The Sovereign Awakened
A Radical Democratic View on Protest

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Abstract: This article contrasts the liberal idea of a "sleeping sovereign" with the democratic one of a "sovereign awakened." The right to protest is defended as an expression of popular sovereignty, envisaged as a right to popular "self-awakening" instigated by an imperative call of duty not reducible to a set of liberal individual rights. In contrast to some approaches of agonistic democracy, it is argued that democratically breaking the rules of the game of liberal democracy is an indispensable dimension of democratic protest. Taking into account Étienne Balibar's thoughts about a rule-breaking right to have rights, it is suggested we revisit the French Constitution of 1793, in which a popular duty to insurrection is enshrined. The article ends with the proposal to supplement insurrectionary accounts of sovereignty with a Gramscian view that would insist on the necessity of hegemonically constructing a democratic "collective will."

Keywords: agonistic democracy, antagonism, constituent power, popular sovereignty, protest, radical democracy

In March 1968, Jacques Dutronc's chanson *Paris s'éveille* ("Paris Awakes") climbed to the top of the French charts. Most of the verses paint a postcard idyll of early morning Paris – including the Eiffel Tower and Arc de Triomphe. But with the last verse, the chanson takes a surprising turn: "The newspapers are printed / The workers are depressed / The people are getting up [Les gens se lèvent] / They're being bullied / It's time for me to go to bed." A hint of social criticism? Perhaps, but the cynical volte-face with which Dutronc settles on the dividing line between criticism and escapism is striking. Faced with harassed workers, the bohemian takes refuge in sleep after a night of drinking. Just a few weeks later, however, Paris awoke politically. Now, in the second hour of the chanson, students and bohemians poured into the streets while workers went on a general strike. The political connotation of the phrase *les gens se lèvent* had by no means escaped the protesters: the people rise up – *les gens se soulèvent*. The chanson became the unofficial anthem of the uprising. What is more,

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while it was taken off the airwaves by the radio stations for this very reason, Jacques Le Glou, a filmmaker from the Situationist circle, wrote new lyrics for *Paris s'éveille* that turn Dutronc's postcard idyll on its head: cars are overturned, the Arc de Triomphe is toppled, the Place Vendôme has gone up in smoke, and the Pantheon has fallen off the face of the earth. A wildcat strike escalated into a general strike, the levers of power were occupied, and "the cops"—in an image taken directly from the repertoire of French revolutionary songs—were hanged from the entrails of "the parsons." Now the workers administered their city themselves. The old world, the final stanza announces, will perish: "It's five o'clock / Paris awakes / The new world rises / It's five o'clock / And will never go to sleep."

Insomnia often characterizes lived experience in situations of uprising and prolonged protest, but this image of political insomnia is more than a topos of revolutionary romanticism. Behind the image lies a postulate of democratic theory, indeed a concept of popular sovereignty: the sovereign people do not sleep. Only as an awakened and awake people are they sovereign. In the following, I contrast this idea with the opposite one, typical for liberal thought, of a sleeping sovereign. My aim is to defend the claim that the right to protest should be understood as the fundamental constitutional expression of popular sovereignty, and as a right of popular "self-awakening" instigated by an imperative call of duty not reducible to a set of liberal individual rights. To do this, I give a short outline of the school of democratic theory that probably comes closest to this view and can provide us with normative support to prove the legitimacy of conflict in democracy: the school of *agonistic democratic theory.* Yet I criticize the agonistic understanding of conflict, especially in Chantal Mouffe as perhaps the most prominent representative of the paradigm, with the argument that the *breaking* of the rules of the game, in the sense of antagonism rather than agonism, may be an indispensable dimension of democratic protest. In such cases, and in contradistinction to Mouffe's demand for the *sublimation* of antagonism into agonism, one must envisage the democratic *desublimation* of agonisms into antagonism. After a discussion of Étienne Balibar's notions of a rule-breaking right to have rights and of constituent power, I claim that the French Constitution of 1793, the first truly democratic one for a post-Westphalian nation-state, may be the place where a solution to the riddle of popular sovereignty could be found.

Liberalism's Sleeping Sovereign

A truly democratic idea of popular sovereignty—encapsulated in the words *les gens se lèvent*—relates inversely to the liberal one of the people

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as a "sleeping sovereign," as uncovered in Hobbes by the intellectual historian Richard Tuck. For Hobbes, the people – in the form of an assembly in which all citizens have the right to vote – can fulfil the function of a sovereign even if they transfer the power to govern to another entity and then withdraw. Thus, for example, in the case of an elective assembly that appoints an elective monarch, sovereign power remains with the assembly even though it will not reconvene to appoint the next monarch until many years later. Comparable to the sleeping hours of a sovereign ruler, the popular assembly retains its sovereignty even when not in session, the doctrine goes. The same holds true, according to Tuck, for acts of sovereignty in constitution-making and reform. According to the liberal doctrine, the popular sovereign may ratify the basic laws, and then withdraw, as it is not the reality of sovereignty that counts, but the mere possibility that the sovereign might be resurrected at any time or at some specifiable moment:

