Defending what is yet to come

Towards a critical theory of democratic defense

PATRICK NITZSCHNER
POLITICAL SCIENCE | FACULTY OF SOCIAL SCIENCES | LUND UNIVERSITY

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Patrick Nitzschner

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Abstract: Certainty about the robustness of democracy has given way to a widely diagnosed crisis of democracy. There are increasing calls to defend democratic institutions against those who seek their formally democratic abolishment. But safeguarding democracy, it is argued, paradoxically requires restraining democratic transformation. This dissertation argues that this 'democratic paradox' is misconceived. Radical transformation and institutional preservation are not mutually exclusive. Fears of democratic self-abolishment should give way to a normative theory of institutional preservation that remains compatible with radical transformation. This claim is sustained in three steps. Firstly, the history of militant democracy is reconstructed from the interbellum onward. The dissertation redescribes militant democracy (Schmitt, Loewenstein, Popper) as institutionally conservative and normatively aporetic. Its contemporary exponents contradictorily commit to democratic transformation while structurally imposing on it institutional limits. Secondly, it is argued that procedural and radical democratic thought (Kelsen, Urbinati, Mouffe, Rancière), despite divergent preferences for institutional transformation or preservation, do not overcome the democratic paradox. Reproducing the antagonism between institutional preservation and radical change, they inherit militant democracy's aporia. Thirdly, early Critical Theory is developed as an alternative. Its trajectory from immanent to negative critique carries unheeded conceptual resources that contest the presumed antagonism between radical transformation and institutional preservation. The dissertation develops two connected conceptual claims accordingly: (1) the residual normativity of existing institutions lies in their capacity for self-abolishment (which enables radical change); (2) the outcomes of radical transformation are normatively undecidable (it may produce liberation or catastrophe). These propositions give way to a negative institutionalism that reconstructs and defends only the institutionalized potential for self-abolishment. It thereby overcomes the opposition between institution and radical change.

Key words: Democratic defense, democratic theory, critical theory, militant democracy, procedural democracy, radical democracy, institutionalism, negativism

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Lund University
Faculty of Social Sciences
Department of Political Science

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1 Democracy, crisis, defense

The prognosis for democracy appears dire today. Politicians, pundits, and political scientists in 'consolidated democracies' restlessly warn of a 'crisis' that affects the system of order from within which they operate. This is, of course, not the first time that alarm bells sound — it is not even the first time since the turn of the millennium. This time, however, their call appears to be remarkably unequivocal. At least since the end of the past decade, liberal democracy attracts, by and large, fears of disintegration at the expense of more hopeful perspectives. Political Science perceives the odds as being stacked against the liberal democratic orders of the status quo. Testament to this is a number of rhetorical figures. Democracy is held to be not only in crisis (e.g., Przeworski 2019), but also in recession (Diamond 2015), or in twilight (Applebaum 2020); it is said to be disfigured (Urbinati 2014), backsliding (Bermeo 2016), de-democratizing (Manow 2020), and regressing (Schäfer and Zürn 2021). Its end (Runciman 2019) or death (Levitsky and Ziblatt 2018) appear to be looming. Long gone seem the days of a much more optimistic Zeitgeist that found a somewhat uneasy exponent in Francis Fukuyama's (1989; 1992) supposed attempt to put an end to history in proclaiming the inevitable triumph of the liberal world order and, with it, the triumph of liberal democracy as its inevitable system of government. Irrespective of the ambiguities always concomitant with even the most optimistic of time-diagnoses, liberal democracy's prospects appeared quite fortunate at the start of the millennium.[1] Since then, something has changed.

This book is interested in a question that tends to loom large over every crisis diagnosed in Political Science in general, and in normative Political Theory in

[1] Fukuyama's remains the most frequently cited, perhaps less frequently read, expression of this Zeitgeist; others, like Larry Diamond (1997; 1999), developed at least equally optimistic discussions of democratic consolidation. Neither of these two authors, of course, proclaimed a literal end to historical change or the unqualified necessity of democratic consolidation. Them being read as having done precisely that, however, offers sufficient illustration for the context of liberal democratic optimism in which they published their work. It should further be worth noting that Diamond (2015) is leading the charge of "Facing up to the Democratic Recession" while Fukuyama (2022) is pondering *Liberalism and Its Discontents*.

particular: What is to be done? But to develop potential responses to this question, a different question deserves to be addressed first: What crisis? It is unsurprising that political thought[2] has a hard time agreeing in any conclusive detail upon just what precisely has put democracy in peril. Beyond the superficial agreement signified by the adoption of the vernacular of a crisis of democracy which departs largely from observations made within status quo democracies,[3] diagnoses vary on the crisis' cause and character. It therefore proves helpful to first establish some of the structural similarities that current diagnoses of a crisis of democracy display. Such a reconstruction, briefly conducted below, delineates the problem-constructions that this book engages with. But more still, it makes clear that, in developing their notion of a crisis of democracy as *a crisis of particular democratic institutions*,[4] corresponding diagnoses also circumscribe the scope of *possible* responses.

Diagnoses of a crisis of democracy and responses devised in democratic theory are thus mutually reinforcing, or: *co-constitutive*. Accordingly, the first of two broad claims that this book sets out to defend is that contemporary diagnoses of a crisis of democracy thrive on the assumption that the abolishment[5] of the institutional orders that make up the liberal democratic status quo is *normatively undesirable*. Making this presupposition, they structurally demand normative affirmation of existing institutions. The *institutional conservatism* produced by this presupposition, this book demonstrates, cuts

[2] Political thought is thought that concerns itself with political questions. The latter are broadly defined in this book as the full range of human activity that (re)negotiates the organization of the social. They are not tied to any further particular (institutional) form of social organization, any essential dynamic, or ontological condition. They refer to the ways in which human action historically produces any such organization, dynamic, or condition. Attempting to circumscribe the political more narrowly — to define the forms of social organization, the dynamics and ontological conditions proper to it — constitutes a futile attempt to conceptually identify an essence of the political that is simply absent (McNay 2014).

