia*). For Hobbes, democracy was a potentially dangerous idea, as people who know more about becoming rich, rather than gaining knowledge, spur other people to revolt instead of governing them (Hobbes 1982). And for Carl Schmitt, the ongoing democratic dispute threatens the homogenous ethnic-nationalist community of the people (Schmitt 2009). Besides this critique which questions democracy in general, there has

always been criticism that addresses the weak performance of democracy. Schumpeter, for example, stressed the de-functionalities of popular democracy and stressed the advantages of a model of democracy that serves not the common interest but the selection of the élite. And Crouch’s dark diagnosis leads to the invocation to strengthen vigilant public spheres and alternative lobby work in order to influence the political system anew and from another side.

What is new in Crouch’s study and what is interesting for our questions here is that he starts off from the assumption that we undeniably live in a world-society, an almost global society in which transnational and highly-differentiated, administrative-technical networks of globally-operating economic élites strongly determine global and national politics (Brunkhorst 2009: 11).

Through this change in perspective, from society to world society, some threats to democracy come to the fore. Firstly, not only the economic and financial crisis, but also climate change and other global risks create the need for transnational action and regulation, but the state-framed democratic embeddedness of decision-making falls short. Secondly, there is an erosion of national sovereignty through transnational governance and the globalisation of law and politics. Expert committees, international organizations, and global corporations substitute the “will of the people” and legitimate private international law and other regulations. And thirdly, modern societies are characterized by a plurality of values, and deep conflicts and divisions. The subject of democracy, the popular sovereign will, can never be homogeneous and create unity.

In other words, we are confronted with changes which endanger the basic elements of democracy: the present democratic and state-based representational system becomes increasingly powerless; citizens are affected by decisions and rules of which they are not the authors; and the demos (the people) is becoming more plural, domestically as well as globally. But how does political theory reflect on these problems,

and what is the role of democracy? I will discuss four prominent approaches which all have difficulties in identifying the possible resources of democratization in world society.

1.1. Governance theory

One approach in particular in political theory has gained a wide currency in political science and can be subscribed with the “container notion” of “governance theory”. Even though the notion of governance embraces everything that has to do with “regulation” in the broadest sense, it can be defined a little more precise by referring to the American sociologist Talcott Parsons to whom this strand of theory can be traced. Governance theories describe society as being steered not so much through concrete actors, as being mediated through social systems. These systems are integrated through functionalist requirements, which emerge in different societal areas, such as economy, law, and politics (Parsons 1971). This way to describe societal processes became prominent not just in sociology but also in economic theory of transaction. Oliver Williamson defines governance as the way of describing rules and their enforcement in economic processes. What happened was that since then, governance came to mean efficient regulation. Political scientists, including Ouchi, Schmitter, Powell, and Hollingworth, expanded this concept and added the regulation of clans, associations, and networks, all of which can be found in the economy as well (Ouchi 1980; Streek and Schmitter 1985; Powell 1990). Then, with globalisation-reaches theory, the meaning of governance brought with it an enormous advantage. It offers the tools not just to focus on regulations both within and between states, but also between the traditional global players and non-state actors, such as transnational corporations, international organisations and NGOs (Rosenau and Czempiel 1992). This changed the meaning of hierarchy within governance. Instead of analysing the hori-

zontal power relation of the institutions of the state and its citizens, global governance theories claim to identify non-hierarchical, vertical relations between states, transnational institutions and non-governmental organisations (Héritier 2002). Within a political setting in which, for example, the allocation of common goods (water, healthcare, education) is at stake, governance theories, the state (and the citizens) appear as one actor among others (private companies, lobby groups, members of trade unions, and so on).

This may sound as a critical counter-concept to the hierarchical nature of steering processes. But it is less anti-hierarchical than it may seem to be. “Governance”, as Adrienne Héritier puts it, “implies that private actors are involved in decision-making processes in order to provide common goods and that non-hierarchical means of guidance are employed” (Héritier 2002: 12). This could not express better that the difference between the steering object and the subject of the steering has become blurred. This comes with a price, and it is the citizens who pay this price. The steering subjects are no longer citizens but private and other non-state actors, as they have the competencies and the financial means to regulate “common” problems. The steering objects are not only states, but can also be the citizens of subject to regulation or to politics itself.

