

An Agonist's Reply

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I am grateful to Hans Lindahl, the conference organizers – Sanne Taekema, Roland Pierik, and Wout Cornelissen – and the conference participants and the discussants for engaging the work of my essay candidly and seriously. By way of reply, I want briefly to say something about my approach, which informs the questions posed in my essay on law and politics, and then proceed with my response to the responses published here.

1 Reply to Hans Lindahl and Marin Terpstra

The perspective in political theory that most informs my work is that of agonistic political theory. Agonism stands for the view that politics is a set of practices in which we may seek stability while acknowledging that any release from contest we thereby get is temporary and/or impositional. There are always remainders to any political settlement, no matter how just or fair its terms, and the best political arrangements will express some fidelity to those remainders by: attending to them, redistributing goods and services to them, experiencing the benefits of the privileged or normalized as contingent rather than deserved or natural, and giving institutional expression to all of these commitments by allowing for opportunities in the system for minority activism, dissidence, reclamation, reparation, and even for political reconfiguration in time.

Another important contribution of agonism is its focus on the participants in and constituencies of political life, rather than primarily on the law or the lawgiver. Or better, agonism calls attention to the political contexts and conditions in which law operates and out of which it arises. Rather than to focus exclusively on the formal apparatuses of law, agonism focuses on the lived experience of law, on political culture and the institutions whereby legal and political cultures sustain and extend themselves. Law and legal institutions are the focus of most other normative political theorists, from

Rawlsians to Habermasians. Agonism, however, calls attention to the dependence of legal solutions on the subscription of the subjects interpellated by them. With a theory of the subject as always to some extent resistant to the very forces that shape us into subjectivity, agonism focuses our attention not just on the stability law might lend to political institutions, but also the fragility and contingency of those institutions.

Consequently, my essay, 'Between Decision and Deliberation', begins by analyzing the undecidability of the law or lawgiver, on Rousseau's account. If it does not end there, that is because this not unusual focus positions readers to enter into the perspective of Rousseau's avowed puzzle, and this seems to be the perspective of mainstream theories of our own day: Is the one who claims to be a lawgiver, real? Or a charlatan? Is this law a good or a bad idea? Just, or unjust? Agonism invites us to switch the question, to focus on the subject of political life: Are we a people? Or just a blind multitude? Or undecidably both? Is the lawgiver ours? Or someone else's? Or no one's?

For me, this is what the *between* of my essay's title points to: Between decision (or sovereignty) and deliberation (or proceduralism), lies the undecidable people/multitude on whom both decision and deliberation depend, though this dependence is never analyzed by either camp, not by decisionists nor by deliberativists, except by the latter in their formalist fashion by way of various paradoxes which are proliferated by the deliberativist approach (as I argue elsewhere), in part because they are preferable to the only paradox that could conceivably explode the deliberative focus on law and its (in)stabilities, the paradox of politics.¹

I argue that there is some sort of not merely decisionist decision that balances between decision and deliberation, something other than the caricature of decisionism (as arbitrary ungrounded, immoral, fascist) criticized by the deliberative camp. Hans Lindahl wants more, and not wrongly so (I can't say 'rightly' but I can say not wrongly). Through his phenomenology of legal decision-making (which already suggests a more restricted domain than the broader 'political', which for me includes law, but also exceeds it. But, then, phenomenology and the precision it offers may require that seemingly more definite object – law!) ... Through his phenomenology of legal decision-making, he sees something worth adding to my 'between' – an 'opening', an irreducible 'hiatus', not quite like Arendt's which sits 'between

1 On this proliferation, see my 'Another Cosmopolitanism: Law and Politics in the New Europe', in: *Another Cosmopolitanism*, Robert Post (ed.), New York: Oxford University Press 2006, p. 102-127.

past and future' but a hiatus that 'separates and joins what calls for legal qualification and the legal qualification thereof'. (p. 138)

This opening, and not merely the *medias res* that I refer to in my essay, is the between that holds sway for Lindahl. I am as uncertain about that 'opening', however, as he is about my 'decision.' As Wittgenstein might say, everything depends on something beyond the stipulation of the opening, that is, on how we experience that opening, what we do with it, how we respond to it and so on – which is a way of saying we are back to the undecided people again.