[3] The term status quo democracy is used here to identify political systems of order that are commonly identified as democratic. It does not entail a principled normative judgment as to their democratic character.

[4] While the *cause* of the crisis has attracted much concern, the *object* of the crisis is often simply presumed. Nadia Urbinati (2016: 6) clarifies that it is "a parliamentary democracy based on the centrality of suffrage and political parties," "not democracy in general" that is commonly held to be in crisis. This often tacitly presupposed restriction does much work for the solutions suggested, which chapter 3 of this book in particular demonstrates.

[5] Here and in the remainder of this book, 'abolishment' is a maximal concept: after abolishment, the abolished order is absent. The emerging order is wholly non-identical with it. The fear of democratic self-abolishment thus is the fear of non-democratic (dis)order.

across the otherwise oppositional traditions of militant, procedural, and radical democratic theory. This book defends, secondly, the claim that this presupposition is as misconceived as it is pervasive. It argues that the abolishment of existing institutions is *normatively attractive* while maintaining that institutional preservation can be a *normatively consistent* praxis. Institutional preservation does not require the normative affirmation of existing institutions. In defending this claim, the book retheorizes democratic defense on the basis of a 'negative institutionalism,' the development of which is the core intention of this book.

1.1 What crisis of democracy?

Contemporary crisis diagnoses ought to be taken seriously. In so doing, it becomes possible to establish the conceptual space which this book navigates. This demands that contemporary crisis diagnoses are addressed in analytical terms: To introduce the relevant corpus of responses to the 'crisis' of democracy, it appears useful to first identify where precisely diagnoses of such a crisis intersect. From such an engagement, this book derives the basic notion of a 'crisis' of democracy that responses are constructed in dialogue with. Such a synthesis of existing diagnoses of democracy's current crisis, it is argued, brings to light at least three shared premises: democracy is facing (i) primarily internal tensions and, therefore, (ii) its formal institutions have come under pressures which (iii) gradually, and at least prima facie legally, undermine their functioning. This threefold characterization captures the basic notion of democracy's crisis that is adopted for heuristic purposes in this book. A consciously limited conceptualization, it is analytically useful insofar as it allows the book to situate itself within a particular problem space that is central to democratic theorizing today. It does so by discriminating, in accordance with extant crisis diagnoses, against 'external' pressures on democracy, against coups d'état, and against revolutionary violence. The commonalities of current diagnoses of democracy's crisis allow this book to presuppose some structural characteristics of the problem constructions that it seeks to address without having to establish it as a narrowly defined empirical phenomenon.[6]

[6] This is neither to deny nor to affirm the *reality* of the 'crisis' of democracy. On the one hand, bracketing this question is what makes pondering potential responses to the disintegration of liberal democratic institutional orders a manageable task for this book. On the other hand, the book's theoretical considerations will finally point beyond the more narrowly confined diagnosis of a 'crisis' which thus constitutes only its heuristic *starting point*.

Nevertheless, it is important to note in a first step that the lines between internal and external pressures on democracy, between overt political violence and the gradual subversion of democracy are often permeable in extant analyses — both empirically and conceptually. Still, and while empirical phenomena always exceed their conceptual capture and vice versa, the analytical sediment manifest in contemporary discussions of democracy's crisis makes for an immanent starting point for a *reconstruction and (re)theorization* of potential responses.

Although it is impossible within the scope of this introduction to consider in any exhaustive way the types of pressures on status quo democracies omitted in this book, it is worth briefly discussing particularly pertinent cases to illustrate just how permeable the boundaries erected by conceptual artifice tend to be. Firstly, among the 'external' pressures on democracy that have seen some recent attention in political thought, such issues as climate change (Willis 2020) and large-power geopolitics (Diamond 2020) point to the fuzziness of any attempt at disambiguation. Neither phenomenon is by any means isolated from status quo democratic orders: While climate change continues to be driven by countries boasting a liberal democratic system of government, geopolitical struggles remain organized along a liberal democratic—authoritarian divide. Yet, what unites such 'external' pressures is that they are not peculiar to democracy as an institutionalized system of government. Authoritarian states are very much involved in geopolitical struggles amongst each other, and they too have emerged as major causers of environmental harm. Democracies, here, analytically figure as potential tokens of a broader phenomenon rather than being the unequivocal center of analysis. The pressures at the heart of current diagnoses of democracy's crisis, on the other hand, are assumed to be peculiar to status quo democratic orders.

Another important discrimination, particularly with a view to recent coups d'état, is that against overtly violent and unambiguously illegal overthrows of government. The current crisis of democracy, according to much of Political Science, rather becomes apparent in subtle subversions of 'established' democracies, predominantly in the collective political 'West.' But here, too, the boundaries are very much blurred. On the one hand, it must not be forgotten that, despite the often authoritarian characteristics of regimes overthrown in recent coups d'état, calls from within the international community of states and supranational organizations to restore at least what is commonly held to be minimal requirements of democracy, such as electoral procedures, tend to follow any (attempted) coup. On the other hand, while the kind of violence that has become undeniable in the most recent coups has indeed not erupted in the

established democracies of the collective political West, this does not imply that these democracies have not seen at least coup attempts. Events like the 2021 Trump-led Capitol Attack in the United States or the December 2022 coup plot orchestrated by Heinrich Prinz Reuss in Germany demonstrate that the lines between overt political violence and subtle shifts in the political sphere that may eventually culminate in such political violence are very much blurry.