This change of roles has devastating effects sometimes on the citizens but on political legitimacy as well. Whereas public-private partnerships were once created in most European cities (for the water supply, for example) to deal with collective concerns, the new definition of political subjects (non-state actors) and new modes of governance has introduced new hierarchies: between those who can and are willing to pay, and those who cannot and remain excluded; between those who fit into the required market schemes and those who have nothing to offer the market; and between those who have the expert knowledge to win over both the politicians and the media. A second problem is that politics has become techni-

cal engineering, which spurs the above-mentioned alienation between politics and citizens. But this comes with another re-definition of concepts. Efficiency has replaced legitimacy, and efficiency is achieved through rational choice or the evolutionary success of the existing regulations. It is de-coupled from any democratic influence on the part of the citizens. Governance is substituting democracy.

You may object that there are other advocates of governance who accept the role of the nation-state in international politics and who are aware of a problematical legitimation gap. Anne-Marie Slaughter, for example, is interested, above all, in the global government-networks in which official advocates of the states in financial and economic matters, those in charge of police investigative work, as well as other representatives including judges, exchange information across nation-state borders, and attempt to find solutions to global problems. This sectorial extension and consolidation of government work across nation-state borders has led to a “disaggregation of state sovereignty” (Slaughter 2005: 266). The state now appears as a many-headed power entity that speaks with many voices both inwardly and outwardly. However, according to Slaughter, this does not mean that great legitimacy gaps inevitably emerge; in the event that they do, though, they can be dealt with simply through transnational government work: advocates of government and other global élites are already accountable to national societies by virtue of their duty with regard to their double function as the representatives of different inner-societal interests and as transnational actors who must defend the concerns of the nation-state against those of other nation-states. Justification here is translated into accountability. A transparent and public justification of the past conduct of an actor is required (Benz and Papadopolous 2006). This conception of accountability is detached from any conception of reciprocity or of the political involvement of the various stakeholders. The network-proposal abandons the negotiation of multi-lateral regulations to the global élites,

who only need to *inform* the citizens of their societies about the results of these negotiations. But what happens when the arrangements are not acceptable to the citizens? One searches in vain for proposals for the possible alteration of these regulations in Slaughter’s theory. Political participation remains limited to the global élite. And hegemonic law maintains legitimacy *through*, and not *vis-à-vis*, the ruling élites.

1.2. *Idealist Theory*

On the other side of the spectrum are idealist theories.¹ These theories articulate justified ideals and design an idea of a desirable situation upon the basis of normative ideals. For a few consecutive years at least, when the implosion of the Soviet Union ended the last territorial imperium hold together by force, this breakdown led to an upsurge of normative theories that challenged the hegemony of realist-governance positions. Strong impulses came from neo-cosmopolitan theorists such as David Held, and from those who argue for the constitutionalization of international law, such as John Rawls and Jürgen Habermas. Besides the discussion about global constitutionalism, many normative international theories are interested in global ethics. Moral philosophers such as Simon Caney and the German philosopher Otfried Höffe, for example, construct global normative principles from the point of view of moral philosophy, which they then apply to political reality. One major problem is that the systemic complexity of international law and the global economy as well as the interest-based resistance in both class-struggles and power-relations are addressed as only a marginal condition of politi-

1. Despite all differences, the theories of Darrell Moellendorf (Moellendorf 2002), Simon Caney (Caney 2005) or Otfried Höffe (Höffe 1999) can be identified as variants of the idealist approach.

cal action. The notion of reason is justified by the *right* theory of morality and justice and cannot be shaken by anything akin to “unfriendly” material or political conditions. In other words, these views can be criticised using the notorious attack made by Hegel against Kant: it is only an empty “ought” that they argue for.

As a normativist, you may object that normative ideas are not “empty” at all, but have a performative character if they are mobilized in public disputes, for example. Then, they may come to have an effect in the world and change it, which has happened more than once. And, no doubt, ideal theories remind us what realist theories systematically suppress: the path-breaking role of ideas in the social evolution, politics and history. Just think of *Olympe de Gouges* and her fight for women’s rights during the French Revolution, or the role that Karl Marx played in forming ideals of socialism. Some ideals can have a link to social reality. The problem is, however, that idealist theories miss the dialectical point. They stress the bright side of the ideas without taking into consideration the downside –which is always there. Law, for example, has a dual character. It is being torn apart between freedom and force, and this problem of two-sidedness is only partially solved: idealists stress freedom and legitimate law very often referring to human rights when it comes to debates about a just global order. But law has a coercive side, and idealists ignore the different ways in which coercion is applied, they are not interested in an analysis of how coercion and force are legitimized or what the criteria for legitimized and illegitimated force actually are. But even human rights, as we know, can be misused for oppressive interventions and imperial geo-politics, and, as Spivak has pointed out, for colonization disguised as a help to the people who allegedly do not know what is good for themselves (Spivak 2004). In this regard, idealist theories are worldliness: they construct normative principles, “freestanding” to use a Rawlsian term, on moral grounds and with no social-theory backing beforehand. So, whereas

empirical governance theories based solely upon the analysis of interests and structures are social-technocratic without ideas, idealist theories without any relation to the interests and social conditions of political action are inapplicable to real political struggles and the potential for emancipation. Only if the gateway to the justified criticism of worldliness-moralism can be closed, can normative theory successfully overturn the hegemony of governance approaches.