> On Hobbes's account, a sovereign can be very thoroughly asleep: in the case of an elected monarchy, it might in principle be asleep for sixty or seventy years, or even more. Moreover, when awake the sovereign might do nothing more than select a new monarch, and promptly fall asleep again. So all actual legislation to do with the ordinary lives of the citizens, and all actual power exercised over them, would be in the hands of the monarch; yet the monarch would not be sovereign. (Tuck 2015: 91)

The last sentence is of disarming frankness: the sovereign remains subjected to the "actual power" of others. This perverted notion of a subjugated sovereignty, characteristic of liberal thought, rests on two presuppositions. First, the scope of action of the popular sovereign is largely restricted. Not all that much falls within the purview of its sovereignty: the election of deputies to a representative body, the appointment of a government or a head of state, should it be done directly, and the confirmation or rejection of proposals for fundamental constitutional change. Typical of liberalism, the goal is to minimize the waking phases of the *demos.* And, second, sovereign and government are clearly separated so that sovereign power remains with the sleeper, while executive power – as well as simple legislation – can be exercised by others. Whatever the merits of the liberal doctrine of a separation of powers, in the world of actually existing liberalism it conceals the desire for excluding the demos from official business. The common people are allowed to claim sovereignty for themselves, provided they refrain from exercising government, since their sovereignty, they are told, remains unaffected by its submission to the "actual power" of others. The sovereign need only designate these others and then withdraw, "just as a monarch might appoint a vizier before going to sleep" (Tuck 2015: x).

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As counterintuitive as the idea of a subjugated sovereignty is, for many liberal thinkers, while purporting to uphold the principle of popular sovereignty, the disempowerment of the demos lies at the very basis of democracy (e.g., Brennan 2016; von Mises [1927] 2006; Przeworski 2003 Schumpeter [1942] 1994; for a *locus classicus* of a critique of the restricted view of popular participation in post-war liberal-democratic thought, see Pateman 1970). The subtitle of Tuck's book—*The Invention of Modern Democracy*—is therefore misleading, for the historical invention he reconstructs is democratic only if democracy presupposed the almost complete narcotization of the *demos.* Without doubt, Tuck's book would have been more adequately subtitled *The Invention of Modern Liberalism,* because it is the liberal doctrine that regards the sovereign people as a constitutional fiction that must not be allowed to push for self-realization. It is certainly true that liberalism does not constitute a homogeneous ideology, but liberal doctrines do share common traits (such as their focus on individual rights and on private property, most often an idea of negative liberty, a largely formal conception of equality, and a belief in the beneficial effects of market competition), and they are customarily characterized by a deep distrust of actual popular rule—as encapsulated by liberalism's favorite scarecrow: the "tyranny of the majority." Where firm and convinced neoliberals no longer believe in the need for pseudo-democratic window-dressing, they do express their view quite openly and unabashedly invoke the merits of a sovereign in a coma. Joseph Schumpeter ([1942] 1994), a major inspirational source for post-war minimal or pluralist theories of democracy, denied the *demos* its right to political interference for the period between elections.

Nowadays, Jason Brennan (2016), in his surprisingly successful book *Against Democracy,* goes even further with his proposal to replace democracy by a new epistocracy of enlightened experts.[1] While the "hatred of democracy" (Rancière 2009) is certainly not peculiar to modern times, modern liberalism developed to a point where effective sovereignty is granted solely to the laws of the market that need to be defended even at the price of authoritarianism. As is well known, the neoliberal experiment was first put to test by the "Chicago Boys," revolving around Milton Friedman and Arnold Harberger, in Pinochet's regime of murder and torture, for in their view a dictatorship, if it unleashes the market forces, will be preferable to a democracy that doesn't. Friedrich August von Hayek, in defending the Chilean junta or the South African apartheid regime, made it clear that, when in doubt, democracy must be sacrificed to liberalism (Chamayou 2021). Such anti-democratic doctrines can easily be dignified with Nobel Prizes, because there is agreement in bourgeois society that the sovereign, when awakened, must be sedated, drilled, or, if nothing helps, shackled and thrown from helicopters into the river.

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Unlike some defenders of liberalism assume, mainstream liberal approaches cannot wash themselves clean of such an anti-democratic neoliberalism. Far from representing only the extremist aberration of reasonable, philanthropic strands of liberalism, neoliberalism blatantly expresses the liberal claim to rule: popular sovereignty is acceptable only if it remains subject to the command of property and the market, constitutionally guaranteed and politically defended by the parties of a liberal "center"—a view, once typical for liberal anti-communism during the Cold War era, that has resurrected in today's liberal anti-populism (for an overview see Moffit 2018). However, while liberal approaches dominate the field of democratic thought, alternatives are available. Some of the positions that are usually lumped together under the title "radical democracy" advocate an alternative position by regarding the *awakened demos* as the foundation of modern democracy. From a radical democratic point of view, the people's claim to sovereignty, as expressed in acts of popular democratic protest, threatens to thwart the pretensions to rule of what Tuck would call the "actual" centers of power. For a *demos* without *kratos,* a *demos* forced to submit to the "actual power" of dictatorial market forces and their stalwarts, would be anything but sovereign.

