The "populist" constitution of liberal democracy

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Abstract

At stake in contemporary debates about populism are the foundations of liberal democracy. I show this through a critical examination of the works of two of the most influential theorists of populism today: Jan-Werner Müller and Chantal Mouffe. Müller and Mouffe both start from different versions of post-foundationalism, but understand post-foundationalism differently, and this has implications for how they understand democracy, populism and the legitimacy of the constitutional order. Pushing Müller's post-foundationalism to its logical conclusions, I show how he cannot uphold the distinction he makes between democracy and populism. With Mouffe, I argue that what Müller takes to be specific to populism extends to all democratic constitutional orders, including liberal democratic ones. They are "populist" in the sense that they are the contingent crystallization of relations of power, and that they are articulated in combination with an image of the people that functions as an extra-constitutional source of legitimacy.

Introduction: Post-foundationalism, populism and pluralism

At stake in contemporary debates about populism are the foundations of liberal democracy. It is not just a question of this or that constitutional right or of the relationship between constitutionalism and democracy, but of how we think of the very nature and status of constitutions and of the demos. This much becomes clear if we examine the positions of two of the most prominent voices in academic and political debates about populism today: Jan-Werner Müller and Chantal Mouffe. The debates often circle around the relationship between populism and (liberal) democracy and around populism as a strategy for the Left. On both issues, Müller and Mouffe place themselves on opposite sides. They represent different theoretical traditions, having developed their own distinct positions within those traditions. Müller comes out of the Critical Theory tradition, and he links his argument against populism to the co-originality of constitutionalism and popular sovereignty (Müller 2014; 2016a; 2017c; 2017a; 2017b; Boel, Jensen, and Sonnichsen 2017).[1] Mouffe draws on post-Marxism and post-structuralism, and she links her argument for left

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[1] Similar views of populism are found in, among others, the following authors, who are also critical of Laclau and Mouffe's approach: (Arato 2013; Cohen 2019; Urbinati 2019).

populism to an argument for agonistic democracy (Errejón and Mouffe 2016; Mouffe 2018). In this paper, I analyze Müller's and Mouffe's positions in order to show what is at stake in current debates about populism and, thus, to identify the political challenges more clearly. I argue that all constitutional orders – including liberal democratic ones – are "populist" in a very specific sense: they are the contingent crystallization of relations of power, and they are articulated in combination with a representation of the people that functions as an extra-constitutional source of legitimacy.

Müller and Mouffe start from different versions of post-foundationalism and from the view that "the people" does not exist as such, but is the product of performative claims to represent it. They also both stress the necessity of combining constitutionalism and popular sovereignty, or – in Mouffe's terms – liberalism and democracy. This combination is necessary in order to guarantee pluralism, which is essential to both of them. They both believe that there is too little democracy today and identify a depoliticized neoliberal technocracy as the source of the problem. Yet, they also work with different understandings of what post-foundationalism entails, and what the performative character of the people means for how we think about democracy and the legitimacy of the constitutional order. These different understandings of post-foundationalism have implications for the question of how to guarantee pluralism. I will show this by focusing the discussion on populist constitutions. It is precisely when populists come to power and engage in constitutional reform that push comes to shove: the constitution is supposed to be the guarantor of pluralism, but, from a post-foundational perspective, this is complicated if all we have are contingent representations of the people and contingent articulations of constitutional principles.[2]

The analysis is more than a comparative analysis. I develop my argument that even notionally liberal democratic constitutional orders are "populist" starting from a reading of Müller. Pushing Müller's post-foundationalism to its logical conclusions, I show how he cannot uphold the distinction he makes between democracy and populism. Mouffe goes further in her post-foundationalism, but she too tries to control

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[2] On post-foundationalism, see (White 2000; Marchart 2007). The differences between White's and Marchart's takes on post-foundationalism are reflected in the differences between Müller and Mouffe.

the effects of the post-foundationalist starting point in ways that are ultimately untenable.

Democracy versus populism: Müller

Müller writes against the background of the European experience with fascism and Nazism (Müller 2003). The central question is how there can be a central role for the rule of the people while guaranteeing pluralism. In his earlier work, Müller's answer was a form of constitutional patriotism (Müller 2007); in his later work, he turns his attention to populism, which he opposes to democracy. When Müller writes of democracy, he has in mind liberal democracy understood as representative democracy mediated by a liberal constitutional order. He understands a constitutional order in a broad sense to include not just the constitution but also political institutions and the norms and institutions of civil society; in this, he is on the same page as Mouffe. While Müller is often referred to as a liberal (E.g., Chambers 2019), it is important to note that he does not want to reduce liberal democracy to constitutional rights, and that he emphasizes the value of democratic participation beyond formal institutions. He expresses this with the term "popular constitutionalism," and it takes him closer to deliberative approaches that take popular sovereignty, or democracy, and constitutional rights to be co-original (Chambers 2019; Cohen 2019; Habermas 2001). Although less explicit in his work on populism, he places himself in the Habermasian strand of the Critical Theory tradition, and so he seeks to recuperate the normative content of liberal democracy through immanent critique. It is through this analysis that he places populism in opposition to (liberal) democracy.

Populism is undemocratic because it consists of the usurpation of, first, the power of the people and, then, the constitutional order by a leader or a party claiming to be the sole representatives of the true people. Usually his examples of populism are right-wing, such as Hungary under Orbán and Turkey under Erdogan, but he also includes left-wing examples, most prominently Venezuela under Chávez and Maduro (Müller 2017b, 86). At the same time, some movements that might otherwise be characterized as populist are not so, according to Müller, because they are simply trying to reinvent social democracy and they accept the legitimacy of their opponents. They include the *indignados* and Podemos in Spain, the late-19th century

People's Party and Bernie Sanders in the US, Jeremy Corbyn's Labour in the UK, and Syriza in Greece (Müller 2017c, 85–91, 93, 98).

Mind the gap!