Despite such fuzzy conceptual boundaries, *democratic theory* appears preoccupied with one very particular phenomenon. The shared features of the prevailing, dreary perspectives on democracy's current state and future can be outlined accordingly. In reverse order (iii), few commentators expect democracy to fail with a proverbial — or perhaps very literal — 'bang'. Armin Schäfer and Michael Zürn (2021: 57), for example, emphasize that democratic regression is no longer characterized by the sudden appearance of tanks in the streets, but rather by gradual subversion on institutional terrain. Such subversion may be less noticeable at first but results in outcomes no less dire for democracy. Existing institutions, in such a situation, may persist as a surface structure but cease functioning altogether. Anne Applebaum's (2020: 5) *Twilight of Democracy* starts from precisely such a case: In Poland, she suggests, the *Law and Justice Party* (PiS) overtly transformed and harnessed for its aims, yet superficially maintained the structural functioning of, democratic institutions.[7] In more extreme and so far, largely hypothetical scenarios, the exceedingly subtle character of democracy's failure might produce a situation in which such institutional subversion might not be as plain: "we can persist with institutional arrangements which we have become so used to trusting", that we "no longer notice when they have ceased to work," as David Runciman (2019: 4) points out. Rather than ending in a sudden and overtly violent rupture, democracy is thus held to be subverted surreptitiously, with democratic institutions being undermined in ways that they themselves prescribe: "The erosion of democracy takes place piecemeal" — and such a piecemeal approach to change, in contemporary liberal democracies, tends to at least enjoy "a veneer of legality" (Levitsky and Ziblatt 2018: 77). Importantly, such analyses neither omit the possibility of political violence as a point of culmination that results from preexisting institutional shifts, nor do they deny that political violence might feature as an intermediary or

[7] The election of Donald Tusk (*Civic Platform*, PO) as prime minister may have shown that the internal subversion of existing institutions in Poland has not achieved the aim of preventing a change in government altogether. Nevertheless, it certainly posed strategic challenges for legitimate democratic opposition (see, e.g., Moroska-Bonkiewicz and Domagała 2023).

accompanying phenomenon in the context of such shifts. Yet, they center on the ways in which democracy might be subverted *even without* overt political violence, thereby turning their gaze on consolidated democracies with a relatively stable monopoly on (the means of) violence. In such democracies, an overtly violent overthrow of government appears less plausible than the institutionally pursued, institutional disintegration of liberal democracy — even if political violence is never ruled out altogether.

The assumption of gradual and largely peaceful transformation, as opposed to a sudden violent rupture (iii), then, effectively presupposes both the legal-institutional (ii) and the internal (i) character of democratic subversion. That is, the assumed non-violent character of democratic subversion that underlies much of today's diagnoses of democracy's crisis entails assumptions not only about the character of democracy's crisis but, on the flipside, about democracy's normal functioning. Adam Przeworski, in his influential diagnosis of democracy's crises, defines democracy, if functioning in ideal ways, as

> a mechanism for processing conflicts. Political institutions manage conflicts in an orderly way by structuring the way social antagonisms are organized politically, absorbing whatever conflicts may threaten public order, and regulating them according to some rules. […] Hence democracy works well when whatever the conflicts that arise in society are channeled into and processed through the institutional framework […]. To put it succinctly, democracy works when political conflicts are processed in liberty and civil peace. (Przeworski 2019: 7-8)

In democratically organized polities, Przeworski argues, change occurs in legally and institutionally contained ways. This is what differentiates democratic change from change effected by overt political violence, such as that of a coup d'état traditionally conceived. A crisis of democracy, thus, is defined by "some manifest signals that democratic institutions are under threat," by "a gradual, almost imperceptible, erosion of democratic institutions and norms, subversion of democracy by stealth" (Przeworski 2019: 15).

Philip Manow (2020: 122) identifies such contemporary anxieties about democracy's future as an obsession with a "*complot anti-démocratique*, namely the democratic plot against democracy."[8] Such a legal and institutionally contained 'plot,' importantly, requires a particular set of actors. These actors are characterized, ideal-typically, by a strange duality: They are

[8] All translations are the author's, unless otherwise indicated.

willing to pursue their goals through exclusively democratic means and they pursue exclusively anti-democratic ends. Such actors, of course, are but images of real-world, empirical actors who tend to relate to concepts such as democracy in much messier ways, whether it be in the realm of means or in the realm of ends.[9] Still, the current crisis of democracy as it is commonly diagnosed in political thought presupposes that anti-democrats operate *within* the institutional parameters of existing democratic institutions rather than plotting anti-democratic action *externally* — in revolutionary cells, paramilitary organizations, or the like.[10]

What is characteristic of, but by no means limited to, current diagnoses of democratic crisis, then, is that the modus operandi of democratic subversion is assumed to be prima facie consistent with the normal mode of democratic functioning and, therefore, blatant and, importantly, undeniable breaches of legal provisions or even overtly anti-democratic agitation are not to be expected as the predominant form of democratic subversion. The assumption is that existing democratic institutions face as a threat the potential for what will here be called disintegration by 'self-abolishment,' the potential abolishment of institutions that is consistent with their provisions. This assumption, the below outlines, circumscribes the conceptual scope of the idea of defending democracy throughout its contemporary history. The notion of a crisis of democracy and the idea of defending democracy rest on the shared conviction that the institutionally permissible abolishment of status quo democratic institutions is *normatively undesirable*. This presupposition, it seems, can only be discarded once the defense of existing democratic institutions is given up on all the same. It is this presumption which this book seeks to contest, thus questioning its normative tenability and reconstructing the scope of possible alternatives. In so doing, it arrives at the development of an alternative, 'negative' institutional theory. Before further outlining how this book intends to achieve these aims, it first seems helpful to introduce the notion

[9] Contemporary theorist of 'militant democracy,' Alexander Kirshner (2014: 41), for example considers the "idea of the ascetic antidemocrat cartoonish and implausible."