If Lindahl wants to *add* to my picture, Marin Terpstra wants to *subtract* from it. For him, too, as for Lindahl, the idea of decision to which, on my account, deliberation is opposed, is underspecified. Terpstra in effect asks: Why try to generate a third option that is neither decisionist nor deliberative when the answer lies already in the binary I criticize? Why not embrace decisionism as the proper name for my position (as Chantal Mouffe does, though Terpstra writes not with Mouffe in mind, but with a canon of decisionists that includes thinkers like Machiavelli and Nietzsche). That the two sides of the binary – deliberation versus decision – mirror each other, each one standing for what the other disavows, is not a reason to look elsewhere or to create more options, but rather a reason to embrace and fight harder for that which, to Terpstra, is the already existing right option.

The course counseled by Terpstra is a tempting one. Much like Mouffe, Terpstra advocates hegemonic politics by way of decisionism. My key concepts, he argues, (politics, paradox, democracy) can be 'reformulated', he says, 'in decisionist vocabulary'. (p. 152) Perhaps so. Translation is always possible. Indeed, there are two translations in these first two comments: One, into legal phenomenology (Lindahl) and the other into decisionism, properly understood (Terpstra). One means to add, the other to subtract. But presumably in both something is lost. Something is always lost in translation. But what?

Here, what goes missing is something unmentioned, but nonetheless important in the original essay commented upon here: Agonism, the position with which I am most identified in political theory. What distinguishes decisionism from agonism? Agonism, as I understand it, does not trade in the binaries on which decisionism thrives. For agonistic democrats, binary oppositions must be deconstructed to show their mutual implication, that is, to expose both the falsity and productiveness of the original binary and then, and this is the second move, such binary oppositions must also be

pluralized. Agonistic democratic politics understands the friend-enemy distinction and can practice politics around it, but agonism refuses to be reduced to that binary. Instead, we deconstruct it and pluralize the positions in relation to which agonistic democracy does its work. Political practices of pluralization call attention not to the decision, *per se*, but to what we are doing when we decide. That is, agonism calls attention to the remainders of decision – to the parts of the self and community that are interpellated and remaindered by decision. Thus, we do still decide, but not, as I said in my original essay, in the same way that decisionists, with their friend-enemy distinction, might do.

A strong point of the decisionist theory is its capacity to give an account of exceptional or emergency politics. But in so doing, the binaries that emergency politics tends to foist upon us take over the political terrain, eliminating the pluralism that agonists seek and constraining the pluralization we seek to practice (though I take Terpstra's point when he suggests there are varieties of decisionism that take their bearings more from the political condition of situatedness than from a friend/enemy distinction, *per se*). Lindahl valuably calls attention to the connection between theorizations of founding (with its implication in a-legality) and the state of exception (which claims to institute or reinstitute a-legality) but may really just suspend (il)legality *without* pointing to another law:

'[T]he self-attribution of legal norms by a group of individuals as their interested author never entirely neutralises the groundlessness of the act whereby someone seizes the initiative to posit legal boundaries [but why just legal?] on behalf of a "we". Indeed the normalization whereby a-legal foundational acts retrospectively become legal (if they catch on ...) has its inverted image in the disruptions of legal boundaries.' (p. 142)

Where is the world of legal/illegal 'challenged by a-legal behaviors'? In those moments where 'the self-constitution of all such acts [is highlighted], as is clear in the example of the political utterance "not in our name"'. (p. 142) Note here how the political, and not merely the legal, has become the focus. Note here as well how the opportunity for a politics that is beyond law presents itself with or as the self-absencing of the people/multitude. Not in our name? It is the mirror of the U.S. Declaration of Independence, whose power came from the signatures appended to it: 'in our names' said the signatories to the document, fully expecting to be hung for it the next morning.

For Lindahl, membership is always at stake: his example here, the policy from which the people dissent, is deportation. The act of self (non-)origination is militancy against deportation on behalf of 'values (...) deem[ed] constitutive for the political community of which they are citizens'. (p. 142) I would add to this the following: sometimes such actions are on behalf of facts. These people are here and *that* is a reason not to deport them (Here I admire Terpstra's concept of 'together'). Values introduce reason and ranking. Why *should* they be here? How did they get here? Aren't others more needy? The clarity of the situation is soon lost in the fog of reasoning, a victim of the supposed clarities of consistency and logic and fairness, an instance of the potential injustices of justification. What light may allow us to see this? Is it what Lindahl calls a-legality, another legality? Is this his 'openness'?