Appropriating Claude Lefort, Müller argues that we should think of democracy as a process where different representations of the people – put forward by competing political parties – vie to occupy the empty place of power (Müller 2017c, 71). This democratic competition among representations of the people takes place within the constitutional order and within the institutions of that order: "all we have is a shared political stage (as specified in a constitution) on which various actors can launch representative claims; and these claims always have to be understood as provisional, fallible, and self-limiting" (Müller 2017a, 603). The gap between the empty place of power as instituted in liberal democratic institutions and the particular occupations of those institutions must remain open. This can only happen if the occupations of the institutions are partial and temporary; otherwise, pluralism is threatened, and without pluralism there can be no ongoing competition for power: "there is no democracy without proper rotation into and out of public office" (Müller 2017c, 77). At stake is therefore the relationship between the liberal democratic order and the particular representations of the people. Populism is an exclusionary form of identity politics that collapses the gap between the constitutional order and a particular representation of the people. The danger of populism is a combination of a monist claim to represent the "true" people and a claim that the populist movement is the only true representative of the people (Müller 2017c, 3, 20).

Populist representations of the people are "symbolic" as opposed to "empirical." Müller equates "symbolic" with "fictional" and "illusional" (Müller 2014, 485, 487, 491; 2017c, 20, 27, 28, 34, 39).[3] "Empirical" representations of the people refer to "the people in its empirical entirety" and "the actual input and continuous influence by citizens divided amongst themselves;" this is "a people of individuals," as opposed to the representation of the people as a homogenous unity (Müller 2014, 485, 487; 2017c, 77). In the case of symbolic representations, the people is spoken for by a populist leader or movement; in the case of empirical representations, the

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[3] While Müller does not reference Pitkin's (Pitkin 1967, chapter 5) account of symbolic representation, his use of the term is similar to hers. On Müller, representation and populism, see also (Thomassen 2019).

people speak through liberal democratic institutions, most importantly elections (Müller 2017c, 39). Representations of the people are empirical in so far as their legitimacy can be tested within liberal democratic institutions, specifically elections through which the people's voice can be heard as a temporary majority. The populist symbolic people consists of a claim that there is a "real" people independent of the institutions, but it is just that: a symbolic claim to represent what is really a fictional people. The symbolic people cannot be tested within the liberal democratic institutions, and this challenges the legitimacy of the constitutional order by positing an extra-constitutional source of legitimacy. Populists refuse to accept that the stage – the constitutional order – is shared when they appeal to an extra-constitutional people, which, they say, is excluded from the present constitutional order.

For Müller, the question of what is the best, right, and so on, people can only be decided within the liberal democratic institutions (both formal and informal). When Müller writes that "democratic politicians … make representative claims in the form of something like hypotheses that can be empirically disproven on the basis of the actual results of regular procedures and institutions like elections," this cannot be interpreted as a return to some positivist objectivity (Müller 2017c, 39). The "empirical" testing of hypothesis is framed by a "theoretical" frame. The competition between different representations of the people is all we have, and this is why liberal democracy is opposed to populism, because populists claim a direct and privileged access to a "real" people "out there." Müller is a post-foundationalist in this sense: there *is* no people, only competing representations of it; and liberal democratic institutions, which form the "ground" for this competition, is a historical achievement. As such, the constitutional order is artificial, and it is the crystallization of power relations: "Constitutions are, for the most part, settlements that emerged from interest-based bargains, they are the 'autobiography of power'" (Müller 2007, 1). The challenge is to make sure that a constitutional order is not *only* "a sort of particularism in universalist disguise" (Müller 2007, 6). Hence the qualification "for the most part:" there must be some normativity beyond what a genealogy of power can uncover (Müller 2007, 5–6, 147). From this post-foundationalist perspective, populists are foundationalists because they claim that there *is* a true people, and that this people should be the foundation of the constitutional order.

When in power, populists use the state to propagate anti-pluralism: "populists create the homogeneous people in whose name they had been speaking all along:

populism becomes something like a self-fulfilling prophecy" (Müller 2017b, 80). Populist movements "colonize," "occupy" and "usurp" the state, thus closing the gap between the place of power and a particular image of the people (Müller 2017b, 71, 78, 80). This is the source of populist constitutions: "Those populists who have enough power will seek to establish a new populist constitution – in both the sense of a new sociopolitical settlement and a new set of rules for the political game" (Müller 2017c, 62). This is what we have seen in Hungary, Venezuela and Egypt (Müller's examples). Although they have since moved away from this, this is also what Podemos proposed to do in Spain in order to substitute the 1978 constitution of the transition from fascism to democracy with a new constitution that should not be the constitution of the establishment (*la casta*) but of the Spanish people (Errejón and Mouffe 2016; Iglesias 2015; Franzé 2018). Writing about Venezuela, Ecuador and Bolivia, Müller concludes that "the *nuevo constitucionalismo* used constitutions to set up conditions for the perpetuation of populist power, all in the name of the idea that they and only they represented *la voluntad constituyente* – the single constitutionalizing will" (Müller 2017c, 66–67). Populists posit a constituent power external to the constitutional order, and that power is a unitary will; it is unitary at the level of the people (with its homogeneous identity) and at the level of the populist leader. It is only a small step from this to the Schmittian celebration of the dictatorship of the decision, and for Müller For Müller (Müller 2003, 233-241; 2016a, 179–80), the debate about populism is also a re-run of the Kelsen-Schmitt debate.

The populist logic is such that it undercuts even explicit affirmations of pluralism: "the declaration of the Bolivian state as plurinational cannot automatically be considered evidence that the constitution enables the preservation of pluralism" (Müller 2017a, 604). Again, the issue is the distinction between the institutions that guarantee pluralism and the partial and temporal occupation of those institutions, and the problem is that populists do not respect this distinction, which defines the distinction between democracy and populism. "Populists will seek to perpetuate what they regard as the proper image of the morally pure people (the proper constitutional identity, if you will) and then constitutionalize policies that supposedly conform to their image of the people" (Müller 2017c, 63). Having said that, Müller also notes: "Such a strategy to consolidate or even perpetuate power is not exclusive to populists, of course" (Müller 2016c). I will return to this below.

