Review

Law and agonistic politics

Andrew Schaap (ed.)

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Andrew Schaap's edited volume, *Law and Agonistic Politics*, has a major and minor theme. The minor theme can be found in essays that address particular issues in contemporary agonistic thought – for example, essays that address agonism's relationship to foreignness (Karagiannis and Wagner), complexity theory (Little), ethics (Breen) or the connection between philosophy and practice (Thomson). These essays raise potentially interesting questions but do not take debates about agonism in substantially new directions. The major and more interesting theme that emerges in the book – and the one I will concentrate on in this review – is a debate, true to the title of the volume, over the relationship between the *agon* and law, between contest and the rules/norms of the polity. Although agonism is conventionally understood as a theoretical approach focused on the promise of contestation and conflict for politics, many of the essays in *Law and Agonistic Politics*, taken together, raise the important question of how and whether agonism should develop its own distinctive legal vision – a pressing question not only in the context of contemporary debates in democratic theory over the relationship between rules and contestation, but also in a contemporary political context increasingly framed by law and legal issues (human rights, Supreme Court decisions and so on).

Both Andreas Kalyvas and David Owen suggest that there is a problematic 'institutional and legal deficit' (34) in contemporary agonism. In particular, they both worry that agonists' embrace of political struggle may leave them less attentive to how rules and norms help rather than hinder such struggle. For Kalyvas, contemporary 'postmodern' agonists (such as Honig and Connolly) neglect the role of laws/institutions *vis-à-vis* contestation because of their assumption that 'conflict will mostly be good and advantageous as they interconnect and bind rivals together and cultivate respect among contending identities' (34). Kalyvas argues that this optimistic view of conflict obscures the *narcissistic* element of political struggle that he finds in ancient accounts

of agonism – an element that can only be constrained and channeled into civic virtue by law. David Owen similarly argues that law enables political struggle. However, he sees legal rules as enabling contestation because of their *binding*, not *constraining*, effect. He argues that political struggle (at least ideally conceived) must claim norms/rules as common – a practice of rule interpretation/claiming that binds the contestator and contested together into a community.

Kalyvas and Owen are right to criticize agonistic approaches that obscure the indebtedness of contestation to rules/norms, a point echoed, as Owen notes, by some agonists (cf. Honig, 2007; Tully, 2008; Honig, 2009). Yet their portrayals of contest as commensurate with rules (Owen), and dangerous if not constrained by them (Kalyvas), obscures an important agonistic insight about the relationship of rules to contest (argued for most forcefully elsewhere by Rancière and Honig): namely, that the assumption that common rules can constitute a political sphere where participants are equal (and can equally contest rules) obscures the inevitable exclusiveness of such a sphere and thus also the conflictual ‘processes of politicization’ through which excluded groups claim equality. Deranty and Renault make this point in this volume, but they suggest that agonistic conflict inevitably consists in ‘a challenge to the law’, since law entrenches inequality and domination (51, 54). This position seems to return us to a version of agonism rightly critiqued by Kalyvas and Owen, an agonism that pushes law aside as antithetical to contestatory freedom, rather than developing a distinctive agonistic legal vision that acknowledges law’s enabling *and* disabling effects on contestation.

Hans Lindahl’s and Jason Frank’s essays both gesture toward just such a distinctive vision when they explore this doubleness of law’s relationship to contestation, that is, law’s simultaneous inclusivity and exclusivity. Lindahl’s complex and rewarding essay, ‘The Opening’, suggests that we see the relationship between excluded people and the law they contest in terms of contestation’s iteration of the groundlessness of founding, an iterative structure that reveals contestation as alien to *and* grounded in the common rules of the polity, as hearable *and* reduced by the legal institutions to which it appeals. On Lindahl’s account, this doubleness implicit in the relation between contestation and law should prompt us to articulate an agonistic ‘normative theory of law and politics’ (65) that does not portray law as the *condition* of healthy agonistic politics (Kalyvas), nor as *commensurate* with agonistic contestation (Owen), but rather as a structure whose ‘authoritative acts of positing legal boundaries’ gain their normative significance only by ‘acknowledg[ing], albeit indirectly, that they exclude what they include’ (69).

Whereas Lindahl focuses on how contestatory claims qualified by law are both included and excluded by it, Jason Frank portrays the doubleness

of inclusion and exclusion differently: as a rhetorical structure of felicitous political claims-making that he finds in what he calls 'constituent moments'. Constituent moments (exemplified here by Frederick Douglass' speech for the 4th of July 1852), on Frank's account, 'enact felicitous claims to speak in the people's name, even though those claims explicitly break from established rules and procedures for representing popular voice' (88). Constituent moments thus both claim to represent 'the people' (not yet fully formed), while also claiming exclusion from 'the people': 'In the Fourth of July address Douglass acted as both a subject who did not have the rights he had (his division between *you* and *me*), and one who had the rights that he had not (in his very speaking of these claims)' (94). The doubleness implicit in Douglass' claims-making (that he claims both to represent *and* to be outside of that people) does not on Frank's account indicate the formal inability of democratic norms to capture contestation (as Lindahl portrays it). It, rather, reveals a promising rhetorical structure that allows Douglass' claims to be felicitously *heard* by a public.

Although Frank does not explicitly claim his account as agonistic, his concept of 'constituent moments' may reveal the importance of pursuing an agonistic approach to law based in the performative, concrete and rhetorical dimensions of democratic claims-making. Indeed, both Aletta Norval and Andrew Schaap show the promise of attention to concrete democratic claims-making in their very interesting essays. Norval's essay examines a South African group's unprecedented suit (in American courts) against international corporations for their involvement with the apartheid regime, and Schaap's a 1970's Australian Aboriginal claim for sovereignty by staging an embassy on the lawn of Parliament. In their essays, both authors implicitly echo Frank's approach when they suggest that the doubleness of democratic contestation – the rhetorical practice of claiming inclusion and exclusion both – enables equality.

Frank's, Norval's and Schaap's essays, taken together, may point toward a promising agonistic approach to law based in the notion of 'constituent moments'. However, the importance of *Law and Agonistic Politics* lies less in its avowal of a particular form of agonism, and more in its staging of a lively debate over the relationship between law and the *agon* that contemporary democratic theorists would do well to continue. Although much of contemporary democratic theory is certainly occupied in some sense with discussing this relationship (agonists included), *Law and Agonistic Politics* presses theorists to examine this relationship in light of agonistic insights about the doubleness of democratic politics – about law's exclusiveness *and* inclusiveness, contestation's fecundity *and* susceptibility to co-optation, and 'the people's formal and performative dimensions. The volume, thus, deserves to be read not only by agonistic theorists, but also by democratic theorists more generally.

References

- Honig, B. (2007) Between decision and deliberation: Political paradox in democratic theory. *American Political Science Review* 101(1): 1–17.
- Honig, B. (2009) *Emergency Politics*. Princeton, NJ: Princeton University Press.
- Tully, J. (2008) *Public Philosophy in a New Key, vol. 1: Democracy and Civic Freedom*. Cambridge: Cambridge University Press.

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