Each decision in law, as Lindahl goes on to explain, exposes and conceals a primordial questionability which is given some expression by human behavior which, I agree, is always to some extent a-legal because it 'in some ways upsets the anticipations of legality/illegality encoded in legal norms'. (p. 145) Here Lindahl echoes Hannah Arendt's argument that action will always exceed the categories that seek to regulate, contain or explain it. A-legality, for Lindahl, postulates a certain responsiveness that operates between two limits: The first insists that in fact human behavior has no residual a-legality; it is merely factual and so does not occasion any revisiting of our legal/illegal distinction and/or the second, a form of human behavior that might press us to such a revisiting but is cast as so indisputably illegal that such revisiting is ruled out of order in the most fundamental way. Such behavior is terroristic.

It seems that with these two limits we have arrived at Agamben, although he is no legal phenomenologist: here we are left with the bare life of bio-facticity and terror or the emergency of the state of exception. Both are supposed to be kept at bay by law and sovereignty. But perhaps here, by way of Lindahl's account, we can see the role of law and sovereignty in constituting subjects as either bare life (victims) or terrorists (perpetrators). It is to offset this, to prevent something like Agamben's logic of sovereignty from achieving its totalization that Lindahl posits a-legality: Another law; another law that underlies uncanny law, and is responsible for its fecundity, its excess. This other law does not just found (as in Paris and Philadelphia, about which more below). It points beyond. But this excess, is it possibly perhaps over-captured by Lindahl? Here even the a-legal traffics with the legal. Law is everywhere when even the a-legal can only offer another law or another legality. On the other hand, this other legality and its fecundities, may be

inadequately seen in Terpstra's account, where law is nowhere and it is all decision all the time.

I will close out this part of my reply with a brief turn to Agamben, to a short passage that makes clear how his perspective and its insistences blind him to the vast 'between' to be found between law and anomic existence, between deliberation and decision.

Agamben quotes Meuli regarding festivals of reversal as a kind of state of exception:

'Chariveri', Meuli says, 'is one of many names for an ancient and widely diffused act of popular justice (...). A close analysis shows that what at first seemed simply to be rough and wild acts of harassment are in truth well-defined traditional customs and legal forms by means of which from time immemorial the ban and proscription were carried out.'²

Here is Agamben's interpretation of that passage:

'If Meuli's hypothesis is correct the "legal anarchy" of the anomic feasts does not refer back to ancient agrarian rites which in themselves explain nothing [that is, the feasts are not, as Wittgenstein said against Fraser on the fire festivals, explicable by reference to a supposed original referent]; rather it brings to light in parodic form the anomie within the law, the state of emergency as the anomic drive contained in the very heart of the nomos.'

Here we can see the extent to which Agamben is captivated, indeed captured by his model. Where Agamben sees 'legal anarchy', Meuli has said after all that he sees 'well-defined traditional customs and legal forms'. Where Agamben see emergency within the law, Meuli sees popular justice, indeed he says there is here a justice which only seems at first to be rough but is in fact ritualized. Of course, roughness and ritual may coexist as, indeed, may legal anarchy and legal form, a point that any legal phenomenologist might also miss or contest. Agamben does not explore such possibilities here, however. And so he misses what Meuli describes – how popular law and popular justice can be both formed and formless. We have here, from Meuli, in effect, a deconstructed binary whose poles intermingle, inhabit each other and enter into agonistic contestation with each other (just like the people

2 Giorgio Agamben, *State of Exception*, Chicago: University of Chicago Press 2005, p. 72.

and the multitude, on my reading of Rousseau). Their agonistic cohabitation generates a meaningful practice. We miss this when, confronted with a binary opposition, we react in the usual ways: we may seek to break its power by generating a third option (as Lindahl seeks to) or by exposing the two given options as really one (as Terpstra seeks to). Agamben does the latter when he redescribes the binary of law and anarchy as legal anarchy. In so doing, he misses the opportunity to think and act our way out of the binary's spell. Firstly, by deconstructing its apparent oppositions – law can be anarchic after all, exceeding (as Jefferson feared) the terms it sets for itself and are set for it, and setting about in a spirit of wild adventurism. Secondly, by pluralizing the terms the binary seeks to freeze into oppositional relation. In so doing, we might note that lawful and anarchic are adjectives that could well apply to a whole host of human behaviors from the factual to the terroristic and to most everything in between, as well as beyond.