In so far as populists close the gap between the constitution and their particular representation of the people, the populist constitution is "partisan" (Müller 2017c, 65, 68, 74), giving rise to "conflict" and "confrontation" (Müller 2017c, 67, 74). Conflict itself is not a problem, and, for Müller, it is part of democracy: politicians and political parties put forward "visions" of the people as "fallible hypotheses," and the electorate vote in elections on the basis of their identifications with these (Müller 2017b, 82). Conflict is part of a healthy democracy, even when it is conflict over who the people are and what democracy is. In Müller's words: "The concept of the people is always up for grabs, and democracy is also about a permanent contestation of what democracy is;" and "of course, any of us can criticize our democratic institutions; they are not sacrosanct" (Boel, Jensen, and Sonnichsen 2017, 75). However, conflicts must be mediated by the liberal democratic constitutional order; this is "legitimately contained conflict" (Boel, Jensen, and Sonnichsen 2017, 84). The problem with populism is that, rather than having political conflicts – democratic competition – *within* the constitutional framework, we have political conflicts *over* the constitutional framework; rather than merely facilitating the competition between different parties, the populist constitution is itself partisan.

Blurring the lines

Müller wants to distinguish populism from democracy, but, as I will show in this section, he is unable to do so. That is not for want of trying, but because there is something about what he identifies as populism that also applies to democracy, and that boils down to the people as an extra-constitutional source of legitimacy.

Take first Müller's alternative to populism and neoliberal technocracy: "a new social contract for the people as a whole." He immediately transforms the "whole" people into "broad-based support" (Müller 2014, 491).[4] However broad-based it is, when it is short of universal, it is partisan. Müller's examples of positive experiences of this are Iceland and Ireland, and his negative example is Hungary (Müller 2017c, 99; 2014, 491). The problem that Müller encounters is that there cannot be a contract without a definition – and, therefore, a delimitation – of the people who will contract. Before the people can contract, we must define who belongs to the people, and what it means to belong to the people (Näsström 2007; Ochoa Espejo 2017). Is

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[4] Compare (Müller 2017c, 99), where the reference to "the people as a whole" disappears.

the definition based on being affected by a decision? On formal citizenship? (And how is citizenship defined?) On being present, in a given moment, within a given territory? And so on. The people must be defined, and to define a people is to delimit it too – to draw a line between who is included, and who is excluded. Once the people has been defined and delimited, we also need an account of how the contract is contracted: are we dealing with a universal consensus? If not, what is the relationship between the people and the majority speaking for the people? And so on.

That is why Müller's solution to the boundary problem of who belongs to the people does not work. While he is right to argue that it is not settled once and for all and should be seen as an ongoing process, this merely raises the question of who belongs to that process, and how the process is shaped (Müller 2017c, 80–81). The process cannot take place simply *within* the confines of the constitutional order, but is also a struggle *over* that order to establish who belongs legitimately to the people. The process of establishing the identity and legitimate limits of the people cannot be contained wholly within the constitutional order, and so the distinction between populist symbolic representations and democratic empirical representations of the people is blurred. The constitutional order is partisan in Müller's sense because it is always also the crystallization of a particular people.

The same issue arises in relation to a distinction Müller makes between "democratic" or "revolutionary" and "populist" claims. He writes: "In nondemocracies, 'We are the People' is a justified revolutionary claim: it is precisely not a populist one," and he gives as examples Tahrir Square and Gezi Park/Taksim Square (Müller 2017c, 73). On the contrary, in democracies, any claim that "We are the People" must be false because it can only be a part masquerading as the whole people. Democratic claims about the people instead take the form of "we are also part of the people," an empirical people already there to be included among. In words that are reminiscent of Seyla Benhabib's notion of democratic iterations:

> Constitutions can ideally facilitate what one might call a *chain of claim-making for inclusion.* An initial "We the People" neither entirely disappears inside the regular political process nor stays as an actual, empirical unified agent – a kind of macro-subject – outside the constituted order. Instead who are "We

the People" remains an open question, one which democracy in many ways is *about*. (Müller 2017a, 601) (Benhabib 2004; critically Thomassen 2010)

What emerges in Müller's texts is a view that the democratic constitution is at once the framework for the claims about the people *and* the result of those claims; the constitutional framework at once takes a certain people as given *and* provides the opportunity to represent, and thereby constitute, the people in new ways. Even if the pluralism of the constitutional order marks the particular people as contestable, this contestation is framed by the constitutional order, which is in turned framed by a particular people, thus placing limits on what are legitimate questions and alternatives.

Müller (2017c, 74) notes, "whether a particular claim is democratic or populist will not always be a clear-cut, obvious matter," and he gives as an example the time between Tahrir Square and the consolidation of the new Egyptian regime based on "a populist, partisan constitution" of the Muslim Brotherhood. A (legitimate) claim about the whole people in opposition to the old undemocratic regime slides into a (illegitimate) claim by a part to represent the whole people. We are always in the terrain of parts claiming to be the whole people; if so, the legitimacy of the constitutional order cannot be dissociated from what Müller would call populist claims about the people. The *pars pro toto* structure, which Müller (2014, 490) identifies as defining populism(Müller 2014, 490)(Müller 2014, 490)(Müller 2014, 490), is characteristic of both populism and democracy.

The analysis of Müller's position suggests that the democratic constitution is at once a space for the competition among different representations of the people *and* shaped by one or more of those particular representations of the people. The normative potential of the liberal democratic constitution exceeds any particular constitution and the image of the people it is articulated with. This is how Müller is able to dissociate the normative content of the constitution from its contingent genesis (which should be understood as a continuing re-articulation). However, this means that the legitimacy of a claim about "We the People" cannot be finally decided with reference to any existing constitutional framework. When legitimizing a claim about the people, one may make reference to a constitutional framework, but the constitutional order is not a self-enclosed and self-legitimating system. In Laclau's (2005, 167; see also Blokker, 2019, at 549) words, "there is no political regime which

is self-referential." In the final analysis, the liberal democratic order is articulated together with a particular image of the people, even if the former cannot be reduced to the latter.