[10] In more practical terms, political thought has often identified (authoritarian) populists as the most prevalent current empirical form of actors reasonably subsumed under this ideal type. This book, however, will conceptually stick to the ideal-typical 'anti-democratic actor' to avoid the use of politically overdetermined vocabulary. What is important at this stage is not the identification of a particular, real-world collective agent but the structural assumption of actors that pursue the ostensibly anti-democratic end of institutional disintegration in ways that are at least superficially legally permissible within a given, institutionalized, status quo democracy.

of democratic defense that it engages with and to then sketch the ways in which democratic theory has developed this notion so far.

1.2 Democracy and defense

The unifying characteristics of current diagnoses of democracy's crisis can be condensed into the premonition that a set of political actors may successfully pursue anti-democratic aims by utilizing non-overtly violent, legally permissible, seemingly 'democratic' means. Because these means do not deviate significantly from 'normal politics,' from the institutionally prescribed containment of political conflict, their effects are difficult to notice — democracy is undermined in stealth. This cumulative diagnosis, then, resonates with a longstanding perception of a particular dilemma in democratic theory: the supposed 'democratic paradox.' That is, beyond the obvious observation that democracy, much like any other type of regime, might abolish itself, it is further held to "furnish[…] its enemies with the means to fight it, whereas other regimes can be ruthless with people they perceive as opponents without contradicting the values they espouse in justifying their existence" (Müller 2016: 251-52). In its most simple form then, this paradox implies that non-democratic actors might be voted into office only to then strip other political forces of the means to fairly contest them at a later point in time — the means that they themselves used to come into power. Democracy, in such a case, would be abolished as a consequence of a decision that is democratic, at least by legal-institutional measure. From the perspective of its crisis and defense, thus, democracy is basically defined as a political order that allows for its own abolishment. This conception of democracy, it will become clear, is retained in this book as a proximate definition derived from extant engagements with democracy's defense. The book thus adopts an immanent definition of democracy in a double sense. Democracy is, firstly, defined in accordance with extant diagnoses of its 'crisis' as an institutional order that might be abolished from within. This implies, secondly, that only the 'democracy-immanent' subversion of democratic institutions is of concern for this book.

While the ostensible paradox of democratic self-abolishment enjoys great persistence as an intellectual problem,[11] its empirical record is rather less

[11] The assertion that democracy must be defended against internal enemies can be traced at least to the French Revolution (Müller 2012: 536), and it might date back as far as the Roman Republic (Avineri 2004: 1). The Greek polis, moreover, knew the practice of ostracism

impressive. Although National Socialism is recurrently presented as a case in point, the identification of its ascent as both legal and democratic is at least empirically untenable (Müller 2016: 252) if not outright revisionist, National Socialist ideology (Schulz 2019: 109). Further, fully conclusive empirical examples of a wholly legal, democratic abolishment of democracy are thus far lacking. The supposed paradox, then, comes into full view only once the possibility of a defensive response to democracy's potential for self-abolishment is considered. This perspective on the idea of a democratic paradox departs from the concern

> that the very attempt to defend democracy will damage democracy: Governments will fight their enemies until they become like their enemies; they might think that they have held on to democracy, but they actually destroyed it in the process of securing it. (Müller 2016: 253)

This particular paradox, the anxiety that democracy cannot but should be able to defend itself while remaining democratic in character, is what this book preoccupies itself with in the remainder of its pages. The reason for this is not a set normative conviction: Neither the desirability of democracy nor the desirability of its defense is considered to be given a priori. Yet, the observation that those who diagnose a crisis of democracy tend to call for its defense in the same breath and that, at the same time, normative grand theories of democratic defense have emerged in the course of the past decade (see, e.g., Kirshner 2014; Rijpkema 2018), lends itself to studying the purported crisis of democracy from the perspective of such calls to arms.

Faced with near all-pervasive warnings of a crisis of democracy, it seems unsurprising that much of Political Theory has taken to its defense. The sheer abundance of discussions of how democracies do, should, or should not respond to 'populism,' 'new authoritarianism,' and the like bears witness to this (see, e.g., Walker 2016; Rovira Kaltwasser 2019; Mounk 2021; Bourne 2022; Malkopoulou and Moffitt 2023). When John Rawls (2003: 193) identified the defense of liberal democracy as a "practical dilemma which philosophy alone cannot resolve" at the beginning of the millennium, this somewhat despairing exclamation may have had the ring of an attempt to merely relegate the matter to the realm of political practice. The defense of democracy seemed well above a political philosopher's pay scale. Now, given increasing attention in political and legal theory to the question of democratic

which bears some resemblance to the exclusionary mechanisms characteristic of democratic defense in late modernity (see, e.g., Ober 2017a).

defense, such a statement is likely to be read quite differently: as a call for political thought to — finally — get its hands dirty and face up to the vicissitudes of the messy political present. At the very least, it is becoming ever clearer that democratic defense is certainly more than a merely 'practical' matter, if practical implies a false binary of theory and praxis which is resolved to the exclusion of the former. The ways in which today's 'crisis' of democracy is responded to crucially depend on normative arguments that are developed, not least, in Political Theory. This obviously does not imply that the hierarchy simply goes the other way: political theorists do not merely devise responses to 'anti-democratic threats' which are then neatly implemented; the relationship is not an immediate one. Rather, Political Theory both reflects and shapes the ways in which crises are socially constructed and addressed. If this premise is convincing, then examining responses to the supposed 'crisis' of democracy in contemporary democratic theory should be a viable approach for making sense of that very crisis — and of potential ways out of it.