There are two further prominent approaches that suggest how to deal with global politics. The conflict here is about whether democratic politics aims to create agreement or to sustain plurality and dissent. What is at stake is not the localization of democracy (if at all) in relation to facts or ideas. Instead, the debate is about the way in which politics deals with conflicts and how it comes to a decision.

1.3. Dissent

Let us have a look at the dissent approach first.² Modern politics –some authors stressed– has been characterised from its very inception by a paradoxical enterprise: traditional sources of integration (religion, tradition) no longer work because the plurality of interests in modern society cannot be harmonised. But the integration of society is necessary and should be reached by exactly what has no longer been possible: all the involved parties should disclaim part of their freedom, give up part of their interests and submit themselves to a common will. Acknowledging this paradox has led to a political theory that scrutinises how an institutional order develops, even though it is almost impossible to achieve peaceful co-existence. This was the birth of the concern with “the political” in contra-distinction to “politics”. Whereas politics is captured

2. See also Kreide and Niederberger 2012.

in the institutions of the state and democracy is tamed by both parliaments and courts, the political in the thought of Lacoue-Labarthe and Nancy, Lyotard and Mouffe does not embody the static aspect of the institutional order (Lacoue-Labarthe and Nancy 1997, Lyotard 1989, Mouffe 2005). Instead, it tries to acknowledge the public dispute, conflicting views, and controversial decisions-dissent, in short.

The political is also a kind of method of being reflexive about thinking; it uncovers the difference between politics and non-politics -non-politics including everything that eludes itself from the market forces and other forms of societal reproduction. In contra-distinction, politics stands for decision-taking processes, it embodies the world of institutional apparatuses and the iron cages of law. Theories of the political aim to show that political decisions do not rely upon the existing convergences of beliefs or forms of life. Rather, they present specific political techniques, which make decisions collectively-binding. Whereas the ground for politics is dissent, it is only through the insight that a common basis of politics cannot be found that allows for political action and the construction of institutions. In order to describe politics, theorists refer to the idea of the comparing force in competitions. In these competitions –or “agonal” situations– it is the strength as well as the strategy and tactics that are decisive. However, political decisions within democracies do not overcome dissent, but are only an intermediate result of the societal competition. The political is similar to Derrida’s idea of the non-decidable decision-in-the-making, about to be overturned by another decision. This is why the centre of power remains empty. As long as the dissent is insurmountable, nobody can claim to know or to occupy what keeps society together and running.

These approaches explicitly address hegemonic global practices and structures. Identity-creating antagonism is directed against the “ontological level of politics” with all its discourses, institutions and practices, which, because of the political, are always contested. The political is not a distinct order or a

certain way of judging existing practices, but it is the possible open space –the space to create resistance against politics–. I think this is an intriguing idea in order to understand political action beyond institutional political power.

One problem I see with this theory is the description of politics as an external conflict of interests. This is empirically unconvincing. Political actors refer to the interests of others, and political decisions are usually not the result of a mere aggregation of interests. Instead, actors modify and adapt their interests and political aims in the process –be it through a new insight or through an interest to achieve success. Secondly, and more importantly, theories of dissent suggest that they can well integrate the great plurality of views and interests. But it remains very unclear if the inclusion is not just arbitrary. There is no normative conceptual frame that offers criteria on who should be included, take part and speak upon the basis of what reasons this should occur. It is not just that decisions are not justified, there is also the question of how it can be prevented that only the politically and economically powerful, the highly eloquent and very well educated get a voice in negotiations. Dissent theories fail to take a position regarding this problem.