Dissensus over the Right to Dissent: Agonistic Theories of Democracy

As stated in the beginning, in this article I aim to defend the claim that the right to protest should be understood as a fundamental expression of popular sovereignty. To appreciate such a radical democratic view, which I explain in more detail in the final sections of this article, it is important to understand the historical genesis of a right to protest, for liberalism managed to claim an intellectual and political monopoly on the basic political rights, including the right to assemble and the freedom of expression—a claim that is partially unfounded, as those fighting for their right to protest were not only liberals. In the revolutions of the nineteenth century, especially the movements leading to the Revolutions of 1848, democratic radicals and early socialists fought for civic and political rights as much as they fought for social rights. It is thus imperative to further investigate the founding moment of a *democratic* right to protest. But before returning to the historical genesis of such a right, understood as expression of popular sovereignty, we need to engage in a short survey of today's radical democratic thought. In recent years, agonistic theories of democracy have emerged as an independent new branch of democratic thought. Typically, agonistic democrats postulate two things:

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(a) in a democratic order, conflict must be affirmed as a central political value, otherwise democracy would stagnate; and (b) conflicts must nevertheless be dealt with in a rule-governed manner, otherwise society would perish in a war of all against all. Accordingly, "agonistic" is derived from the Greek *agôn,* the term for a contest domesticated by rules of the game that are accepted by all participants. From an agonistic perspective, democracy is a *symbolic order of social relations in which the productivity of rule-governed conflicts is institutionally and culturally recognized.* This means that, on the one hand, no final decision can be made between conflicting views of the common good, because if a final consensus could be found, the *agôn* would come to a standstill; but on the other hand, the bond of conflict must not be broken either, because otherwise society would split into two irreconcilable camps and the *agôn* would escalate into *stasis* (civil war).

Two strands can be distinguished within the paradigm of agonistic theories of democracy. One strand, prominent above all in the USA and Canada, is oriented primarily towards Nietzsche and Arendt. In this camp, whose founding figure is Sheldon Wolin, William Connolly, as perhaps the most prominent defender of "agonistic respect," stands for a position critical of resentment that finds its models primarily in Nietzsche and Deleuze, while Bonnie Honig has developed Arendt's theory into a feminist agonism. James Tully's quasi-Nietzschean defense of the agonal character of freedom within the framework of a multiculturalist theory of democracy can be considered another variant of this strand (for an overview, see Wingenbach 2011; see also Wenman 2013). This Nietzschean-Arendtian strand can be contrasted with agonistic positions that evolved from the Marxist tradition, which is arguably more prominent in Europe. The post-Marxist strand includes Claude Lefort and his school – including, among others, the early Marcel Gauchet, Miguel Abensour, Pierre Rosanvallon, or Myriam Revault d'Allonnes – as well as theorists with a background in the Althusserian camp of structural Marxism, including Étienne Balibar, Jacques Rancière, Ernesto Laclau and Chantal Mouffe (see Marchart 2007).

Both strands – the Nietzschean-Arendtian and the post-Marxist – are characterized by the centrality granted to social conflicts, which are welcomed as a potentially productive dimension of democratic societies.[2] But this does not mean that the two strands of agonistic democratic theory run parallel, which would be surprising anyway due to their different argumentative backgrounds. Depending on the respective conception of social conflict, the resulting theories differ. If Arendt's idea of an *agôn,* rather than Marx's idea of class struggle, is taken as the standard model of social conflict, little seems to stand in the way of the agonists' equal

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participation in public debate. All participants to an *agôn,* as a rule-based competition, are fighting, it seems, on level ground along the same set of rules. Post-Marxist agonism, on the other hand, emphasizes the asymmetrical and power-laden structure of social relations. The agonistic and quasi-aristocratic aim to distinguish oneself, which is characteristic of Nietzsche's as well as Arendt's model of action, hardly plays any role in this camp, because it is essentially subaltern actors who struggle for inclusion under unequal, and above all – measured against the sportive ideal of agonism – unfair conditions. From this perspective, political action does not carry its meaning in itself, as in Arendt, but is oriented towards political goals, the realization of which presupposes the overcoming of obstacles (such as uneven power relations, an institutional structure detrimental to one's own political goals, or simply political forces opposed to the latter). Pure agonism, which according to Arendt carries its purpose in itself, would not be suitable for such endeavor.