The broader approach that will be pursued in this book's normative discussion of the idea of democratic defense can be formulated accordingly. At a certain analytical distance from extant crisis-diagnoses, this book examines the construction of democracy from the perspective of its defense and vice versa. It departs from the assumption that conceptions of democracy and its defense are co-constitutive at least as long as conditions in which the potential for democratic self-abolishment is possible prevail in institutional form. The book's concern, then, rests with the different ways in which this co-constitutive relationship can be arranged. This entails one substantive restriction that shall be stressed upfront: This book primarily concerns itself with the defense of existing democratic institutions which are understood here as relatively stable, sedimented structures of social practices in polities commonly understood as 'liberal democratic.'

Rahel Jaeggi's minimal definition of institutions as "habitual arrangements constituted through social practices, that consist in more or less complex systems of stable mutual behavioral expectations and are characterized by public influence and recognition" (Jaeggi n.d.: 4; Jaeggi 2009: 532-33) is proximate to the definition adopted here. A norm is a subset of "stable mutual behavioral expectations," reconstructible or formally defined, that constitutes an internal standard by which the practices can be assessed — but norms neither exhaust institutions, nor practices. They are, therefore, conceptually

distinct from both.[12] In this book, institutions are further defined by recursivity in the relation between institution and subjectivity: Institutions are not only "constituted through social practices," they also identify the subjects that constitute them through their social practices. With a view to the 'democratic paradox,' this amounts to a consciously circular conception of agency: The democratic subject that is entitled to democratic self-abolishment is identified by the institution that is being abolished — there can be no further, a priori definition of the agent in question. The book, thus, conceives of 'democracy' as a political order in which (legal) institutions are ultimately contingent upon real political activity.[13]

In a 'democracy,' then, the 'demos,' a social collective which is subsumed to and whose political agency is enabled by 'democratic institutions,' may decide to abolish the very institutions to which it is formally subsumed. An institution, summarily, is an objective construct the persistence and transformation of which crucially depends on practices of identification (or: subjectification). This definition, as has been pointed out above, is consistent with — and immanent to — the alleged 'crisis' of democracy: institutions that can be abolished from within are institutions that identify internal subjects entitled to their abolishment. They do so in 'democratic' ways so long as they identify a collective subject, a 'demos.' The 'democratic' character of a political order, thus, is here defined as a self-determination of existing institutional orders, not as a normative state. As such, its examination demands a broadly reconstructive approach.

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[12] For a critique of Jaeggi's blurring of the boundaries between norms and practices, see Testa (2021).

[13] Compare, for a similar conceptualization of democracy as defined by the potential for self-abolishment Marx's (1982: 29-30) definition of democracy as "the resolved mystery of all constitutions" in his *Critique of Hegel's Philosophy of Right* which, once read from the perspective of the 'democratic paradox,' seems to dispel the latter's paradoxical character. Marx goes on to argue that in a democracy, "the constitution not only in itself, according to essence, but according to existence and actuality is returned to its real ground, actual man, the actual people, and established as its own work. The constitution appears as what it is, the free product of men. […] Man does not exist because of the law but rather the law exists for the good of man. Democracy is *human existence*, while in other political forms man has only *legal existence*. That is the fundamental difference of democracy. […] In democracy the formal principle is simultaneously the material principle. […]." That is, more simply put: The institutions of a democracy are the result of (political) human activity and, as a consequence, they can be undone by (political) human activity. Democracy's only foundation is human activity — which, emphatically, does not imply that its formal character would be obsolete. Formal and material principle converge.

The reason for this is that, insofar as self-abolishment is conceived of in this book as an institutionally specific potential, its democratic character is by no means a normative a priori. Institutional self-abolishment constitutes democratic self-abolishment only so long as the subject that conducts and is entitled to the act of abolishment is identified by the institution that is to be abolished as its 'demos.' To be sure, the concept of the demos, its boundaries in particular, continues to trouble Political Theory. But it is neither needed nor possible for an institution-centered theory of democratic defense as it is developed here to take a position among the numerous arguments that have been developed in this regard, centering on the all-affected and all-subjected principle (see, e.g., Näsström 2011; Erman 2014; Erman 2022). The reason for this is that a theory of democratic defense that takes existing 'democratic' institutions and the 'demoi' that they identify as its starting point cannot a posteriori resolve normative questions of inclusion or exclusion as if they were an a priori. The 'demos' is instead taken to be defined practically, by the institution that it is formally entitled to abolish. This practical concept of the demos flows directly from this book's reconstructive engagement with the defense of existing institutions.