2 Reply to Hoogers and De Haan

In my paper, I argued for the benefits to democratic theory of taking the perspective of the paradox of politics seriously. Hoogers, however, sees only a problem in need of solution and the solution, he argues, is representation. But this solution does not escape the paradox; it only replays it, as is suggested as well in Lindahl's essay. Every act of representation reinterpellates people into their identity as citizens in ways that may exceed or violate their ideals, practices or self-understandings. The people represented may not (yet) exist as such. Or they may come into existence by resisting this interpellation, as they do, in Lindahl's example, when they say: 'Not in our name.' The problem here is not simply that representation overreaches, although it may well do so each and every time it claims the people for itself. The problem is also that representation itself is always caught in the paradox of politics: the paradox of politics – the chicken and egg problem of founding in which good law postulates good people to make it, but good people postulate good laws to make them so – is not only a problem of beginning, but also a problem of maintenance. Beginnings are never over. New birth, immigration and recidivism all mark the perpetuity of beginning as maintenance. So does the fact that lingering in the social contract are traces of original settlements and their unresolved or violently resolved differences, which plague the post-founding order.

Still, what if we grant to Hoogers the claim that the paradox of politics is limited to the period of founding and constitutional law can therefore solve the problem? What *kind* of an answer is constitutionalism? Political theorists like Hobbes do not just provide us with constitutional frameworks, but

also with stories, incentives, rhetoric, models, and virtues. They provide us with pictures of good citizenship that are extra-constitutional, but are presupposed by constitutional order. Yet on such questions, Hoogers is silent. The same goes for *the* question of constitutionalism: Why is the constitution binding? Because it is the legitimate expression of the people's will? How should we know? The question haunts Rousseau. Do the people will the regime into being with the general will or the will of all? How should we know? Another response might orient away from beginnings and toward rupture *in medias res*: in the Canadian constitution, this more creative response to the problem of legitimation is provided by section 33, also known as the notwithstanding clause, which allows for the suspension of specific constitutional provisions by popular will.

The notwithstanding clause allows the voice of the people (with judicial scrutiny) to interrupt constitutional order, to suspend constitutional provisions for a limited period of time and to renew the suspension periodically through mechanisms of popular vote. This is *an* answer to the problem of the paradox; it is not a solution to the problem so much as a marker of it. What is important about section 33 is not simply its narrow permission for an exception/suspension but its solicitation to a constitutionally ordered regime's citizens and denizens to maintain active citizenship. In other words, when faced with constitutions that have such provisions, political theorists with a concern for active citizenship should worry if they see no resort made to the notwithstanding clause. Its non-exercise would be, on this account, a worrisome sign of alienation, withdrawalism, submission to constitutional authority, *not* a sign of the success of representation, or at least not necessarily so.

There are other supposed 'solutions' to the paradox of politics that similarly operate as markers of an insoluble problem, rather than as answers to it. One, about which I have written at length elsewhere, is the U.S. Declaration of Independence, in which the name of the people, the we, of the inaugural statement 'We hold these truths to be self-evident', marks the problem it seeks to solve. Indeed, De Haan locates the argument of my essay in the context of that earlier work of mine, in which Derrida's critical engagement with the work of J.L. Austin figured centrally. In that earlier work, also first published in the *American Political Science Review*, I analysed the working of the 'solution' to the paradox of politics provided by the Declaration, as Derrida read it.³

3 Bonnie Honig, 'Declarations of Independence: Arendt and Derrida on the Founding of a Republic', *American Political Science Review* 1991/1, p. 97-113.

