

Review essay: Agonism and the Law

Andrew Schaap (ed.), *Law and Agonistic Politics* (Farnham: Ashgate, 2009).

Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009).

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What unifies agonistic approaches to politics—and explains their shared reference to the notion of the *agon*, the ancient Greek word for ‘contest’—is a conception of politics as struggle. Over the past two decades, agonistic theorists have presented emphatic criticisms of liberal and deliberative democratic approaches in political philosophy. While claiming to acknowledge the importance of disagreement and pluralism, those mainstream approaches are said to fail to appreciate the contestatory nature of politics, stifling the productive and emancipatory aspects of struggle by attempting to transcend or pacify it. In contrast, agonistic theorists converge on the view that political struggle is perpetual and daily recurrent and that no issue is in principle excluded from contestation.

Yet agonistic theorists are (appropriately, one might think) divided on a range of questions, not least about how to cash out the notion of politics as struggle in the first place. For example, while no agonistic theorist conceives politics as boundless

and unrestrained conflict, they address the question of measure (*how* is contestation conducted? what keeps political contest from degenerating into war?) and the question of boundaries (*who* struggles in the first place?) in very different ways. For some theorists, political struggle takes place within the bounds of a legal-political order, whereas for others, such an order is itself at stake in politics. As Andrew Schaap aptly puts it in his introduction to the collection *Law and Agonistic Politics*: “If a legal order derives its legitimacy from the political unity that it presupposes (e.g. ‘the people’ in a democracy), should we understand the agon as already internal to this political unity or should it be defined precisely as that which threatens it? Or is it possible to think the agon as both external and internal to the political unity and, if so, in what sense?” (p. 2).

These two books thematize these questions in different ways by examining how agonistic politics relates to law and institutions. There are many points of intersection and dispute within and between these volumes. I cannot undertake a comprehensive discussion here, but shall attempt to address some of the issues and contributions that stand out.

The origins of the notion of the *agon* in ancient Greek practices of contest are often mentioned but rarely reflected upon. In the opening chapter of *Law and Agonistic Politics*, Andreas Kalyvas renders contemporary agonism a big service by providing a clear, concise and historically grounded account of this original understanding of the *agon*. Kalyvas paints a picture of a unique but short-lived political experiment in ancient Greece, where an agonistic political practice emerged as a combination of two apparently contradictory tendencies: an individualistic ethos of striving for excellence and personal glory, which originated in athletic contests among a highly exclusive aristocratic class, was gradually drawn into a relatively

inclusive public sphere characterized by equal citizenship and a civic spirit. This “singular encounter of the democratic logic of equality with the aristocratic spirit of excellence” (p. 24) was unique in that it “mobilized personal self-love and the struggles it generated for the good of the community.” (p. 26)

This account of its ancient incarnation brings out the force of the questions of bounds and measure in the agon. Even after struggle had been “democratized” and was conducted among equals within a public sphere, citizenship was an exclusive status granted only to those who were liberated from the conditions of labor and housekeeping (i.e. not women and slaves). Moreover, if the aristocratic spirit was to be harnessed for the common good, it had to be tempered by a sense of community and institutional mechanisms. As elements of this “counter-narcissistic legal apparatus” (p. 26) Kalyvas mentions legally instituted tyrannicide and ostracism (a more elaborate treatment of these practices would have been interesting given the focus on the relation between law and agonistic politics).

In contrast to this ancient understanding, Kalyvas argues, post-modern appropriations of the agon often represent “a considerable divestment of its ancient significations and a radical redefinition” (p. 31), substituting interminable collective power-struggles for individuals’ strife for excellence. Perhaps the most striking contrast between the ancients and postmoderns that emerges from his story pertains to the relation of agonism to law and institutions. Whereas on the ancient understanding, a legal order was essential in keeping the agon within bounds and measure, in contemporary views legal and political institutions are often precisely the object of political contestation. This presses the question what resources the postmoderns can muster to address the questions of bounds and measure.