1.4. *Consensus*

Contrary to the dissent theory of politics, political liberalism –I will only mention John Rawls as one of its most famous proponents– rests upon the idea that a commonly-shared public agreement *is* possible as a result of rational argumentation. In Rawls’ theory, politics focuses on the process of how political rules should be created. Under hypothetically fair conditions, among them the equality of the participating parties and the equal chance that an argument passes the test of reasonableness, parties express their interests (Rawls 1993). This alone does not explain why the parties will comply

with a political decision in the end -which is the problem of idealist theories as well, of which Rawls is very much aware. The reason why they finally submit to the outcomes of the decision-making process is that all the parties need to be convinced that, by so doing, they can follow their interests better than under any alternative rule system. The tension between the unforeseeable results of political action and the forces of institutionalisation are “solved” through a trick: some basic rights to political and social participation are assumed to be already institutionalised and are not up to political disputes.

Here, similar to the idealist approaches, politics follows justice. As long as the political system is just –just according to the principle of justice that all parties have agreed upon in the original position– outcomes are legitimate. And, similar to realist positions, the parties in the original position are, to some extent, driven by rational calculations and not by moral considerations. The function of public politics, however, is to approve political decisions in retrospect. The establishing of the basic structure is reduced to technical problems of implementation. Politics, in the words of Raymond Geuss, becomes a kind of applied ethics (Geuss 2008). It is an irony of this approach that it highlights the concrete embodiment of the basic rights of every citizen including political rights, which should be the/an object of public reasoning. But, on the other hand, it abandons real politics.

So, whereas governance theories face the problem that politics becomes a social technique and democratic legitimacy is reduced to efficiency, idealist theories miss democracy likewise. In this “castle-in-the-air” approach, politics has turned into applied ethics. And whereas dissent theories believe that they can deal with conflicts by occupying power positions in order to overrule these positions again and again, they nevertheless have no criteria to judge political decisions. The reasonable agreement approach, on the other hand, dreams the old and fatal dream of overcoming deeply-entrenched conflicts, thereby failing to take political conflict seriously. The repression

of democracy in practice takes place again, in psychoanalytical terms, in theory. We not only face a crisis of democratic politics, but also of democratic theory. But what is left for a conception of politics beyond ideal and realist, beyond dissent and consensus?

2. Towards a renewed conception of political theory

In the remaining part of my paper, I would like to outline a conception of radical democracy which avoids the problems mentioned above and meet the demands of world society. As one problem is to find a way beyond a governance theory lost in realism and an idealist theory confronted with the criticism of an “empty ought”, I start with this before going on to discuss the normative grounds of democracy between dissent and consensus.³

2.1. An international social theory

First of all, I think the methodological restriction to *political* theory when talking about politics is problematic. Political theory should open up to social theory that addresses the phenomena of globalisation. Of course, the entanglement of political and social theory is not a brand new idea. Political theory, however, especially the new branch of International Political Theory that has correctly surpassed the “methodological nationalism”, sometimes exercises a kind of hegemonic disciplinary demarcation. If one sets aside an analysis of the current conditions of world society, one misses an important point –that of taking the global as well as the local structural and social obstacles to political participation into considera-

3. For an early concept of radical democracy see Laclau and Mouffe 1995.

tion. International social theory needs to reveal the barriers of democratisation –political, economical and social ones– which can then in turn help us to detect the potentials for democratization. There are at least two main approaches that are complex enough to mediate the advantages of normative and empirical theories. This is systems theory, on the one hand, and critical theory, on the other. I will defend the latter because it is the only one that does not exclude a non-empirical intermediation of idealist and realist theory. I will sketch three characteristics of a critical social theory.

a) Practice

Critical social theory cannot be understood without reference to Marx's and Horkheimer's theories. It was thanks to them that "Critical social theory" overcame transcendental consciousness. Whereas, for Hegel, theoretical reflection culminates in the absolute knowledge of philosophy, Marx turned to the real "material" processes. Theory, as Horkheimer stressed, needs to describe itself as a part of life's context, which it tries to capture. This theoretical weakness is, at the same time, its strength: social theory reflects its self-referentiality and understands itself as a part of the selfsame practice which it describes. Phenomena such as alienation in the labour production process, being subjected to transnational administrative structures (such as the EU or through the WTO), and exclusion from political participation, can only be overcome in practice, not in theory (Habermas 1972: 14ff). In other words: theory is the science of practice.

b) Subject

Habermas, however, criticises Marx for not distinguishing between empirical and critical-reflexive forms of knowledge

and stresses social criticism as *self*-reflection. This spotlights the role of the subject –an aspect Marx ignored. In the act of self-reflection, the subject realises that he or she cannot identify himself or herself (Habermas 1972: 104). Like in a mirror, the subject sees himself or herself as someone trapped in the forces and restrictions of the labour process, completely at the mercy of the requiring demands of a highly technological, extremely mobile and flexible world, and he or she is politically powerless; a subject deformed through oppressive processes of objectification –and he or she realises the catastrophic situation. This experience begs us to know more about these processes and how to reverse them. This is how self-knowledge starts. The interest in knowing about the conditions of self-preservation and knowing about pathological structures and developments has led to the famous insight that radical criticism of knowledge (*Erkenntniskritik*) is only possible as a social theory.