Philip Manow's (2024) *Unter Beobachtung* demonstrates that such an approach is well-suited for making sense of recent attempts to identify liberal democracy's 'enemies,' particularly of those undertaken in the name of 'militant democracy.' Manow (2024: 31) argues that, in order to arrive at a plausible concept of democracy, it is necessary to "bring into view the joint historicity of institutions and social conceptions of them as an interwoven institutional and conceptual history of democracy." Such a historical 'interwovenness' of democracy as a social concept on the one hand and of institutional forms identified as democratic on the other is taken here to suggest that it is useful to retain a determinate conceptual openness on the end of 'democracy.' This makes it possible to reconstruct the ways in which democracy is socially co-produced by calls for its 'defense.' That is, democracy is not identified at the outset of this book with determinate, self-contained 'models' (Held 2006) and their foundational normative principles. Instead, democracy receives its definitional (conceptual) content in the attempts to preserve democracy as an institutional order that the book reconstructs. In other words: democracy as an institutional order is examined as its defenders imbue it with normative content.

The book's focus on institutions entails that the defense of normative principles as such, which is a common defense strategy in normative Political Philosophy, is not a focal point of its ambitions. The reason for this is the conviction that

the defense of democratic principles is a much less normatively delicate matter than the defense of existing institutions. It is the latter which constitutes a common target of critical democratic theorizing in particular. The defense of existing institutions provokes charges of "ideological nostalgism," of a reliance "on already achieved and institutionalized standards or socially accepted ideals" (Forst 2023: 219). Such a mere conservatism, it is argued, cannot claim the status of genuine normative argument (ibid.). Nevertheless, it is obvious that democratic normativity and democratic institutions cannot be neatly separated: Insisting on one in the absence of the other appears as futile as their conflation appears conservatively biased. Rather than rejecting any possibility for defending existing democratic institutions in normatively consistent ways as a matter of principle, it thus appears worthwhile to ask whether such defenses can be put up without producing the kinds of conservative predispositions that a univocal identification of democratic normativity and status quo institutions would entail.

Bearing this focus on institutional defenses in mind, the book approaches its concern with the co-constitutive relationship of democracy and its defense in two ways which, although analytically inseparable, can be distinguished for introductory purposes: Firstly, it asks: *how have existing theories of democratic defense responded to the 'democratic paradox' throughout their contemporary history?* In responding to this question, the book focuses particularly on the co-constitutive relationship between democracy as an institutional order and its defense under conditions of an (assumed) institutionalized potential for democratic self-abolishment. Under corresponding conditions, extant theories that argue in favor of the defense of status quo institutions historically imbue existing institutions with (at least minimal) normative content. They identify 'democracy' with the existing institutional order, thus linking the latter to normative essence. This leads to normative contradictions as long as the possibility of democratic self-abolishment is presumed. The 'democratic paradox' remains unresolved.

Secondly and consequently, the book asks the question: *how can democracy be defended in normatively consistent ways under conditions in which its radical transformation from within remains a democratic possibility?* In asking this question, the book closes in on the problem of the normative foundations of democratic defense. While undermining the tacit assumption that the defense of existing institutions requires their positive identification as normatively valuable, the book maintains that normative concept and positive institutional form are inseparable. Once their relationship is conceived as a

negatively co-constitutive one, the 'democratic paradox' loses its paradoxical character. Existing institutions are defensible because they can be abolished.

To further develop its responses to these questions, the book formulates a novel methodological approach that proceeds from 'text' to 'context.' Situated at the intersection of Political Philosophy and Conceptual History, this methodology's thick reading of seminal engagements with the idea of democratic defense neither contends itself with exegesis nor subsumes texts to their 'contexts.' Instead, it produces insight into the social ('contextual') circulation of texts by tracing their ('textual') normative-semantic patterns beyond received theoretical boundaries.[14] To this end, it makes use of a criterion of 'greatest specific difference': Textual corpora to be reconstructed are chosen according to their explicit opposition to the preceding textual corpus' normative-semantic patterns. Utilizing this criterion, the book detects and scrutinizes a structural semantic pattern that can be redescribed as an institutional conservatism. Institutional conservatism organizes the full spectrum of extant responses to the 'democratic paradox' which comprises militant, procedural, and radical democratic theory in particular. All of these extant theories of democratic defense have come to arrange the relationship between institutional preservation and radical (self-)transformation (self-abolishment) as a relationship of opposites. Critically scrutinizing the restrictive implications that this presupposition has for conceiving the defense of existing institutions, the book simultaneously pursues the reconstructive-historical intention of examining the social circulation of extant theories of democratic defense and the normative-theoretical aim of critiquing their institutional conservatism.

It is thus a focus on reconstructing the social circulation of the normative *ends* of democratic defense that sets the book apart from extant discussions.[15] Rather than focusing only on the justifiability of certain means and mechanisms, such as party bans and restrictions on free speech, or on present empirical practices

[14] The term 'social circulation' refers throughout this book to the circulation of normative-semantic patterns. The analysis of 'social circulation' thus is the analysis of the travel of textual meaning beyond the confines of a delimited textual corpus. If such circulation can plausibly be established without direct referentiality, then the claim that this circulation is *social* gains credibility — inferences towards the social mediation of textual meaning can be sustained. For an elaboration of a corresponding methodological approach see chapter 2 of this book.