It would, thus, seem that there is something general about "populist constitutions" in that *any* constitution is articulated with a people who is at least in part external to the constitutional order. This creates an inherent tension between constitutional order and people, and Mouffe's theory of agonistic democracy promises a way to account for this tension.

Agonistic populism: Mouffe

Mouffe came to populism via a study of European right-wing populism, which she interpreted as a reaction to the depoliticizing hegemony of neoliberal technocracy. With her theory of agonistic democracy, she wanted to put conflict back into political theory, and she positioned agonism in opposition to what she saw as the consensus politics of liberalism and deliberative democracy represented by John Rawls and Jürgen Habermas respectively. Today, she argues, populism is a fruitful strategy for the Left. She finds left populism in a concrete form in the political projects of Podemos in Spain and Jean-Luc Mélenchon's La France Insoumise, both of which she has been involved with. For Mouffe, there is no democratic politics without the construction of a people, and there is no politics (democratic or otherwise) without exclusion. The theoretical and normative question is, for Mouffe, how to guarantee pluralism if collective identities and exclusion are part and parcel of politics, and she believes that her version of agonistic populism can address this.

Mouffe's work on populism is inspired by Ernesto Laclau's theory of populism (Mouffe 2018, 10–11) (and he in turn references her theory of agonistic democracy as the way to think about democratic populism (Laclau 2005, 166–69) and by her and Laclau's theory of hegemony, whereby identities – including the people – are the result of contingent hegemonic articulations (Laclau and Mouffe 2001). Although I focus on Mouffe here, I draw on Laclau where relevant and do not distinguish between them.[5]

Hegemony, populism and the tendentially empty place of power

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[5] On the differences between Laclau and Mouffe, see (Wenman 2013).

Like Müller, Mouffe also appropriates Lefort's thesis about the empty place of power in modern democracies (e.g., (Mouffe 2018, 42).[6] In *Hegemony and Socialist Strategy*, she and Laclau follow Lefort in opposing democracy and totalitarianism (Laclau and Mouffe 2001, 187)(Laclau and Mouffe 2001, 187)(Laclau and Mouffe 2001, 187)(Laclau and Mouffe 1985, 187). The latter consists in a claim to represent the unity of society, a unity that the democratic revolution has otherwise dissolved. Power, law and knowledge melt together in totalitarianism, and this is precisely what Müller sees in populism: a populist movement claims to represent society as a whole, and it does so by positing a true people as the source of its legitimacy, thereby collapsing power, law and knowledge. However, Laclau and Mouffe suggest that the choice is not between totalitarianism and no unity at all. The result of the democratic revolution is that "it becomes possible and necessary to unify certain political spaces through hegemonic articulations" (Laclau and Mouffe 2001, 187). Although Müller uses a different terminology, he would agree, because the emptiness of the place of power is guaranteed by the historical construction of particular political institutions. For Laclau and Mouffe (1985, 188), those articulations take place "[b]etween the logic of complete identity and that of pure difference," where "complete identity" would correspond to Lefort's totalitarianism and Müller's populism, and where "pure difference" would correspond to the "implosion of the social."(Laclau and Mouffe 2001, 188)(Laclau and Mouffe 2001, 188)(Laclau and Mouffe 2001, 188) In *Hegemony and Socialist Strategy*, the implications of this argument are not spelled out, but in their later works, it becomes clear that the argument takes them in a different direction than Lefort, and Müller.

Mouffe notes of the democratic revolution that it not only consists of the emergence of an empty place of power that anyone can, in principle, occupy. Through its particular symbolic form, the democratic revolution also elevates a particular subject – the people, the demos – as the subject supposed to rule itself. As a result, we must ask how the people is articulated – for instance, in more individualized or more collectivist forms – and under what conditions (Mouffe 2000, 2). The latter include the ways in which the articulation of a people is combined with pluralism; this leads her to argue for the mutual articulation of the liberal and the

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[6] Here, I am not concerned with the accuracy of Müller's and Mouffe's (and Laclau's) readings of Lefort, but with how they use Lefort's ideas for their own purposes.

democratic traditions, and of liberty and equality. In the context of her argument for an agonistic populism, she argues that liberty and equality "only exist inscribed in different hegemonic formations" (Mouffe 2018, 43).

In order to fully appreciate the way in which the empty place of power works, we must, then, consider it as hegemonically articulated, and hegemony concerns, for Laclau and Mouffe, the construction of collective identities, in this case the people.

The emptiness of the place of power is not a natural fact, and therefore it must be hegemonically articulated (Laclau 2005, 170; see also 2014, 172–73). The is always partially embodied in particular institutions, subjectivities, and so on, and there is no necessary link between the empty place of power and the particular instantiation of it. "Emptiness is not just a datum of constitutional law, it is a political construction" (Laclau 2005, 170). That construction can be populist, but that does not make it totalitarian. Populism can be more or less democratic or totalitarian. Laclau (Laclau 2005, 166–71) proposes Mouffe's agonistic democracy as a way to articulate a democratic populism, because it articulates the identitarian logic – Müller's populist identity politics – together with a logic of difference that undermines the totalitarian attempts at closure. The problem remains, however, from Müller's perspective: populism involves the partial closure of the gap between the empty place of power and the agents occupying it.

A populist discourse is a performative discourse that brings into being what it claims to represent. As Mouffe (Mouffe 2018, 62) writes, "the 'people' is not an empirical referent but a discursive political construction." Populism, then, is a discourse that constitutes its own ground, not out of the blue, but by rearticulating already existing discourses of legitimacy. This is why populism is paradigmatic for Laclau and Mouffe: in populism, we see more explicit what is a general trait of all politics, namely that politics is about hegemonic articulation of identities that are not simply given prior to the hegemonic articulation but constituted through the articulatory practice. Müller (Müller 2014, 483) argues that Laclau reduces all politics to populism, in which case populism loses its specificity. For Müller, populism is a *particular* way of constructing a people, whereas, for Laclau and Mouffe, populism captures something *general* about the construction of any collective identity and, hence, any order. That is important because it means that, for Müller, there are alternatives to populism, whereas, for Laclau and Mouffe, there are only different

kinds, and degrees, of populism. Although we cannot say that Laclau and Mouffe equates populism and politics (critically Arditi 2010), there are traits of populism that are general for all kinds of politics, and those are traits, which, for Müller, distinguishes populism as a particular and illegitimate form of politics. What Müller identifies as the source of the illegitimacy of populist constitutions are, for Laclau and Mouffe, general traits of the constitution of legitimacy. For Laclau and Mouffe, a constitutional order cannot be dissociated from the articulation of a collective subject, which is to say that it cannot be dissociated from power relations. Any constitutional order will be partisan as a result of the unavoidable colonization of the of the place of power.