For Derrida, the 'we' of the declaration solves, but simultaneously marks the problem of the aporia of founding. When the 'we' is invoked, it works insofar as its hopeful future-oriented performative of founding is mistaken for a constative statement of fact. That is, if the Declaration works, that is in part because we accept its claim that a 'we' that holds certain truths in common actually does exist, as such, but if it exists, what need is there for the Declaration? This we, Derrida explains, is undecidably *both* constative and performative and its generative power comes from this undecidability. If it must declare itself, that is because *this* we both does and does not yet exist, certainly not until the end of the sentence, not until the declaration is signed, in a kind of necessarily counterfeit act. So the 'we' that anchors the Declaration, 'we, the people', is in fact produced by the Declaration which trades on this necessarily fictive 'we' in the name of which the Declaration is made, and so on. Through the fictive, productive powers of the declaration and its undecidable 'We', we see the aporia that the Declaration both announces and conceals.

In this same 1991 essay, I analyzed Hannah Arendt's retelling of the story of the American founding and its escape from the aporia of founding, or what I would now refer to as the paradox of politics. Then, in 1991, my emphasis was on Arendt's exploitation as it were of the simultaneously, undecidably, performative character of the 'we' which Derrida did more to deconstruct. He saw the necessity to combine the mutually contaminating dimensions of performative and constative. That is, he saw how the performative *depended* on its other, the constative. He saw how the success of the performative utterance, 'We, the people' which aimed to bring that people into existence, presupposed and required a constative moment – in which the 'we' is treated as referentially true – that such performativity was also bound to disavow. This fiction, the necessary fiction of the grammatical subject, Nietzsche said, is necessary to the success of the performative.

In 1991, I preferred Derrida's franker, deconstructive analysis of the necessarily contaminated character of inaugural politics to Arendt's own effort to provide us with a far less contaminated origin for democratic politics. She goes to great lengths in *On Revolution* to mark and to disavow as unnecessary, contingent, and accidental, incidental, those moments of the founding that appear to be constative. In her view, such constations compromise the founding's admirable performative freedom, its purity as action. Thus, she insists, wrongly, as I argued then, on the non-necessity to the founding of the declaration's references to nature's god, self-evident truths, and natural law. (She saw no undecidability in the 'we' itself and consequently did not worry about any threat of an illicit constation there.) The true political free-

dom of the events she admired depended on these excisions, she thought, and also on the retelling of the story of the founding as *she* told it – as a fable of freedom that showed our capacities to act without the crutches or guarantees of what for Arendt are the extra-political realms of nature or religion.

The problem with this approach is not only its overly secularist insistences, but also its failure to understand the implications of and reasons for secularism's inadequacy to politics. That is to say, political action, imagination, freedom, and institutional maintenance are always caught up and implicated in or contaminated by elements Arendt would like to insist are *extra* political, whether these are concerns of embodiment that Arendt wants to confine to the private realm or other supposedly extraneous factors like religion.

In my 2007 article reprinted here, 'Between Decision and Deliberation', I moderated this early critique of Arendt and (although I did not put it this way) used her to moderate my earlier championing of Derrida. For in this recent essay, what I find centrally important is a different, until now unnoticed moment in Arendt's *On Revolution*, a moment where she allows the absoluteness of inaugural freedom to be supported by something seemingly extraneous to it – a historically contextualized practice of beginning, practices of self-governance already begun and practiced in 'anticipation' of the revolution that might never have come; and when it did, it instituted but also thereby betrayed (maybe, almost) this new set of practices of freedom which in turn fully depend for their future posterity and longevity on the story Arendt tells of their inaugural, rather than contextual origin. Why? Because only the former but not the latter can inspire in a context-transcending way. The radically contingent events of pre- and post-revolutionary America are, like the beginning of life itself as Arendt says in *The Promise of Politics*, radically unlikely. The singular story of a beginning (in her fabulist's rendering) that almost was not, and ought not (statistically speaking) have occurred, can inspire others to act only if its unlikely character, its specificity, its uniqueness are both cherished (on behalf of the uniqueness of action) and attenuated. In other words, we are here in what Derrida calls the paradox of exemplarity – in which it is the uniqueness of the example that makes it powerful but that very uniqueness may also undo its power as an example, which, after all, seeks to inspire others to copy it. Arendt's solution: the story of this beginning – which could only happen once – bears repeating.