It is thus not surprising that Chantal Mouffe, probably the best-known representative of the post-Marxist model, has sharply criticized her Arendtian counterparts in the field of agonistic democratic theory. By resorting to what Mouffe calls an "agonism without antagonism" (Mouffe 2013: 10), the Arendtian understanding of conflict ignores the more fundamental dimension of antagonism (for a discussion of the concept of antagonism see Marchart 2018). Furthermore, Arendt, like Honig or Connolly later, would underestimate the central moment of *hegemony* – that is, the goal of all politics to establish a hegemonic formation (a "historical bloc" à la Gramsci) which can only be achieved by constructing a collective "we" against a "they." In political action, "the moment of decision cannot be avoided, and this implies the establishment of frontiers, the determination of a space of inclusion / exclusion" (Mouffe 2013: 14), for otherwise hegemonic power relations could not be challenged. For if social relations are constitutively asymmetrical, a political project of radicalizing democracy necessarily requires the construction of a social alternative – in other words, of counter-power.[3]

Therefore, the antagonistic dimension of politics must be kept present in democracy, while at the same time it needs to be tempered, for if both sides did not agree on procedural issues, agonism could spiral out of control and turn into unbridled civil war in which the political opponent would be declared an existential enemy.[4] While I would side with Mouffe's realistic picture of political action, her insistence on an *agonistic pluralism* – her name for the rules of the political game in liberal democracy that need to be accepted by all participants – leads Mouffe into what could be seen as a contradiction in her argument, since antagonisms that must be tempered procedurally or must be subjected to shared rules

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are precisely this: *agonisms.*[5] Mouffe thus ends up with a position that is hardly distinguishable from the one she criticizes.

Rule-breaking Protest as *Democratic Desublimation*

Our brief discussion of agonistic theories of democracy has revealed two types of conflict: *agôn* and antagonism. The concept of *agôn,* as a socially or institutionally regulated form of competitive conflict, refers exclusively to struggles that obey the institutionalized rules of conflict resolution without questioning these rules as such. Herein, agonistic democratic theories of Nietzschean-Arendtian provenance differ little, as Mouffe correctly observes, from liberal models of democracy. Pluralist models of interest aggregation or proceduralist models of deliberation also tolerate well-tempered conflicts. But, and this is decisive, even Mouffe, who apparently affirms antagonisms, only seems to welcome them as long as they are carried out according to accepted liberal procedures. The democratization of society should take place "through an immanent critique of existing institutions" of liberal democracy (Mouffe 2013:133), for otherwise conflicts, when taking on the shape of a Schmittian antagonism between friend and enemy, "will lead to the destruction of the political association" (Mouffe 2013: 138). Thus, Mouffe attaches great importance to the democratic *sublimation* of unregulated antagonisms into rule-governed agonisms, which leaves one wondering whether or to what extent her idea of a conflict tamed within a political regime of agonistic pluralism effectively differs from the Nietzschean-Arendtian or even the liberal model of democracy. Yet in a radical democratic struggle for liberation and democratization, the legitimacy of many hegemonic rules of the game can, and perhaps must, be called into question. There are many cases in which power structures cannot be successfully challenged within the existing rules of the game; we only need to remind ourselves that it took a civil war – a full-blown *stasis,* not an *agôn* – to finally abolish slavery in the USA. Hence, it was argued that for an emancipatory counter-hegemony to be fostered, the rules of the game must occasionally be broken:

> In fact, substantive political change during the modern period has routinely involved episodes of violence, physical occupation, armed insurrection, and systemic forms of refusal (e.g., general strikes, riots, sit-ins, passive disobedience, and boycotts). It is precisely through the intersection of conventional political participation (voting, "agonistic" debate and opinion formation in the public sphere, and so forth) and these decidedly "antagonistic" forms of extra-parliamentary action, that real changes in the distribution of wealth, power, and authority have been

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> achieved. Thus, the "taming" of conflict advocated by Mouffe on behalf of an agonistic pluralism entails a misleading and incomplete view of societal transformation. (Kester 2012, n.p.)

Again, we see that what Mouffe reproaches in the other variants of agonistic democratic theory – a pluralism that leaves no room for antagonism – can also be held against her own conception of agonistic pluralism. In *both* its variants, agonistic democratic theory has problems integrating the conflictive rupture of the rules of the game into its model, because such rupture would no longer constitute a case of *agôn.* Mouffe, hence, fails to answer the question as to how radical democratic struggles can be successfully conducted solely in the spirit of agonistic pluralism and without an element of antagonistic politics. Let us only think of the political treatment of parties for which the euphemism "right-wing populism" has become common. Even where they may still act within the constitutional frame, it can make sense to draw a *cordon sanitaire* around racist, authoritarian, and anti-democratic parties, precisely in order not to have to recognize them as legitimate agonists. Mouffe has always spoken out against the antagonistic exclusion of such parties and in favor of their recognition as agonists (Mouffe 2005: 72-76). However, it is hard to see from a democratic (i.e., non-liberal) perspective why, for instance, the political mobilization of racism must be recognized as legitimate simply because it barely escapes illegality.