[15] To be sure, the critical theory of democratic defense that is developed in chapter 7 of this book is able to *address* the question of means, but it is only able to do so by focusing on the dimension of ends.

of institutional preservation, its agents and material preconditions, the book's conceptual emphasis on institutional preservation and transformation offers a novel perspective that excavates hitherto neglected normative problems tied to the idea of defending democracy. As will become clearer below, it is precisely the historical development of theories of democratic defense that gives clues as to such normative deficiencies; it also points to some alternatives in democratic theory which, however, are not fully capable of resolving the normative aporias[16] of extant theories of democratic defense; the book, therefore, develops its own, critical retheorization which it coins a 'negative institutionalism.' The distinctiveness of this critical theory of institutional transformation and preservation is that it refrains from determining positive normative ends of democratic defense. It does not identify existing institutions with positive normative value. Yet, a negative institutionalism maintains that the defense of existing institutions is a normatively consistent strategy best sustained with reference to the normative force of the abolishment of existing institutions. As such, it is a negative-normative theory of institutional transformation and preservation. In order to outline why such a retheorization is useful and how it addresses deficiencies of extant theories, it first seems helpful to introduce the full spectrum of extant theoretical corpora that speak to the substantive context of democratic defense.

1.3 Theories of democratic defense

Before giving contours to the book's theoretical argument, it is necessary to further delimit its scope. The sheer abundance of calls for the defense of democracy makes it flatly impossible to consider each and every such call in a systematic manner. It is, however, possible to determine some focal points which are constructed in this book to form a heuristic spectrum of opposites according to the criterion of 'greatest specific difference.'[17] This spectrum can be outlined, for the most part, with reference to the following two binaries: repression and exclusion — permissiveness and inclusion; institutional preservation — institutional transformation. That is, the theories of democratic

[16] To avoid any confusion: Normative aporia here does not refer to the *absence* of normative argument. It refers, instead, to *irresolvable logical contradiction* between a normative claim and the practices that it is intended to sustain.

[17] As will become clearer in course of this book, the oppositional character of the responses considered is heuristic rather than pointing to essential distinctions; in fact, existing options seem to converge precisely in their seemingly sharpest differences.

defense considered in this book fall within a broad spectrum of *strategic means* which ranges, firstly, from theories that advocate either the repression of alleged 'anti-democrats,' for example by means of rights restrictions and party-bans, to theories that consider any such repressive intervention normatively untenable. The theories considered further display a broad spectrum of *normative ends* that range from the defensive maintenance of existing institutions to the argument that democratic offense, the radical transformation of existing institutions, constitutes the best possible defense.

To be sure, the construction of this spectrum derives from the explicit claims of existing theories and from their most common reception. As such, it does not offer a sufficient a priori classification of the theories and authors considered in this book. It does provide a useful framework, however, to which the book will continuously refer in the reconstructive process of refining its conception of extant theories of democratic defense. Yet, in so doing, the book further contends that at least once the defense of existing democratic institutions is of concern, genuine *normative* alternatives are distributed primarily along the dimension of ends (institutional preservation — institutional transformation) which usurps differences that are distributed along the dimension of means that has been the focal point of existing theories of democratic defense so far. In making this argument, the book broadens its contribution: Discussions of strategic means in the defense of democracy have thus far largely obscured convergence in normative ends. In demonstrating that militant, procedural, and radical democratic theory converge in these ends *as long as they champion the defense of existing institutions*, the book revises the conventional reception of each of these literatures, the normative intentions of which are usually considered to be incompatible (see, e.g., Invernizzi Accetti and Zuckerman 2017; Malkopoulou and Norman 2018). The dimension of ends, it is argued in this book, ultimately subsumes the otherwise more widely discussed dimension of means. To further outline the book's theoretical scope, it is useful to introduce the tentative — self-proclaimed — distribution of particular theories or theoretical families that it engages on the dimensions of means and ends. This also allows for a sketch of their standing within the book's substantive argument and of the free-standing contributions of each of the corresponding chapters.

1.3.1 Militant democracy

The first family of existing theories of democratic defense is that of *militant democracy* (see, e.g., Loewenstein 1937a, 1937b; Sajó and Bentch 2004;

Müller 2012, 2016; Kirshner 2014; Tyulkina 2015; Rijpkema 2018; Malkopoulou and Kirshner 2019). First coined in the context of interwar and World War II fascism and later included on a large scale in post-war constitutions, militant democracy boasts a rich conceptual and practical history which subsumes seemingly irreconcilable political-theoretical influences that range from liberal democratic thinkers like Karl Loewenstein (1937a; 1937b) to the 'conservative revolutionary' Carl Schmitt (2004). As is the case — more or less — for all extant theoretical engagements with the defense of democracy considered in this book, militant democracy can thus be understood as a response to the widely contested notion of the 'fall of Weimar' and the divergent conclusions that have been drawn from it. It is striking that, despite continuous accumulation of knowledge about 'Weimar' and the rise of National Socialism, historians and political theorists keep returning to this contested juncture, begging the question: "Why Weimar" (Lebow and Norman forthcoming), "Why return to this problem again? What is still to be said?" (Hett 2018: 9). Weimar, that is, remains a stubborn metaphor of democratic disintegration that is open to radically different interpretations: "Weimar is mobilized to challenge the status quo but also to defend it" (Lebow and Norman forthcoming: 9). The observation that Weimar's "history is, and has to be, constantly rewritten" (Hett 2018: 10) holds true — even where this does not necessitate the conclusion that the political present must somehow be analogous to the 1930s, or that long-standing narratives about the legal abolishment of democracy under National Socialism should be perpetuated (critically, e.g., Schulz 2019). Nevertheless, 'Weimar' remains a shared historical frame of reference that this book, too, continuously returns to in its critical examination of extant engagements with the defense of democracy.