Thus it turns out that Derrida's constative (if also fictive) 'we', the grammatical we of the Declaration, is also present in Arendt's account, but it

is clothed by Arendt in historical wrappings. In Arendt, the constation is not seen as such as fictive, grammatical, but is instead a set of historical practices whereby a new kind of sovereignty not inimical to freedom accidentally, contingently arose, by way of a set of events that might well have been otherwise: this is, in short, *an accidental sovereignty*.

It might not have happened, but it did. And this shared reality helps the founders broker the aporia of founding by securing in their experience the reality on behalf of whose future they risk their lives when they sign their signatures to the document of the declaration. They are aware of the risk; they joke about seeing each other next on the gallows.

So Rousseau's paradox, in which the people need good law to make them good and they cannot be good without good people to make it so, this paradox is elided by these contingent circumstances in which somehow the people and law were born simultaneously (in Arendt's fabulist's rendering, it bears repeating) ... albeit without having to face the problem of sovereignty. Why? Because they lived in its shadow (George III cast a long shadow from England to the colonies) but not in its presence, not, as it were, under its roof. Indeed, as I point out in the essay, the geographic distance between the colonists and the king and his agents is not only a fortuitous fact, though it is that too, but also a product of political work and risk, since the colonists were wont to pretend they did not receive certain missives from the king. (Today we would say 'sorry, I did not get that email; it must have landed in my junk box'.) With communications as they were then and the success of ships' voyages as uncertain as they were, it could be years before anyone might notice the colonists' failure to comply with the monarch's directives. In this grey zone, under sovereignty's protection and yet distant from its powers of surveillance and enforcement, the colonists found, practiced, and inaugurated the freedom of self-governance. But this historical story is too located and contingent to inspire action in the present so Arendt offers a fable of founding instead which seems to dis-count the always contaminated nature of political founding and maintenance.

De Haan brings us back to history in a very welcome way, it seems to me. It is a Pandora's box, as he says I say, but this fact is a problem, in my view, for Habermas, *not* for me. And Habermas knows it. That is why he, who understands the (for him) human, all too human, need for stories and fables, and who therefore offers us the names Paris and Philadelphia so as to inspire us, nonetheless soon modifies those contaminated events with something he much prefers to endorse: The 'reasonable trace' of the great dual historical event, Paris and Philadelphia, which 'began a project that holds together

a rational constitutional discourse across the centuries.' For me, however, 'Paris and Philadelphia' are messy, which means they will not do the work Habermas wants, the work of standing in for the 'reasonable trace' without also calling attention to the processes of exclusion of popular and plural power that occur at the formative event and are daily reperformed in myriad ways ever after.

I also agree with De Haan that studying historical negotiations of the paradox of politics is instructive. Indeed, the story he tells of de Gaulle's effort after WWII to position himself to take power is in fact quite useful. Here is what I would highlight in addition to what De Haan calls attention to: History will not be the solution De Haan says I seek to the paradox of politics but rather an illustration of the problem, which is what De Haan sees and embraces as well – the imperfection of such settlement. Some illustrations will be more or less powerful in deepening our understanding of the paradox. But in general they make visible the fecundity of the paradox of politics, which is a problem daily, although it is most visible in inaugural or crisis moments. I agree with De Haan that democratic theorists should embrace and explore this paradox rather than seek to cover up or solve it and the reason for this is that an awareness of the paradox makes us inhabit our democratic institutions and constitutions differently.

So I do not 'recoil' from actually entering the infinite sequence (of Aristotle) nor do I think history is a Pandora's box full of evils better locked away. That, again, is what I take to be Habermas's view. (One recalls, in any case, the tiny afterflight of hope that also follows out of Pandora's box, as if to catch up with the already escaped evils rashly released by curiosity.) And I will not take the bait on which is more efficient – philosophy or history – nor enter into a debate about the assumed postulate of this question: that efficiency is preferable to inefficiency. But I will discuss the historical events laid out here by De Haan.