While Mouffe has developed a potent critique of both liberal democratic thought and Arendtian agonism, the problem remains that, for her, the relation between the two tropes of conflict – antagonism and agonism – resembles a one-way street due to their unequal weighting. Mouffe privileges the moment when antagonism becomes sublimated into agonism (or enemies into adversaries), while at no point advocating the non-liberal passage in the opposite direction of democratic *desublimation,* that is, of transforming agonisms into antagonism. Popular protest, however, has always the potential to desublimate rule-based conflicts into antagonisms that threaten to break the rules of the liberal game of loyal opposition and individualized civil disobedience.

Of course, there is no guarantee that a political project of desublimating agonisms into antagonisms will necessarily be in the service of progressive politics. The dilemma – sometimes described under the rubric of a supposed "normative deficit" of radical democracy – can largely be dissolved if the following proviso is introduced: protests are democratic only to the extent to which they aim at enlarging the horizon of freedom, equality, and solidarity for all. Protesters revive these fundamental principles of democracy by claiming their sovereign right to fight for

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the expansion of the democratic horizon. The sovereign thus awakened comes into conflict with a liberal regime that seeks to maintain the fiction of a "sleeping sovereign" who must only be awakened in rare cases of constitutional adaption. In democratic protests, however, the sovereign has already awakened and, instead of waiting to be consulted, begins to make demands without being asked, thus producing a collision between constituent and constituted power. Hence, protests shift from an agonistic to an antagonistic mode once they start challenging a narrow liberal interpretation of rights, for it is precisely such narrow interpretation of the rules of the game which hinders efforts to restore to the people their sovereign right.

Radical democratic protests, when formulated in a popular and emancipatory fashion, therefore construct a test case to explore the space between agonism and antagonism, between a liberal and a radical democratic perspective on democracy. What is needed is a democratic theory that can prove not only the legitimacy of a pluralistic *agôn,* which seems to be largely guaranteed under a liberal constitution anyway, but at the same time can prove the legitimacy of *antagonistic* forms of conflict, insofar as the latter remain oriented towards the founding claims of democratic rule.

Extending the "Right to Have Rights" to All

Fortunately, radical democratic thought can provide us with some of the components for such a theory. I will restrict myself to briefly discussing the contributions by two of the most prominent theorists of radical democracy, Claude Lefort and Étienne Balibar. Lefort takes up Arendt's notion of a right to have rights that allows for the questioning of all particular established rights (Lefort 1986: 258). With the modern invention of human rights, a legitimating ground is established that allows for more and more groups that were previously excluded from the realm of particular rights (or even the realm of rights *eo ipso*) to demand their inclusion. Human rights thus provide democracy with a "generative principle" or, put differently, a means for expanding the democratic horizon. But insofar as excluded groups will face powerful resistance to their inclusion into the realm of rights, this generative principle will prove deeply conflictual by nature, which is why democracy is a regime in which conflict is deemed legitimate. Interestingly, Lefort's ideas have encountered both more liberal and more radical readings.[6] A variant largely compatible with liberal approaches to civil disobedience was proposed by German social and legal theorists Ulrich Rödel, Günter Frankenberg, and Helmut Dubiel, who insisted that acts of protest should be understood as acts of

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continued self-legislation. If democracy is to be based on the principle of popular self-legislation, they argue, then the original act of self-legislation – including the declaration of a right to have rights – must always be re-established in "the everyday repetition of the founding act, mediated for instance by petitions, demonstrations or acts of civil disobedience" (Rödel et al. 1989: 103).

From here the authors conclude: "Only with the self-declaration of human rights and the mutual recognition of the right to have rights does civil society institute itself as an actionable and conflict-intensive plurality that is able to assert the public sphere against power and fill it with the clash of opinions, ever new issues and legal claims, as well as with the diverse forms of symbolic practice" (Rödel 1989: 106).[7] While a certain proximity to radical democratic theories of protest is undeniable, the limits of their approach are also visible. Popular sovereignty is reduced to *controlled* and *limited* forms of rule-breaking, such as are paradigmatically found in acts of civil disobedience.[8] Yet acts of challenging the law within the limits of the law remain perfectly acceptable for liberals. Consequently, by accepting an already constituted liberal order as their frame of reference, protests may run the danger of exhausting themselves in merely defensive rearguard actions.