c) Negativity

Whereas idealist theory –as well as political liberalism– strengthen a notion of a just global order, and governance theories describe injustice merely as social difference, disregarding its negativity, critical social theory uses the generalising power of negation (Brunkhorst 2005). It does not start off from the legitimation of principles, but from a sense of injustice (More 1978; Shklar 1992) which appears through the exploited classes, the suppressed peoples, and the excluded parts of population. In the history of theory, this reflexive dynamic of negation has, for the most part, been neglected –even though there have been some exceptions.

Kant uses the reflexive dynamic of negation when he speaks of the violation of rights that can be felt in every place on earth by everyone; Piaget identified the role of the experience of injustice for the development of a consciousness of justice,

and Judith Shklar stresses the universality of a sense of injustice for the formation of a just order (Shklar 1992). Negative feelings, as Adorno and later Habermas claimed, have a cognitive content, which lies in their inter-subjectivity (Brunkhorst 2010: 45). Those who are enraged at the exploitation to which they are subject have a reason, which can be shared with others. This is why the moral feeling of humiliation experienced by slaves is not resentment (Wingert 1993: 79). When, as Barrington Moore says, exploited workers or suppressed people bring about their rejection of suffering and oppression, then they claim something like “It is enough” or “Workers of the world, unite!” (Moore 1978: 81). They use the universalism of negation, without which the theoretical knowledge about society would be impossible (Brunkhorst 2005: 198).

But how can a theory reflect practice-relation, subject-perspective and negativity in a way that the deficits and barriers for democratic action become visible? With a view to processes of globalisation, let me just sketch three aspects of oppression which, in one way or another, effect political participation (Young 1990).

2.2. *Political marginalisation*

International organisations (the World Bank, the International Monetary Fund) determine the domestic affairs of states, even in Europe, and, by this exercise, political authority which undercuts the political self-determination of the people. In Greece, a whole population is more or less excluded from participating in the process of dealing with the financial crisis of the country. Even within European countries, there are a growing number of those who are marginalised beyond the middle-classes and never or only seldom have a chance to participate politically, and very often they do not see how they could do so if they wanted to (Ruppert 2003). Politically marginalised, one can say, are those persons who seldom or

never are in a position to exercise power. Besides the global constraints, obstacles to participation are prevalent in many areas: missing intra-company participation and reduced work autonomy, less competencies to deal with bureaucratic and administrative demands, no free access to the information necessary to decide on a topic (Young 2001). For example, it was only after mass protests against a huge railway station in Stuttgart that was to be moved underground, that some details on the costs, functionality, economic efficiency and so on were made publicly available. Moreover, effective influence is even more difficult internationally. NGOs and organisations which try to establish some rules in policy areas such as immigration, labour conditions, immigration, trafficking, sex tourism, etc., have not managed to establish an international agenda in the long run.

2.3. *Global economic exploitation*

Capitalist societies are inherently unjust and foster economic exploitation since some people have no alternative than to develop their capabilities only for the aims and advantages of others (Young 1990: 30). For workers world-wide, the inexorable aggressive competition of transnational companies means an acceleration of production processes, forced long-hours and a wage which very often does not allow them to make a decent living. Moreover, in some countries in Latin America or in South-East Asia, massive national debt creates a dependence on the part of these countries on the importation of convertible currencies (Elson 2002). This, in turn, made work abroad for immigrants attractive, as they could improve their own financial situation and, at the same time, improve the international capacity of their country to compete (Young 2003). These push and pull factors increase the number of immigrants in richer countries who more or less invisibly offer their work. They also widen the gap between women who need to work in the

precarious field of private day and health-care and those who use the workforce of immigrants to pursue their careers. They work and offer their services without labour law protection and are politically disconnected from all decisions (Parreñas 2001).

2.4. Cultural invisibility

In the political and economic international discourse, it is first and foremost women who find themselves exposed to a symbolic representation which is far from their self-image. They are reduced to being factory workers; maids; much too young mothers; sex workers; asylum seekers and refugees from war zones (Mohanty 2003). These ascriptions create shame and a feeling of alienation and make it difficult for those affected to “go public” and complain.