Bonnie Honig's view of the relation between agonism and law in *Emergency Politics* centers on what she calls the "paradox of politics," which is articulated most thoroughly in the opening chapter and illustrated in the rest of the book. Boldly appropriating Rousseau for agonistic theory, Honig thematizes a problem familiar to democratic theorists, namely "the concern that good citizens presuppose good law (to shape them) but good law presupposes good citizens (to make good law)" (p. 3). Examining how this issue is taken up in contemporary debates, Honig shows that behind and partly obscured by democratic theory (for example, by its preoccupation with the paradoxes involved in founding a legitimate political order) is a predicament experienced daily in political life: the problem of deciding whether law is legitimate or merely purports to be so, and whether the people it invokes to ground its legitimacy is a 'People' or a 'multitude.' For Honig, the relation between law and its subjects is one that has to be continually established and interrogated in practice, rather than determined or measured according to external norms or criteria. Honig suggests: "the people are never so fully what they need to be (virtuous, democratic, complete) that a democracy can deny credibly that it resorts to violence, imposition, or coercion to maintain itself. That is why it is always part of the point of democratic political practice to call them into being rhetorically and materially while acknowledging that such calls never fully succeed and invariably also produce remnants." (p. 19) Attempts to render this predicament theoretically soluble inevitably fail or reconstitute the problem on a different level (for example, regarding the objectivity of a democratic theorist).

In short, the paradox of politics means that "law and its authors/subjects fundamentally fail to intersect in the present in ways that satisfy independent standards of legitimation" (p. 38). Framed in this way, however, it is not clear what is

so paradoxical about the paradox of politics. While the language of paradox pays tribute to the post-structuralism to which Honig is indebted (especially the work of Connolly and Derrida), it also elicits the very attempts at resolution that she wants to avoid. Perhaps it is not best thought of as a paradox but, as she suggests in the end, a condition of politics: “the condition in which we think and act politically, when we demand that the lawgiving/charlatan institutions by which we are always already governed and shaped be responsive to the plural, conflicting agents who together are said to authorize or benefit from them: the ever changing and infinitely sequential people, the multitude, and their remnants.” (p. 38)

As Honig shows again and again, the terms of a legal order are never entirely adequate to capture the multifarious people it is supposed to cover. This resonates with many of the contributions to *Law and Agonistic Politics*. Hans Lindahl speaks in this regard of “alegality”; action that is in first instance neither legal nor illegal, but contests the distinction between the two. For him, “[t]he *agon* refers, in legal terms, to the ever-present possibility of alegal behavior, to a form of behavior that is not merely disorderly by dint of being illegal, but which also contests the orderliness of the law itself by revealing the residual groundlessness of what that order calls (il)legality. In other words, struggle is the overt manifestation of the irreducible contingency of legal orders.” (p. 60) Similarly, Bert van Roermund points to the disjunction “between the representation of power and the tactics of power” and “the rupture between the People and the population” which introduce a moment of heteronomy in any democratic legal order (p. 127).

These perceptive if rather abstract characterizations are complemented in both books by substantive case-studies. Both Jason Frank and Andrew Schaap, for example, aim to display various ways in which the terms of a legal-political order are

inadequate to capture the political struggles of those confronted by it. Frank analyses the paradoxical position occupied by Frederick Douglass in advocating the abolition of slavery, addressing a white audience at once as a member of the oppressed and excluded, a Negro not even recognized as entitled to make a claim and be heard at all, and as an equal, by invoking a more inclusive political community that is not yet constituted: “Douglass both spoke from outside of the people he addressed and claimed to speak in their higher name.” (p. 88) Schaap’s discussion of a tent embassy established by Aboriginals on the lawn of the Australian parliament interestingly mirrors this point: this time, a claim was dismissed as an “absurd proposition of Aboriginal sovereignty” precisely because those making the claim were already part of the legal-political order (p. 209). From within the polity, there is no place to negotiate a treaty with it. As these examples bring out, often the actual play of relations of in- and exclusion takes place beyond or behind the terms of a legal order, revealing the “always partial nature of any claim to speak in the people’s name” (Frank, p. 97). Analogous issues arise in both Aletta Norval’s and Honig’s analyses of the fragile emergence of new rights-claims.