For Étienne Balibar, Lefort runs against the grain of mainstream liberalism with his insight that rights are won through conquest in social struggles against the forces of domination (Balibar 2015: 36). The Lefortian proposition that democracy only thrives as long as rights continue to be claimed serves Balibar as a starting point for reflecting on how power could be self-limited in a democratic, rather than liberal fashion. In liberalism, the exercise of popular sovereignty is subordinated to principles such as the separation of powers and the guarantee of individual rights. These principles are supposed to be acquired once and for all. Balibar does not speak out against liberal rights, but insists with Lefort that "there is another possible way to conceive of the question of the rules and guarantees to which popular sovereignty must subject itself as a sort of *self-limitation* of its own power" (Balibar 2015: 18):

> It is not that we must throw out constitutions in favor of insurrections, but rather that we must place the insurrectional power to emancipate at the core of political constitutions. We should think of the "Charters of Fundamental Rights" (with, first and foremost, the Universal Declaration of the Rights of Man) as symbolic expressions of the ensemble of powers that they have acquired over the course of their history, the sum of their emancipatory movements, serving as footholds for future inventions, rather than buttressing the established order and limiting future struggles for freedom and equality a priori. (Balibar 2015: 18)

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Therefore, the right to have rights is not so much exercised today in the sense of constituted power (as a right exclusively belonging to the members of a given nation-state); rather, it is now politically exercised as a *constituent power*: "the active ability to *assert rights* in a public space or, better yet, dialectically, the possibility of *not being excluded from the right to fight for one's rights*" (Balibar 2015: 667). The logic of the argument is clear: if rights need to be won through conquest, then to struggle for rights is the primordial right in democracy. In other words, the right to politics – even in its radical modes of resistance, insurrection, and disobedience – is *the* fundamental democratic right, and "the essence of democracy is the maximization of the capacity of its citizens for political action" (Balibar 2015: 86). Why does such a radical democratic view sit so uncomfortably with liberalism? While liberalism tolerates a certain degree of conflictuality, it also finds its *raison d'être* in warding off any conflict deemed excessive from the liberal point of view. As soon as a conflict breaks out of the symbolic framework or institutional channels set for it by liberal rule, it will be crushed down or at least neutralized. A liberal order therefore proves responsive only to struggles that remain within the agonistic dispositive:

> A conflict that threatens the constitutional order, as flexible or open as it might wish itself to be, is no longer playing by the pluralistic "rules of the game," and is therefore incompatible with liberalism. This contradiction is independent of the question of whether the origin of this conflict lies in class relationships, religious antagonisms, "cultural" and "racial" differences, or an overdetermined conjunction of these factors, as is generally the case. But, inversely, can we truly say that a conflict that is "channeled" by means of rules that force it to contribute to a consensus, or to "translate" itself into an exchange of arguments, is still a *real* conflict, and not a legal *fiction*? Does not a *limited,* or even *self-limited,* conflict pre-emptively exclude anything that, in a given society, carries true political stakes: liberation struggles, emancipatory demands, revolts against injustice or inequality, and thus any historically significant transformations? (Balibar 2015: 912)

While Balibar himself defends a concept of "conflictual democracy" (2015: 99), his case against liberalism – and his insistence that a "conflict that could truly be called 'real' or 'effective' is never satisfied with respecting the established rules" (2015: 93) – parallels our reservations vis-à-vis Mouffe's agonistic pluralism. It seems that Balibar, at least to some degree, should not be placed within the agonistic strand of radical democracy. Perhaps he would better be described as an *antagonistic democrat* or, put differently, a defender of *democratic antagonism.* His work at least provides some clues as to how theory of "antagonistic democracy," rather than agonistic democracy, might be conceived.[9] Such a stance, of course,

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implies that we abandon the static image of democracy as a constituted regime. For if democratic struggles will always have a tendency to "spill over" the constitutional frame and the institutional channels of actually existing liberal democracy, they will be considered illegitimate. Hence, it is impossible to think of radical democracy along liberal lines as a static and once and for all constituted regime. If anything, democracy is, as Balibar ingeniously puts it, "a 'regime of illegitimate power'" (2015: 93). It is the uncontrollable excess produced by democratic claims "that pushes agonism beyond the limits of a 'coherent' pluralism": "But this excess that cannot be controlled a priori would also be a necessary precondition for the institution of democracy, because it would permit *real* conflicts to enter into the cycle of the legitimation and delegitimation of power" (Balibar 2015: 96). Not only do democratic institutions need to remain open to being challenged by those who they exclude, they must function as platforms to be used for the expansion of the democratic horizon, so that "all conflicts can be subsumed into institutions, but all institutions are potential sites of future insurrections" (ibid.: 96).

The Right to Protest and the Call of Duty

We have now assembled some of the components necessary for a democratic theory that can demonstrate the legitimacy of *antagonistic* forms of protest, provided they will be envisaged as expressions of the constituent power of the sovereign. In this sense our initial claim that the right to protest should be understood as the fundamental expression of popular sovereignty could be substantiated, from a radical democratic position, by revisiting Balibar's argument as to the conflictual nature of constitutive power. The right to rights was won politically from below and must always be rewon in acts of protest. At the origin of our rights, therefore, lies the conflict *over* these rights – including the conflict over the right-to-conflict – in which the constitutive power of the popular sovereign finds expression. A constituted order, to the extent that it is democratic, in turn needs to guarantee the right to fight for new rights (as well as for the preservation of acquired ones) and then accept, perhaps even celebrate and support, the popular sovereign upholding and fighting for the extension of the democratic horizon. Popular protest is therefore not simply legitimate. It is intrinsic to democracy. More than that, it is imperative, for otherwise democracy, over the course of time, would cease to exist. It would thus be misleading to present the right to protest as an exclusively liberal achievement, derivative of freedom of speech and the right to assemble and to petition, which is why I suggested that democratic protest

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constitutes a case of popular "self-awakening" – as opposed to sovereignty in the sleeping mode – instigated by an imperative call of "duty" that is not reducible to a set of individual rights.