Admittedly, this is a very programmatic sketch, which needs some refinement and has to be further developed. However, these illustrative examples show that a negative description of different forms of oppression in world society allows us not merely to reveal characteristic forms of barriers to political participation. Moreover, political marginalization, exploitation, and cultural invisibility indicate potentials to resist these hegemonic structures and show where political participation is most urgent but most difficult to realize.

One may wonder how far one can get with a negative approach for a theory of democracy. What exactly does it tell us about democracy? There are two answers to this, a short first one and a longer second one. The first answer is that a social analysis of the barriers to participation can tell us about the requirements which a theory of democracy needs to consider. For example, if structural obstacles hinder intra-company participation and a humiliating depiction in public creates psychological obstructions, then a theory of democracy cannot ignore, but should, instead, reflect these societal conditions. The

second, longer answer is that the societal theory part is, indeed, only half of the story. It is still an open question as to why criticism of the existing rule system is legitimized, and why disrespecting the social barriers of participation is a problem for the legitimacy of democracy. Therefore, one needs a “positive” legitimation of a normative frame of reference. This could be a theory of justice, of the good life, or an expanded notion of democracy. And it is the latter that I shall defend here.

2.4.1. Towards radical democracy

From Locke to Kant, and up to Sieyès, theories of democracy share one basic insight: the people are an indivisible whole. Marx writes that in modern parliament, the citizens “represent themselves” and no longer have to “be represented” by a ruler (Marx 1963: 124). And for Dewey democratic representation is based upon the strict “identification” of “the interests of the governors with those of the governed” (Dewey 1927: 93). Everyone belongs to the people. The people themselves are not the rulers, and they cannot be divided into the rulers and the ruled (Brunkhorst 2005: 170). The *identity principle* identifies the ruling and the ruled and separates the modern concept of popular sovereignty from the ancient one of rule of the people. The rule of the people [*Volksherrschaft*] means that some are free whereas others may be restricted in their freedom –at least sometimes. The Greek “isonomia” does not mean that everybody is equal before the law and that law is the same for everybody. Rather, it means that everybody has an equal “right” to free speech in the polis. The word “popular sovereignty” [*Volkssouveränität*], in contradistinction, expresses the permanence of the equal freedom of all *legal* subjects (Maus 1992). It is this notion of popular sovereignty that is the core of democratic legitimacy.

But how does this notion of popular sovereignty encounter the above-mentioned global challenges such as de-nationaliza-

tion? Democracy without a *demos* is impossible. And so it is not surprising that many recent efforts of formulating a theory of post-national governance hesitate to use the notion of democracy (Beck 2006; Dryzek 2006). The “classical” conception of popular sovereignty is closely bound to national sovereignty. The most prevailing argument is that we need state-like institutions outfitted with administrative power and efficient coercive instruments as well as a monopoly of violence to preserve equality to exercise participatory rights in the face of potential violation (Nagel 2005; Scheuerman 2011: 90). It is only through effective state institutions that democratically-achieved decisions can have binding force and be legitimately imposed. For some *étatists* the only legitimate way to adhere to the state-centred approach and to meet global challenges is to argue for the conception of transnational democracy which stresses the idea that the different national *demos* ought to be subsumed into a cosmopolitan hierarchy with a single *demos* at its apex (Bohman 2010: 12). I think that this is not an option, for at least two reasons. First of all, it is questionable regarding the assumption that popular sovereignty needs a state. Sovereignty means that those who are affected by binding legal-rules have to be included as free and equal members in the process of producing these rules (Habermas 1992; Brunkhorst 2004: 99). And formulated like this, it becomes apparent that it is the people who should be outfitted with sovereignty and not state institutions – particularly because state borders no longer determine the range and scope of the decision-making that affects citizens (Brunkhorst 2004: 99). Instead of adhering to obsolete attempts to link sovereignty to the state, a normative concept of democracy needs to be based upon procedural guarantees so that those affected can freely participate in the making of those rules they have to submit to. Secondly, what speaks against democratic transnational government is that this way of organizing transnational institutions would amount to a decrease in democratic control, rather than an increase. Kant, as we all know, thought that a world repu-

blic was philosophically demanded but empirically unrealistic and even contra-democratic. Democracy can only function in small entities (Maus 1992). Who is really well-schooled with the information flow in the juggernaut of world society? However, Kant was not familiar with the new media and technologies which have supported the creation of some transnational public spheres (Peters 2007). Moreover, a world government or even a regional government together with international organizations and corporations may too easily come to have imperialist and hegemonic pretensions (Cohen 2004).