Here we have to be careful about what divides Müller and Mouffe (and Laclau). Recall that, for Müller, the people is also an effect of performative representations of it, and that liberal democratic institutions are (also) the crystallization of power relations. Thus far, Müller and Mouffe are on the same page. What distinguishes them is that Müller rows back on the more radical implications of this. He does so when he distinguishes between an empirical and a symbolic people, and when he opposes the populist closure of the gap between the empty place of power and particular occupations of it to a democratic minding of the gap, thus suggesting that non-closure is even a possibility. When Müller (Müller 2016c) notes that the colonization of the place of power is "of course" not exclusive to populism, he does so more as an afterthought. From Laclau and Mouffe's perspective, he is absolutely right though: it is a general trait of any constitutional order, and so we cannot, on that account, distinguish between populism and democracy.

Agonism and liberal democracy

Central to Mouffe's agonistic democracy is what she calls "the democratic paradox:" while the principles of liberal democracy – liberty and equality for all – are articulated together, they always stand in tension with one another. Since we are dealing with the articulation of the principles of liberal *democracy*, and since democracy necessarily involves "[t]he democratic logic of constituting the people, and inscribing rights and equality into practices" (Mouffe 2000, 44), the interpretation of the liberal-democratic principles cannot be dissociated from the construction of a people. Even if the people is not the true or authentic people Müller accuses populists of peddling,

we still need to address the limitations it places on pluralism. As Mouffe (Mouffe 1993, 105) notes,

> under modern conditions, where one can no longer speak of "the people" as a unified and homogeneous entity with a single general will, … [i]t is only by virtue of its articulation with political liberalism that the logic of popular sovereignty can avoid descending into tyranny.

Mouffe's (Mouffe 2000, 44–45) answer to this challenge is that "the articulation [of the democratic logic] with the liberal logic allows us constantly to challenge … the forms of exclusion that are necessarily inscribed in the political practice of installing those rights and defining 'the people' which is going to rule." Although the constitution is shaped by a particular hegemonic articulation of a people, the tension between the democratic and the liberal logics means that any particular people, and any particular constitution, can be challenged "through reference to 'humanity' and the polemical use of 'human rights'" (Mouffe 2000, 44–45). Placing "humanity" and "human rights" within quotation marks signals that, although they exceed the identity of any particular people, they are not bedrock foundations. The mutual articulation of liberalism and democracy thus creates a problem (the liberal democratic space is always limited by a particular demos), but also provides a solution to the problem (the limits of the demos can always be contested in the name of the liberal logic).

While the principles of liberal democracy do not exist independently of interpretations of them, Mouffe (Mouffe 2018, 44) nonetheless insists on making a "methodological" distinction "between two levels of analysis: the ethico-political principles of the liberal-democratic *politeia* and their different hegemonic forms of inscription." Recall that, for her, the principles of liberty and equality "only exist inscribed in different hegemonic formations" (Mouffe 2018, 43). The same applies to the constitutional order: "any political order is the expression of a hegemony, of a specific pattern of power relations," and she adds "that every consensus exists as a temporary result of a provisional hegemony, as a stabilization of power, and that it always entails some form of exclusion" (Mouffe 2000, 99 and 104). To paraphrase Mouffe (Mouffe 2000, 100), the task is not to eliminate exclusion but to constitute forms of exclusion more compatible with democratic values.

Mouffe's agonistic democracy is radical insofar as it starts from the post-foundational premise that there is no ultimate foundation, or root (*radix*), on which to base democracy. It is radically pluralist, because it is pluralism all the way down: there is no "domain that would not be subject to the pluralism of values and where consensus without exclusion could be established" (Mouffe 2000, 91). Although we start from the existing constitution and institutions when we engage in democratic politics, the constitution and the institutions are themselves the result of hegemonic struggles, and so we cannot simply take them as given. Since there is no ultimate foundation, all we have are different ways of founding, by interpreting, the principles of liberty and equality. Note that it is not a question of the abstractness of the principles here, because the principles – however abstract – do not exist independently of the interpretations of them. Interpreting the principles is not a matter of concretizing abstract principles with some minimal content in concrete institutions. Rather, the principles function as "polemical" placeholders.

Mouffe's distinction between the principles of liberal democracy and interpretations of those principles should be seen in light of her rejection of "revolutionary rupture" in favor of "hegemonic transformation" (Mouffe 2018, 44). In the first case, the liberal democratic order and the principles of liberty and equality are at stake; in the second case, "those principles remain in force, but they are interpreted and institutionalized in a different way" (Mouffe 2018, 45). She rejects the revolutionary politics of what she refers to as the extreme Left (e.g., Slavoj Žižek), in favor of hegemonic transformation "*within* the constitutional liberal-democratic framework" and "*through* democratic procedures" (Mouffe 2018, 45, my emphases). Hegemonic transformation consists of the gradual re-articulation of elements in a combination of a Gramscian "war of position" and "war of movement," where the success of the latter depends on the work of the former (Mouffe 1979, 196–98). Although hegemonic articulation is performative, it is always limited by existing structures of meaning; we should therefore think of articulation as dis- and re-articulation of existing significations of, for instance, the people, institutions or principles (Mouffe 1979, 193, 197).