This imperative nature – *thou shalt protest!* – was enshrined in the first truly democratic constitution of modern nation-states and the accompanying "rights of man and of the citizen" declared in 1793. In fact, the right to insurrection was installed in France's constitution not only as the most fundamental right, but even as a popular *duty.* Herein lies one of the main differences between the quasi-liberal constitution of 1789, to which Balibar refers, and the democratic Jacobin constitution of 1793, where it is stated in the last paragraph of the Preface to the democratic constitution (the *Declaration of the Rights of Man and of the Citizen*):

> When the government violates the rights of the people, insurrection is for the people, and for every portion thereof, the most sacred of rights and the most indispensable of duties.

In liberal-democratic regimes, as it goes without saying, the right to insurrection is not considered to be the most sacred right (arguably, the most sacred are property rights). And certainly, these regimes have a clear disregard for insurrection as indispensable "duty." But it is precisely because of its democratic character that such a clear, imperative injunction is expressed. A right is something that *can* be claimed, while a duty *must* be fulfilled – not by an individual as a conscientious objector, but by the people itself or any portion thereof. While democratic regimes issue an imperative call to the people *to become sovereign,* that is, to actualize popular sovereignty by assuming constituent power, liberal-democratic regimes reduce such a collective democratic duty to an individual liberal right. And yet, it is important to understand that it is not, in the first instance, the state or the constitution, or the constituted power in general, that grants a right or determines the duty. So where does the call of duty issue from? Of course, it is the people itself speaking here; it is the sovereign that imposes a duty on itself to *remain* in a state of constituent power, that is, *to not fall asleep.* As Massimiliano Tomba commented on the Constitution of 1793:

> Indeed, in the Declaration of 1793, resistance is not a right that the state has to guarantee. Instead, ongoing insurrections are everyday practices that keep the political system open. Article 28 of the 1793 Declaration stipulates: "A people has always the right to review, to reform, and to alter its constitution. One generation cannot subject to its law the future generations." This opening up of the system has to be understood both synchronically and diachronically. A "people" is constituted by political

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> subjects who have agency before, against, and beyond the state; the constitution expresses only a temporary compromise between those who govern and those who are governed. (Tomba 2019: 36-7)

So, what conclusions can we draw from this discussion regarding radical politics in liberal-democratic regimes? The boundary between *agôn* and antagonism is always up for negotiation from both sides – from the forces of protest, which question the rules of the game, and from a liberal legislature, which can either change or enforce them. From the suffragettes to the Civil Rights Movement, from the occupations of 2011 to the Chilean revolution of 2019-2020, it has been proven time and again that attempts to democratize democracy produce antagonisms. Often the prevailing rules of the game of a liberal-democratic *agôn* prevent any possibility of advancing democratization; and radical democratic protests expand or revamp these rules of the game by breaking them.

In liberal democracies it is this discrepancy – the gap between liberalism and democracy – that is negotiated in collective political protest. Thus, even within a predominantly liberal political order, liberal rights are constantly transformed into, or re-claimed as, *democratic* rights by way of popular action. Popular protest probes the democratic roots of liberal rights – which is what makes it "radical" in the literal sense of the Latin word *radix.* For referring back to the Constitution is not simply an act of seeking legal back-up within in a liberal framework. It is to insist that the *democratic foundation* of the "right to have rights," rather than being located at a certain point in the past, that is, at the historical moment of a declaration of human rights or fundamental rights, must constantly be updated through democratic protest and political engagement.

Nonetheless, I would like to add a short amendment to insurrectionary models of sovereignty, as to be found, for instance, in Balibar or Tomba.[10] While I agree with both authors that the right to have rights implies a right to insurrection, resistance or disobedience (for otherwise the rules of the game could never be transformed and new rights could not be attained), I do not think that democrats should be satisfied with a merely insurrectionary politics, or any form of protest that would not have a truly *constituent* aim. Many radical democratic theories fall into this trap of insurrectionism by limiting the constituent dimension to the moment of an explosive uprising. But if the experience of past protests – from Occupy to the yellow vests – teaches us anything, it is the following: the effects of explosive uprisings that neither enter the space of political representation nor seek organizational and institutional consolidation tend either to evaporate into thin air or be absorbed and defused by the institutions of the liberal regime. This is not to say that they are without

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any effects, as they might contribute to a subterraneous, long-term change of public perception; yet without organizational and institutional consolidation of protest movements into a political force that starts to engage with the realm of representational politics and with the existing state apparatuses, the short- and medium-term political effects may be negligible. For the Italian politician and philosopher Antonio Gramsci (1992), the construction of a new emancipatory world-view – that is, a new hegemony in the sense of a widely shared societal consensus – thus goes hand in hand with the construction of a new "political will," a new political subject which, with reference to Machiavelli, he described as a "modern prince." What he meant by this was not an individual leader, but the "collective intellectual" of a modern party: the subject supposed to organize a new hegemonic consensus.