I suggest that we attempt to understand political self-determination differently. Self-ruling is not *per se* based upon a singular *demos*, but is the rule of the many *demos*. This allows citizen to exercise their political powers in a realm of overlapping *demos* and in dispersed political units. This offers the possibility of resisting against oppression where it appears, regardless of whether it happens on a specific national territory or is on a specific national political agenda. Moreover, yet another problem could also be solved, the so-called *demos* problem (Bohman 2009: 174): individuals and groups run the risk of being oppressed by transnational, *non-democratic* means, through the practices of transnational corporations, for example. But this problem could be overcome as long as the capacity to *initiate deliberation* about the terms of democracy is itself distributed among the *demos* (Bohman 2009: 174).

Now, you may object that this sounds exactly like governance, which I rejected in the above. Are we still talking about popular sovereignty and the identity of the ruler and the ruled? Indeed, when popular sovereignty should meet the challenges of world society it cannot be restricted to weak forms of deliberation.⁴ Yet, deliberative processes alone cannot close the legitimacy gap that emerges when international treaties, decisions, or even internationally-binding conven-

4. For the neo-republican position see Bohman 2009.

tions are not even *indirectly* legitimized by the democratic processes guaranteed by a constitution. It misses the formal structures which institutionalize political participation. And secondly, deliberation cannot adequately represent the interests of marginalized groups. Minority positions must also obtain *actual* access to the negotiations, and must have the possibility of influencing the decision-making process there. We need a further clarification of some of the instruments that would transform and specify the deliberative freedom into effective participation and control of the outcomes of decision-making processes. Clearly, this is a very hard question; and we currently lack a clear answer to it. However, the reason that I mention this is to highlight the necessity of clarifying that what is required when we talk about democracy is an ascription of specific political rights to participation.

Having said that, I would briefly like to sketch my suggestions for some democratic elements in international politics. Basically, I think we need some democratic elements because deliberation is not enough. This becomes clearer when we realize that the relation between deliberation and democracy is in no way free of tension.

Deliberation requires congruence between those subject to the regulation and the authors of the selfsame regulation, and is not satisfied with indirect representation. However, deliberative processes alone cannot close the legitimacy gap that emerges when international treaties, decisions, or even internationally-binding conventions are not even *indirectly* legitimized by the democratic process guaranteed by a constitution. It misses the formal structures which institutionalize political participation. Secondly, deliberation cannot adequately represent the interests of marginalized groups institutionally. Minority positions must also obtain *actual* access to the negotiations, and must have the possibility of influencing the decision-making process there. In a deliberative practice what counts are arguments, not the number of votes. But without democratic procedures deliberation would hardly end

up resulting in a binding-decision. And yet, deliberation and democracy refer to one another. Without the connection to democratic elements, deliberation remains a regulative practice that does not effectively institutionalize the principle of congruence. And without deliberation, democracy tends to be empty and controlled by powerful individual groups.

But how could democratic elements overcome the problems existing in political reality? I would like to mention three democratic elements:

a) Increasing formal political participation transnationally

The long-discussed reform of the UN should aim not only towards including the General Assembly in deliberative ways in the decision-making of the Security Council, but also towards making it an organ representing the citizens of the world. Beneath the level of world organisations, one can already recognise signs of the constitutionalization of democratic participation. By now, political affiliation has been detached from the general state-citizenship which encompasses all rights. Regional and international norms ensure entitlements for the individual beyond nation-state borders (above all, at the level of the European Union).

b) The control of the international executive

What deliberation also lacks are the legal instruments to achieve a transnational institutionalized control of the executive and administration. For this, it requires institutional efforts to *bind* operating international organizations administratively (for example, the WTO or NATO) to the nation-states and their democratically achieved decisions. Only by virtue of this is the administrative power subject to the democratic will of the citizens. These legal obligations are, indeed, not easy to establish at a transnational level. But even international organisations such as the WTO, the World Bank and the IMF

are aware of their external responsibilities regarding justification, and have become sensitive *vis-à-vis* those concerned.

c) Expansion of rights guarantee

Moreover, what is finally needed is the transnational expansion of the existing legal guarantees of rights, through which the equality of the deliberating partners can be achieved independently of economic and political bargaining-power. Independent arbitration is an important step on the way to a transnational legal guarantee of rights, and, next to the signs of a self-developing democratic legitimation, represents a further aspect of the constitutionalization of international relations.