In the story of the Fourth Republic's founding, the way to the constitution is prepared by a patriarchal figure, De Gaulle, who must be got out of the way for the legal founding to occur. De Gaulle's being outmaneuvered is key in this story which like so many founding stories, I am tempted to say, has this oedipal structure. With the details of the story laid out before us, it is hard not to agree with De Haan that of course the

'way in which the Fourth Republic was constituted fell short of the demands of justice and democracy required by democratic theorists'.
(p. 184)

This insight is what the paradox of politics leads us to as well: That the people when formed are formed in a way that also violates and not only fulfils the demands of democracy. If all foundings fall short in this way, it is not only because (as Terpstra says) we are in the realm of the real and not the ideal. More importantly, it is because the sort of democratic theorists De Haan seems to refer to here are not the sort to theorize politics, as I do here, in relation to contamination and hybridity, necessary fictions and performativity, or undecidability. I agree, therefore, that empirical normativity, struggle, agonistic exchange out of which come outcomes no agent may directly have sought – these are among the elements of politics, which, as De Haan says, may bespeak a democratic character, insofar as it is in these moments that actors are equal: equally befuddled in a way. At these moments, as De Haan says: ‘It is unclear to all participants involved what the actual balance of power is.’ (p. 185)

Most interesting to me, however, in the story as De Haan tells it is the central importance of repetition, which De Haan sees in rather instrumental terms (which is not implausible but is incomplete). De Gaulle created authority in an unauthorized way, De Haan says (like the ‘we’ of the Declaration, as both Derrida and Arendt point out, who had no authority to do what they set out to do). First, De Gaulle positioned himself in his radio speeches as France’s savior. Second, he entered many cities, ritualistically, as he did Bayeux. These eventful entries followed a certain formula: reception at the town limits by notables, triumphal march through the streets, and so on. De Haan does not note it, but it is the repetition that has effects – like water wearing away a rock’s surface over time. Many towns entered ritually by De Gaulle, many greetings by many notables extended to him. As Foucault said of the popular demonstrations against the Shah in 1970’s Iran: it was not the demonstration, but the repetition of the demonstrations that had political import.⁴ The repetition – of De Gaulle’s performances, of the myth of the Fourth Republic – eventually accretes into a concreteness, or in terms Hannah Arendt herself might use – action in concert creates the in-between we call ‘reality’. However, it is also true, as she would say, that something disturbingly like reality can also be created by propaganda.

4 On Foucault on Iran, see my ‘What Foucault Saw at the Revolution: On The Use and Abuse of Theology for Politics’, *Political Theory* 2008/2, p. 301-312. Arendt emphasizes the importance of repetition too, in *Eichmann in Jerusalem*, New York: Penguin Classics 1994, p. 270.

The Americans did it too. As Michael Warner showed in his *Letters of the Republic*,⁵ there were repeated parades during the founding period on behalf of the new constitution, featuring printing presses on wheels at which copies of the new document were printed and freely given away to cheering crowds. Here surely is an episode of history – repeated, not unique – that even Habermas ought to be able to love. I joked in ‘Between Decision and Deliberation’ that Habermas’ constitutional patriotism is supposed to provide us with affect but carries little erotic charge: like kissing a typewriter. And yet here we have that very figure, or something unbelievably like it! Printing presses elicit cheers from the surrounding crowds. The hero of the American parades is said to be the constitution, not a man, like De Gaulle. This raises a question for my too-obvious metaphor: Just how important is this difference between man and machine, charisma and type(writer)? Can the reproduction of type technology solve the problem that institutions and practices of representation can only replay? Is there no charisma, magic, charlatany in the case of this new unifying technology of print? Either way, whether by way of the magic of man or machine, it is through repetition and ritual that a people is formed, its affective attachments bonded to each other, and to a document, by way of the good services of a new mass technology – print – not through rational discourse as such. Insofar as it worked, was it the rationality of the document, or the festivities of the parades that shaped the people/multitude into a citizenship of rough rituals and anarchic law? Surely it was to some extent the complicated and contaminated combination of both.

Agonism, as I suggested at the outset of this reply, is particularly well-suited to the study of this contamination. Agonists calls attention not to law, as such, nor to representation, but to the slips and slippages of law and representation, to the political contexts and conditions in which law operates and out of which it arises. Thus, if agonism contributes to the critical study of law, it is by focusing not just on the stability law might lend to political institutions, but also on the fragility and contingency of law and the institutions that sustain and extend it, and to their necessarily repetitive – dare I say, ritualistic – operations in time.

5 Michael Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth-Century America: Publication and the Public Sphere in 18th Century America*, Cambridge MA: Harvard University Press, 2006.