The picture of agonistic theory that emerges from the accounts discussed so far is perhaps best characterized as a diagnostic approach to politics and political theory, aiming to bring to light again and again the irreducible contingencies of a legal-political order, to point towards opportunities and predicaments this presents for political struggle, and to show how alternative approaches to political theory obscure rather than illuminate these concerns. These agonistic theorists resist the temptation to develop theoretical solutions according to which struggles can be identified as reasonable or unreasonable and legal-political orders as legitimate or illegitimate. Such qualifications are easily rendered retrospectively, but provide no solid ground

for their actual assessment in the present; in fact they often close the imagination to new democratic possibilities. Agonistic politics, in this view, is struggle over the terms of a legal order, and what theory provides is not a set of prescriptions or advice on how to keep political contestation within bounds or how to make sure it is conducted with measure, but rather a meditation on the conditions of politics and order so as to sensitize us to the limits and possibilities of political action (cf. Frank in Schaap, p. 100 and Honig, p. 140).

With this picture of agonism and its theoretical ambitions we can contrast another, expressed in some of the essays in Schaap's volume, namely that of agonism as a normative model of politics. Nathalie Karagiannis and Peter Wagner extend their theory of *synagonism* (where 'syn-' means 'together') by arguing that it provides an answer to the question how a political community should relate to strangers that is superior to communitarian and cosmopolitan accounts. Synagonism has quite strong normative connotations: "[S]ynagonism can be understood as the respectful struggle of one against another, bound by rules larger than the struggle, in view of excellence winning for the benefit of the city" (p. 148). In contrast to the other accounts of agonism under review here, they draw explicitly on the ancient Greek understanding of the *agon* to provide a normative model of politics relevant to contemporary conditions (and consequently their account is much closer to what Kalyvas describes as the Greek understanding of *agon*). Such an approach to agonism lends itself more to institutional prescription but also raises significant questions; given the conditions required to keep the Greek *agon* in bounds and measure (an ethos of excellence kept in check by a strong sense of community and a legal apparatus), how can this model be translated to contemporary circumstances? In a different but no less normative account of agonism, Keith Breen directly takes on the question of measure by

drawing on Hannah Arendt to develop an ethic of care that ought to regulate both relations within the agon and relations to outsiders, reminiscent of the notion of an ethos of agonistic respect propounded by Honig and William Connolly in earlier publications.

While it is tempting to contrast these pictures of agonism—as a meditation on the contingency of a legal-political order and the possibilities for contesting it versus a normative model of agonistic struggle within such an order—David Owen cautions that a straightforward distinction between struggle within a legal-political order and struggle over the terms of such an order should be resisted. Building on an expressive conception of political agency, he argues that contestation is at the same time constitutive of and takes place within such an order. Conceiving a constitutional democracy as the “*medium* through which we work out our civic identities” (p. 72), Owen suggests that the rule of law, civil liberties, and public reason are conditions for expressive political agency even if their meaning is at the same time at stake in political struggle.

Both books have more to offer than I have been able to address here. I have barely touched upon many of the essays in Schaap’s collection and even omitted some. While the quality and interest of the contributions varies, on the whole the volume is a significant contribution to the debate (though its price, at \$124.95, is excessive). The first chapter of Honig’s book is a must-read for those interested in agonistic theory, and her book has more to offer; it is also, among other things, an engagement with Jewish thought and a masterful exercise in the art of reading. Honig sees possibilities where others see merely paradox or absurdity; whenever thinking leads to impasse, she seeks to shift the question, opening up the terms of the debate.

The agonistic critique of liberal and deliberative views of politics is by now familiar. To distinguish itself as a mature current of its own, rather than a footnote to liberal and deliberative accounts of politics, agonism needs to engage questions of law and institutions more thoroughly. Without providing any definite answers, both new publications examined here offer valuable resources for thinking about these questions. In that respect these contributions are most welcome. These two books show agonism to be a vibrant, distinctive and diverse current of political thought.