These are only some suggestions and we certainly need to work on these in the future. But the point I wish to make is that political self-determination is not bound to a state or a state-like institution like the European Union which allows for expanded participation. On the other hand, if political self-determination at some point is not linked to legitimate legal institutions, then it would remain too weak to bind powerful international actors, such as corporations.

One could object that this sounds all too familiar: at the end of the day, this proposal is deadlocked in the same technical-institutional understanding of participation, which Colin Crouch has criticized so powerfully. If popular sovereignty means that citizens are both the ruled and the authors of these rules, this is not restricted to legislator procedures. On the contrary, one has to focus on popular sovereignty also from the perspective of power.

2.4.2. Communicative Power

If one overlooks the fact that democracy is tainted with power, one would misunderstand democracy. Seeing popular sovereignty from the point of view of power, it becomes obvious

that all power has its source in the people. Political power, as Hannah Arendt puts it, is a power that (Arendt 1958: 200) no one really is able to possess. Instead, it springs up between men when they act together, beyond narrowing down action to the enforcement of own or collective interests and its administrative embodiments (Arendt 1970: 45). It is through the exercise of power that negative freedom is expressed: the negative freedom not the “be dominated” and “not to dominate” –which is the other side of the same coin- and the positive freedom to create a space in which everybody is among one’s own kind (Arendt 1993/2003).

Habermas has taken up this idea and has transformed it into communicative power. Communicative power is a form of political power, and –he stresses, different to Arendt– the free deliberation of topics and themes and discursively created inter-subjective convictions (Habermas 1996: 184). In the end, communicative power is focused on the formation of legitimate law. This, however, is an unnecessary restriction. The performativity –that is, the power to have effects in the world of arguments and opinions can be found in many affairs of citizens, from the price of coffee to urban planning, party programs, school, taxes, violence in private relations. Everything can become political. But in contradistinction to Habermas, communicative power need not always be translated through law into administrative power (Habermas 1996: 211). Instead, communicative power is directed at existing institutions, conditions, and practices. It is the power to question. And it expresses itself especially articulately in acts of resistance, uprisings against repression and exploitation, in both passive and active resistance, when the momentum of revolution is exploited. There are many historical examples. One prominent example comes from Rancière. Auguste Blanqui, head of the revolution, claimed, in court in 1832, when asked about his profession, that he was a “proletarian”. And when the judge answered that his was not a profession, Blanqui rejoined that this was the profession of thirty million citizens of

France (Rancière 2002: 49). This made the judge write down this newly-born profession. The citizens of the former German Democratic Republic oxymoronically sounded the death knell for a suppressive regime by silent protests, and the protests in Madrid this year started allegedly through someone who sat down in the *Plaza del Sol* and claimed to be too exhausted from the hardships of making a living that he could not go on like that. Communicative power has sometimes been translated into deliberative and law-setting processes (Benhabib 2008) or argumentative justification (Forst 2007). And this is also one aspect of it. But communicative power is not cuddling up and giving arguments. It is resistance –powerfully eloquent or silent. It finds its reason in societal injustice (political marginalization, exploitation, cultural invisibility) and it is developed in political action. Political action can be directed at creating democratic institutions or at questioning, changing, or tearing down the existing decisions and institutions. Action remains a crucial, ever-present resource for innovation in every institution. Domestic and worldwide protests, *Twitter* and *Facebook* and “real” revolutions, leaks (*wikileaks*) and civil disobedience all need to have a constant place in democracy. A notion of politics should accept that politics and democracy are in disorder (Möllers 2008). The confidence in legal rules and in the existing structures is striking, and often democracy is put on the same level with the rule of law. The adoration of the Federal Constitutional Court in Germany is one example for this. But this is a misunderstanding: democracies are confusing enterprises, containing informality, test runs, experiments, the dislocation of borders and limits; they are multi-faceted, loud and sometimes irrational. In the process of questioning the existing institutions, politics becomes a *praxis* in which both systems of rules and actions are seen as being inextricably linked together.

3. Conclusion

To conclude, I think that democracy has not come to an end yet. To overcome the pessimistic assumptions of Colin Crouch, politics needs to reaffirm the space for the articulation of broad public criticism of the oppressive practices, values, institutions, rules and maxims of our society –such as, for example, neo-liberal politics, or of the emptying of the notion of political freedom and equality. Without popular sovereignty, however, there is no political legitimation of law, only domination. But without non-institutionalized forms of democracy, institutions tend to fossilize. Democracy needs to allow for the reinterpretation of the system of rules and reinvention of existing institutions. In this sense, politics still has a lot to do with Hannah Arendt’s notion of natality: politics is a never-ending process of renewal.

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