The risk is that Mouffe takes existing institutions as given. This much is clear from her treatment of Occupy Wall Street. In an argument that mirrors her critique of revolutionary politics, she writes that, in Occupy, the moral antagonism between the 99% and "the 'bad' 1%" who have to be "eliminated" took the place of "political

analysis of the complex configuration of power forces that need to be challenged to create a more just and democratic society" (Mouffe 2013, 117). The moralistic antagonism between the 99% and the 1% turns into a revolutionary politics of either/or rather than an agonistic war of position that seeks to rearticulate existing institutions in a more democratic way. Occupy is both inefficient and dangerous when placed antagonistically against the liberal democratic institutions and not agonistically within those institutions. Extra-institutional movements such as Occupy still have a role to play in an agonistic democracy, according to Mouffe: they are "valuable for enriching democracy. Not only can they raise important questions and bring to the fore issues that are neglected, they can also lead to the emergence of new subjectivities and provide a terrain for the cultivation of different social relations" (Mouffe 2013, 126).[7] However, a hierarchy emerges between institutional politics and extra-institutional politics, with the latter reduced to the role of inspiration for the former. It is through institutional politics that we can really change things, ironically because we have limited ourselves to liberal democratic institutions.

A post-foundational normativity

There seem to be two – contradictory – readings of Mouffe's position, and there would be textual evidence for both interpretations. The first reading is that it is hegemony all the way down. The hegemonic struggle between different interpretations is folded into the results of previous hegemonic struggles between different interpretations, and we do not start from a bedrock of principles or work towards a future reconciliation of the principles: "an agonistic perspective takes account of the fact that every social order is politically instituted and that the ground on which hegemonic interventions occur is never neutral, for it is always the product of previous hegemonic practices" (Mouffe 2018, 92–93). On this interpretation, there is no essential distinction between principles and interpretations. The second reading of the distinction between principles and interpretations is that they are of two different kinds. On this interpretation, it becomes possible to distinguish between struggles *over* the liberal democratic constitutional order (principles) and struggles *within* that order (interpretations).

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[7] Mouffe makes the same argument about the *piqueteros* in Argentina (Mouffe 2013, 126; Errejón and Mouffe 2016, 84–85).

One way to explain the contradiction between the two readings would be that Mouffe is not content to stop at post-foundationalism and simply assert that it is hegemony all the way down. She also wants to defend a particular normative imaginary – an agonistically interpreted liberal democracy – even if only as the framework for hegemonic struggles and for the articulation of a radical democratic version of the principles of liberty and equality for all. This explanation would suggest that there is a contradiction between post-foundationalism and normative commitments. That is the assumption of many of those who criticize Mouffe from a position in normative political theory, especially deliberative democratic theory (E.g., Knops 2007; Michelsen 2019). From such a perspective, Mouffe's position is contradictory because she insists on making the principles of liberal democracy a normative reference point while simultaneously holding that, in the final analysis, the principles are a result of hegemonic struggles.

I want to suggest that Mouffe provides us with a post-foundational way of conceiving of normativity when she insists that normative foundations must be conceived as the provisional results of hegemonic struggles. If that is the case, then the distinction between post-foundationalism and normativity does not hold up because there is no normativity that is not hegemonic, and there is no post-foundationalism that escapes all normativity. Post-foundationalism, as advocated here, undermines any attempt at a bedrock foundation, but it does not do away with foundations, which are instead conceived as always plural and the result of contingent articulations (Marchart 2007, chapter 1). The interpretations of the principles of liberal democracy at once take the principles as their starting point and performatively constitute them. The interpretations only "work" as interpretations in so far as they take the principles as given (citing them for their legitimacy as *merely* interpretations of the *same* principles), *and* in so far as they can take the principles in different directions (because they would otherwise not be interpretations in the plural, but only a mechanical reproduction).

The distinction between the principles of liberal democracy and their interpretations is related to the distinctions that Mouffe makes between enemies and adversaries and between antagonism and agonism. Enemies do not share a symbolic space – for instance, the principles of liberty and equality – and want to eliminate one another; adversaries share a symbolic space, but may disagree profoundly. The agonistic space is characterized by adversarial relations, and it is

delimited by an antagonistic frontier between those who accept the principles of liberty and equality for all (adversaries) and those who reject those principles (enemies). Although agonistic democracy is a way to transform antagonism into agonism, antagonism does not disappear altogether because the agonistic relations among adversaries are constituted by an antagonistic limit.

Here we encounter the same ambiguity as with the distinction between principles and interpretations. Mouffe distinguishes "between demands which are to be accepted as part of the agonistic debate and those which are to be excluded." The latter are "those who put [a democratic society's] basic institutions into question" (Mouffe 2005, 120).[8] Such a distinction would stop the agonistic struggle at the border of the liberal democratic constitutional order. But Mouffe adds that "the very nature of those institutions is also part of the agonistic debate," and she concludes that "the drawing of the frontier between the legitimate and the illegitimate is always a political decision, and … it should therefore always remain open to contestation" (Mouffe 2005, 121). On the one hand, the liberal democratic constitutional order defines the limits of agonistic struggles (Müller's "shared political stage"); on the other hand, that very same constitutional order is at stake in the agonistic struggles.

The solution is to approach the distinctions between enemies and adversaries, antagonism and agonism, post-foundationally. The antagonistic enemy rejects the principles of liberty and equality for all. This antagonistic enemy is defined from the basis of the principles and legitimizes exclusions from the agonistic space. As such, this antagonism has an objective character to it, where objectivity is discursively – that is, hegemonically – constituted. But recall that the principles only exist as particular interpretations; what does the legitimizing – "founding" – work is not the principles themselves, but particular interpretations of them. This is also the point where the agonistic space itself is at stake, the point at which the principles-*qua*-interpretations cannot offer us a foundation for the distinction between adversary and enemy. This is the point where all that is left is a political decision, a decision that cannot be based on any non-contingent foundational principles. It is the point at which it becomes clear that the legitimacy of the antagonistic exclusion is based on a contingent foundation, that is, a hegemonic articulation of the principles of liberty and

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[8] "A line should therefore be drawn between those who reject those values ['the ethico-political values of liberty and equality for all'] outright and those who, while accepting them, fight for conflicting interpretations" (Mouffe 2005, 121).

equality for all. At stake is how we think about the foundation of legitimacy, including the legitimate limits to pluralism.

