

The Ethics of Democratic Conflict and the Transgression of Politico-Legal Boundaries. A Phenomenological Itinerary from Antagonism to Natality and A-Legality

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Holding onto the paradigmatic distinction proposed by the German phenomenologist Bernhard Waldenfels between a radical and an absolute form of political contingency, this paper seeks to show its structural relevance and the unsettling consequences of its oversight especially when searching for an adequate model for seizing the transgression of politico-legal orders in a democracy-based ethical perspective.

In line with this basic assumption, through an analysis deploying a thorough confrontation with Chantal Mouffe's influential political theory, I will argue that an apt form of radical democratic contingency, conflict and challenge cannot be seized in her agonistic design of politics based on the appropriation of Schmitt's absolutistic model of antagonism, but rather in a configuration of politico-legal transgression which looks much closer at alternative forms which can thoroughly express extremely enhanced articulations of conflict and transformative impulses without having to decay into exorbitant figurations. As I will show in the last section of the paper a good candidate for such a scope can be traced by combining two trajectories of political alteration, one inspired by Hannah Arendt's notion of natality, the other drawing on Hans Lindahl's insights on a-legality. Given this general trajectory, the paper will more specifically fall into three parts.

The first concentrates on what is to be capitalized by drawing on Mouffe's perspective. I will show here that Mouffe raises a major point that should be vigorously defended. It consists in her insistence on the fact that a radical democratic design of conflict demands eschewing an exodus from the extant polity and an absolute leap out of the modern institutional paradigm, proposals which have been insistently advocated by some currently influential theorists in the field of political activism (Hardt/Negri, Virno). For Mouffe, securing the possibility of radical democratic conflict requires looking more closely at what the modern democratic discourse already has on offer. Modern democracy entails, so Mouffe argues, the discovery of contingency and, consequently, the acceptance of plurality and conflict as its undeniable co-implication. As a result, the first part of my analysis, in convergence with Mouffe, will make explicit how the modern political paradigm is best able to frame the intimate connection between democracy and conflict in a radical form.

In the second part of my analysis, I will, however, diverge from Mouffe when examining in a deeper phenomenological way the sort of conflict that a democratic space and ethics explicitly demand. My disagreement will take the form of a critique drawing exactly on the aforementioned distinction between a radical and absolute design of contingency and conflict. I will argue that, in order to adequately unfold the kind of conflict required by the contingency proper to democracy, one cannot follow her strategy of anchoring the configuration of agonistic conflict to Schmitt's

design of antagonism. The point I will raise is that Schmitt's theory only accommodates an absolutistic configuration of conflict, thereby remaining irreducibly inadmissible for any radically contingency-based and jointly democratic understanding thereof. As a consequence, by keeping these two paradigmatically opposite forms of conflict connected, Mouffe, far from deepening the articulation of a democratic ethic of conflict, falls prey accentuating exactly the above illustrated ambivalence, by delivering a political discourse climaxing into two irreconcilable poles: one adhering to the condition of radical contingency proper to democracy, the other adhering to the Schmittian absolutistic design of politics.

A significant implication deriving from this alliance will be drawn in the third part of my analysis. In this concluding section I will show to which extent Mouffe's antagonistic-based model of agonistic conflict jeopardizes the delineation of a genuine appraisal of an ethic of transformative democratic conflict or democratic transgression of politico-legal boundaries. The point I will defend is that Mouffe, by placing exclusive weight to the moment of antagonism for the purpose of endorsing the ineradicability of conflict, not only transgresses the effective articulation of democratic conflict as such, but also misses the potentialities inherent in agonism itself. In fact, agonism, once freed from the bonds of antagonism, is best able to take up very promising and vibrant forms for democratic life – forms which can thoroughly express enhanced articulations of conflict and transformative impulses to politico-legal orders without having to decay into anti-democratic degenerations. As I will indicate, a good candidate for outlining such a form of heightened agonism can be traced by combining two trajectories of political alteration, one inspired by Arendt's notion of plurality and natality, the other drawing on Lindahl's phenomenological insights on the dynamic of a-legality.

Conclusively, by recurring to these dimensions of agonism free from the paradigmatic ballast of antagonism, an appropriate view of an ethic of a radically plural democratic space emerges. This configuration of conflict accommodates for politico-legal orders true and proper transformative mechanisms, on the one hand, and grants them a minimal condition of democratic articulation, on the other.

Keywords: ethics of democratic conflict, politico-legal boundaries, Waldenfels, Mouffe, Schmitt, Arendt, Lindahl.

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