Hence, to be envisaged in a fully political way, the constituent acts of sovereignty must also be envisaged as the political expression of a struggle for popular hegemony: for example, of political *self-assertion.* For asserting the role of a democratic sovereign presupposes that "the people" become a political subject, that is, a collective organizer of a new democratic hegemony. For Gramsci, this subject took the form of a political party; today it might not be restricted to the party-form, as important as it still is in a representational system, but can take diverse forms of organization and institutionalization. It is in this enlarged sense of emancipatory action that popular sovereignty would then express itself not only in insurrectionary protest, but in the political enforcement of what Gramsci described as the construction of a "popular will." By accepting the fact that the "rule of the people" is nothing given but needs to be won and stabilized, if only always provisionally and partially, in a political struggle over hegemony, we may arrive at a less defensive view of popular sovereignty. While this Gramscian approach overlaps with Mouffe's (and Ernesto Laclau's) hegemony theory, I would insist that the process of "will-formation" by which the people is to be organized into the role of a sovereign takes place in the medium of antagonism, and not – or if it does, to a much lesser extent – through a liberal-agonistic engagement with political competitors. It is through the force of antagonistic conflict that the sovereign is kissed awake.[11]

Such a view would be congruent with a definition of radical democracy as the name for a political project that literally goes back to the root of democracy – in this case France's 1793 constitution – in order to extend the latter to as many sectors of society as possible by applying the basic principles of the democratic horizon, that is, the principles of freedom, equality, and solidarity, which are based, as we now add, on the political self-assertion of popular sovereignty: the construction of a democratic

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collective will or "hegemonic block" of democratic forces. It is evident that popular sovereignty proves democratic only to the extent that it remains inscribed into the horizon of democratic principles, which excludes from the outset any restricted and exclusionary "völkisch" definitions of popular sovereignty. Where the people awake and start acting in the name of the right-to-rights of *all,* and with a view to expanding the democratic horizon of universal freedom, equality, and solidarity, political action becomes democratic.

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NOTES

1. For a comparable, but arguably more authoritarian view, see Daniel A. Bell's recommendations for Chinese-style "political meritocracy" (Bell 2015) and Confucian social hierarchy (Bell 2010; 2020), that may lead readers to similar epistocratic conclusions.
2. Of course, liberalism and republicanism, even proceduralism, tolerate conflict up to a certain threshold. From a liberal perspective, however, conflicts are only to be recognised as productive where they occur in the form of competition between (political) market participants and obey the motive of rational calculation of interests. Classical republicanism, as a rule, abhors internal factionalism, and deliberative democratic theory remains more interested in the communicative management of conflicts than in their centrality. It would therefore be wrong to assume that other models of democracy are ignorant of conflict; but unlike agonistic theories of democracy, none of these models assigns conflict normative primacy.
3. For the opposite take on agonism, and a defense of the Arendtian "tempered" variant, see White (2021).
4. And insofar as political passions—contrary to what rationalist models of politics would have us believe—will always play a role in politics, Mouffe continues, the main task of democratic politics is to "sublimate" vagabond affects "by mobilizing them towards democratic designs, by creating collective forms of identification around democratic objectives" (Mouffe 2013: 9). Otherwise, these affects would attach themselves to anti-democratic projects.
5. Consider, for instance, the following passage: "Consensus is needed on the institutions that are constitutive of liberal democracy and on the ethico-political values that should inform political association" (Mouffe 2013: 8).

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6. Among his immediate followers in the French context, Pierre Rosanvallon could be said to have developed Lefort's insights in a more liberal direction, while Miguel Abensour (2011) brought out the insurrectionary potential of a "savage democracy" à la Lefort.
7. To be clear, democratic protests differ from anti-democratic protests in that the former affirm and strengthen the right to rights in protest, while the latter claim this right for themselves in order to negate or weaken it for everyone else.
8. For a radical democratic critique of liberal accounts of civil disobedience see Celikates (2016).
9. The conceptual contours of such a theory of multiple antagonisms, rather than agonisms, can be found in the opening chapter of my book *Conflictual Aesthetics* (Marchart 2019).
10. Other proponents of this insurrectionary model could be added; see also Abensour (2011).
11. For a fully elaborated theory of antagonism, will-formation, and political acting, see my book *Thinking Antagonism* (Marchart 2018).

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