For Müller (Müller 2003, 233–41; 2016a, 179–80), the choice is clear: it is either populism in the form of Schmittian decisionism expressing the homogeneous unity of the people or liberal democratic institutions guaranteeing pluralism. For Mouffe, there is no democracy without a "we" distinguished from a "they." For this argument, she relies on Carl Schmitt, but she departs from Schmitt in that she wants to combine democracy with pluralism – "the ethical principle of liberalism" (Mouffe 1993, 104).[9] Her agonistic interpretation of liberal democracy is an answer to the question of how a pluralist unity is possible; agonistic democracy is a "conflictual consensus" (Mouffe 2000, 55).

At certain points, Mouffe limits some of the more radical effects of her post-foundational approach. We have already seen some hesitance on her part when it comes to the status of the principles of liberty and equality for all, and we also saw that she introduced a hierarchical distinction between institutional and extra-institutional politics, a distinction that protected the former against the latter. Another example is her analysis of multiculturalism. Mouffe (Mouffe 2005, 122) distinguishes multiculturalist demands "which concern the recognition of strictly cultural mores and customs and those with a directly political nature," while recognizing that this can only be "a rough distinction." The cultural demands are not a problem as they can be met "without jeopardizing the basic liberal democratic framework." The problem is the political demands, "which would lead to its destruction," because they would require "the implementation of different legal systems" and, thus, "the coexistence of conflicting principles of legitimacy" (Mouffe 2005, 122).[10] Some multiculturalists may respond that this is precisely the point: multiculturalism challenges the view that there is a single people, and at least some multiculturalists argue that there will be an unstable relationship between partly overlapping, but competing, constitutional orders and partly overlapping, but competing, peoples as sources of legitimacy (e.g., (Tully 1995). The result may be messy, but it is hard to see how it could be otherwise if we push the post-foundationalism to its logical conclusion.

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[9] For Mouffe on Schmitt, see (Mouffe 1993, chapter 8; 2000, chapter 2; 2018, 14–15).
[10] The distinction between political and cultural goes hand in hand with a distinction between citizenship and other social relations, which Mouffe (Mouffe 1992, 11) employs in the context of "fundamentalists" challenging liberal democratic principles during the Salman Rushdie controversy.

This is more than just an academic debate among political theorists. However, the different versions – and, one could add, degrees – of post-foundationalism do not necessarily lead to different political conclusions on all issues. Obviously, in contrast to Müller, Mouffe advocates a populist strategy for the Left, but when it comes to right-wing populism, to which they are both opposed, there seems to be little difference between them. In one place, and following his opposition between democracy and populism, Müller treats this as a question of either/or: to be included within a liberal democracy, populists must cease to be populists (in Boel, Jensen, and Sonnichsen 2017, 77). In other places, he treats it as a matter of degree. For instance, he does not favor banning populist political parties, and suggests that "as long as populists stay within the law – and don't incite violence, for instance – other political actors (and members of the media) are under some obligation to engage them" (Müller 2017c, 84). He thinks of this engagement as a version of militant democracy, whereby democrats should talk with populists but not talk like them (Müller 2007, 112–19; 2017c, 82–85, 111-114; 2016b). For her part, Mouffe writes that we should not legally ban right-wing populists, only "a declared Nazi party … or an extreme Muslim party, which wants to abolish the liberal system and establish a theocracy. This is very clear, they are enemies. But most right-wing parties are borderline cases." Even in the case of banning parties, they should still have freedom of expression, for instance to Holocaust denial (in Dreyer Hanser and Sonnichsen 2014, 269). The point is not that Müller and Mouffe cannot draw a clear, principled line between those (populists or not) who should be included or excluded. The ambiguity is to be expected given that we are in post-foundationalist territory. This also accounts for the fact that they articulate their different versions of post-foundationalism with similar political conclusions, at least as far as the response to right-wing populism goes. We should expect that a post-foundationalist starting point can be articulated in a variety of directions, so that different post-foundationalist starting points may also be articulated in the same direction on specific issues.

Conclusion: Populist constitutions

In this paper, I have examined Müller and Mouffe as representatives of two post-foundationalist approaches to populism and democracy, teasing out some of the similarities and differences between them. Doing so has allowed me to argue that what is at stake in current debates about populism is how to understand post-

foundationalism and how far to press it. At stake is the legitimacy of constitutional orders. Populism presents a challenge to how we usually think about this legitimacy, not only because populism challenges liberal democratic constitutional orders from the outside, but more fundamentally because populism shines a light on the hegemonic character of any constitutional order. If all constitutional orders are "populist" in the sense of being hegemonically articulated with an image of the people and, thus, being the crystallization of hegemonic forces, then we cannot draw the distinction between democracy and populism along those lines (Ruíz Collantes forthcoming). Populism – as the mutual imbrication between a constitutional order and an, at least in part, extra-constitutional people – is a general trait of all constitutional politics.

That is not to say that populism is inherently good (Laclau 2005, chapters 7-8; Mouffe 2018, chapter 2). On the contrary, the "populist foundation" of legitimacy means that populist challenges to liberal democratic institutions can be both progressive and regressive. The result is a more ambiguous constitutional politics without guarantees. In Spain, Podemos now appeals to the 1978 Constitution against the right-wing populism of the conservative PP and the ultranationalist Vox. In Latin America, the defense of the constitution has traditionally served the forces of conservatism in sedimenting the status quo, and so left-wing populists have challenged existing constitutions and introduced new ones. In Bolivia, in the wake of the 2019 coup, Evo Morales and the Movement for Socialism (MAS) have had to navigate a situation they helped create where the Constitution is not the ultimate source of legitimacy, and where constitutional politics is also a way to consolidate power. If populism, in Laclau and Mouffe's sense, shows us that politics is also about tearing up the rulebook, then, as Laclau asks, "at what point are you playing a game, and at what point does the game become foul play?" (Laclau 2004, my translation). From a post-foundationalist perspective that is "populist" all the way down in the sense defended here, the answer can only be a political, "partisan" one.

References

Arato, Andrew. 2013. "Political Theology and Populism." *Social Research* 80 (1): 143–72.

Arditi, Benjamin. 2010. "Populism Is Hegemony Is Politics? On Ernesto Laclau's On Populist Reason." *Constellations* 17 (3): 488–97. https://doi.org/10.1111/j.1467-8675.2010.00587.x.

Benhabib, Seyla. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.

Boel, Niels, Carsten Jensen, and André Sonnichsen. 2017. "Populism and the Claim to a Moral Monopoly: An Interview with Jan-Werner Müller." *Politik* 20 (4): 71–85.

Chambers, Simone. 2019. "Democracy and Constitutional Reform: Deliberative versus Populist Constitutionalism." *Philosophy and Social Criticism* 45 (9–10): 1116–31.

Cohen, Jean. 2019. "What's Wrong with the Normative Theory (and the Actual Practice) of Left Populism." *Constellations* 26 (3): 391–407.

Dreyer Hanser, Allan, and André Sonnichsen. 2014. "Radical Democracy, Agonism and the Limits of Pluralism: An Interview with Chantal Mouffe." *Distinktion* 15 (3): 263–70.

Errejón, Íñigo, and Chantal Mouffe. 2016. *Podemos: In the Name of the People*. London: Lawrence & Wishart.

Franzé, Javier. 2018. "The Podemos Discourse: A Journey from Antagonism to Agonism." In *Podemos and the New Political Cycle*, 49–74. London: Palgrave.

Habermas, Jürgen. 2001. "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?" *Political Theory* 29 (6): 766–81.

Iglesias, Pablo. 2015. "Understanding Podemos." *New Left Review*, no. 93: 7–22.

Knops, Andrew. 2007. "Agonism as Deliberation – On Mouffe's Theory of Democracy." *Journal of Political Philosophy* 15 (1): 115–26.

Laclau, Ernesto. 2004. "Es El Momento En Que El Juego Se Rompe En El Que La Política Empieza." *Revistateína*, no. 5 (September). http://ve.scielo.org/scielo.php?script=sci_arttext&pid=S1012-25082005000100008.

———. 2005. *On Populist Reason*. London: Verso.

———. 2014. *The Rhetorical Foundations of Society*. London: Verso.

Laclau, Ernesto, and Chantal Mouffe. 2001. *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. 2nd ed. London: Verso.

Marchart, Oliver. 2007. *Post-Foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau*. Edinburgh: Edinburgh University Press.

Michelsen, Danny. 2019. "Agonistic Democracy and Constitutionalism in the Age of Populism." *European Journal of Political Theory*, September, 147488511987164. https://doi.org/10.1177/1474885119871648.

Mouffe, Chantal. 1979. "Hegemony and Ideology in Gramsci." In *Gramsci and Marxist Theory*, 168–204. London: Routledge & Kegan Paul.

———. 1992. "Democratic Politics Today." In *Dimensions of Radical Democracy: Pluralism, Citizenship, Community*, 1–14. London: Verso.

———. 1993. *The Return of the Political*. London: Verso.

———. 2000. *The Democratic Paradox*. London: Verso.

———. 2005. *On the Political*. London: Routledge.

———. 2013. *Agonistics*. London: Verso.

———. 2018. *For a Left Populism*. London: Verso.

Müller, Jan-Werner. 2003. *A Dangerous Mind: Carl Schmitt in Post-War European Thought*. New Haven: Yale University Press.

———. 2007. *Constitutional Patriotism*. Princeton: Princeton University Press.

———. 2014. "'The People Must Be Extracted from Within the People:' Reflections on Populism." *Constellations* 21 (4): 483–93.

———. 2016a. "Populism (against Democracy): A Theoretical Preface and Some Episodes of a Transatlantic History." In *Transatlantic Democracy in the Twentieth Century*, 171–88. Oldenburg: De Gruyter.

———. 2016b. "Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy." *Annual Review of Political Science* 19: 249–65.

———. 2016c. "Trump, Erdoğan, Farage: The Attractions of Populism for Politicians, the Dangers for Democracy." *The Guardian*, September 2, 2016. https://www.theguardian.com/books/2016/sep/02/trump-erdogan-farage-the-attractions-of-populism-for-politicians-the-dangers-for-democracy.

———. 2017a. "Populism and Constitutionalism." In *The Oxford Handbook of Populism*, 590–606. Oxford: Oxford University Press.

———. 2017b. "The Rise and Rise of Populism." In *The Age of Perplexity: Rethinking the World We Knew*, 65–83. Madrid: BBVA.

———. 2017c. *What Is Populism?* London: Penguin.

Näsström, Sofia. 2007. "The Legitimacy of the People." *Political Theory* 35 (5): 624–58. https://doi.org/10.1177/0090591707304951.

Ochoa Espejo, Paulina. 2017. "Populism and the Idea of the People." In *The Oxford Handbook of Populism*, 607–28. Oxford: Oxford University Press.

Pitkin, Hanna Fenichel. 1967. *The Concept of Representation*. Berkeley: University of California Press.

Ruíz Collantes, F. Xavier. forthcoming. "From Populism to Democratic Legitimism." *Journal of Political Ideologies*.

Thomassen, Lasse. 2010. "The Politics of Iterability: Benhabib, the Hijab, and Democratic Iterations." *Polity* 43 (1): 128–49. https://doi.org/10.1057/pol.2010.18.

———. 2019. "Representing the People: Laclau as a Theorist of Representation." *New Political Science* 41 (2): 329–44.

Tully, James. 1995. *Strange Multiplicity: Constitutionalism In an Age of Diversity*. Cambridge: University Press.

Urbinati, Nadia. 2019. *Me the People: How Populism Transforms Democracy*. Cambridge, MA: Harvard University Press.

Wenman, Mark. 2013. *Agonistic Democracy: Constituent Power in the Era of Globalization*. Cambridge: Cambridge University Press.

White, Stephen K. 2000. *Sustaining Affirmation: The Strengths of Weak Ontology in Political Theory*. Princeton: Princeton University Press.