In abstraction from this historicity, militant democracy can be defined as "the idea of a democratic regime that is willing to adopt pre-emptive, prima facie illiberal measures to prevent those aiming at subverting democracy with democratic means from destroying democracy" (Müller 2012: 536). Theoretical disputes about its normative tenability notwithstanding (see, e.g., Invernizzi Accetti and Zuckerman 2017), militant democracy constitutes the perhaps most *practically* significant modern iteration of the idea of defending democracy. It widely materializes in constitutional practice since the end of World War II, legitimizing party bans and other repressive measures against 'anti-democrats.'[18] Its practical significance notwithstanding, militant democracy has regained *theoretical* currency only in the past decade (see, e.g.,

[18] Until 2015, party bans on the basis of militant democracy have been observed in 20 European countries alone (Bourne and Casal Bértoa 2017: 7-9).

Kirshner 2014; Rijpkema 2018). This return to theoretical prominence appears unsurprising especially given correspondence between existing crisis-diagnoses and militant democracy's theoretical focal points. Today's "Militant democrats want to prevent the backsliding and breakdown of democracy as a result of covert antidemocratic activity by political parties" (Malkopoulou 2023: 438). That is, militant democrats respond to stealth internal subversion of democracy by legal political actors,[19] and they do so to the end of "safekeeping democratic *institutions*" (Malkopoulou and Norman 2018: 445, emphasis added). As such, militant democracy is a paradigmatic attempt to resolve the co-constitution of self-abolishment and defense, of radical transformation and institutional preservation. As its reconstruction in chapter 3 of this book demonstrates, militant democracy constitutes the ideal-typical figure of an *institutionally conservative* defense of democracy which, on the spectrum outlined above, falls towards the repressive and preservative ends. To provide some definitional clarity already at this point: Institutional conservatism functions here as an umbrella term that covers the theoretical preoccupation with and structural preference for the institutional restraint of transformation.

The book is able to sustain its characterization of militant democracy as institutionally conservative by reconstructing militant democratic attempts to resolve the problem of self-abolishment via a prohibition on radical transformation that is ultimately justifiable only with recourse to the intrinsic value that existing democratic institutions acquire qua existence. In this sense, the book argues, the charge of institutional conservatism applies not only to earlier iterations of the idea of militant democracy that self-consciously impose substantive restrictions on democratic practice. It extends also to contemporary retheorizations that seek to 'minimize' the normative content of militant democracy to ensure a restrained use of repressive intervention (Kirshner 2014; Rijpkema 2018). The strategy of abstract normative minimization not only reflects a tendency towards analytically sidelining the lived experience of

[19] The focus on political parties might be somewhat overstated in Malkopoulou's statement of the intentions of militant democrats: recently, other targets have received increasing attention (see, e.g., Müller 2019). Yet, political parties remain the most important targets of militant democratic measures. It should further be noted that the appropriateness of militant democracy to (the construction of) democracy's current crisis is *not* presumed here — it is merely proposed that contemporary militant democrats *claim* to offer such appropriate responses, and that such claims ought to be taken seriously. On the possible inappropriateness of militant democracy in facing the phenomenon of contemporary populism, which recurrently figures in discussions of democracy's current crisis, see Malkopulou and Moffitt (2023).

political struggle in democratic theory (on this, see McNay 2014). It further echoes developments in contemporary conservative thought, especially the latter's more recent 'epistemological,' institutionally conservative variants (e.g., O'Hara 2011).

By inscribing militant democracy in a conservative tradition of institutional thought, the book offers a thorough revision of militant democracy's reception as a uniquely 'liberal' idea (e.g., Hacke 2018). It is shown that militant democracy's normative ends and conceptual mechanisms dovetail with those developed in contemporary conservative thought. In developing this argument, the book further aims to move beyond extant critiques which consider militant democracy's normative fault lines to emerge primarily from an "inherent arbitrariness" which results from its political identification of anti-democrats (Invernizzi Accetti and Zuckerman 2017). Expanding upon and altering such existing critiques, this book seeks to demonstrate that militant democracy's normative aporia results from a structural bias towards existing institutions that lacks a normative correlate but amounts to a residual normative positivity. It points out that, because contemporary militant democrats identify democracy with the institutionalized potential for political change, the maintenance of existing institutions becomes normatively precarious. This, the book argues, is the case at least once militant democratic intervention restricts *radical* change, the institutionalization of which is necessarily presumed in militant democracy's assumption of a 'democratic paradox.'

1.3.2 Procedural democracy

Democratic proceduralism, in a basic sense, sets itself apart from other democratic theories insofar as it conceives of procedure as *inherently* valuable. Rather than being either merely expedient compromises or valuable for external reasons, the totality of democratic procedures constitutes the summary entity which democratic proceduralism posits at the center rather than on the periphery of democratic theorizing.[20] Unlike militant democracy which, after decades of being deferred to the realm of praxis, has recently received systematic attention in normative Political Theory, democratic proceduralists cannot refer to any full-fledged theory of democratic defense that emerges

[20] In developing a notion of procedures as intrinsically valuable, democratic proceduralists directly oppose the Schumpeterian idea of a democratic minimalism (on this see, e.g., Ober 2017b: 474) which is commonly confounded with democratic proceduralism. The relationship between the two will be further clarified in chapter 4.2.

from their family. Nevertheless, democratic proceduralism constitutes an antagonist of militant democracy (at least) since the latter's conceptual invention. Hans Kelsen's (2006; 2018) proceduralism in particular had a significant impact on the polarized debates in Weimar Germany's field of legal theory from which the idea of democratic militancy took its bearings. Despite the persistence of this complicated relationship, and despite the practical centrality of procedural arguments for democratic defense in consolidated democracies, theoretical interventions of proceduralist thinkers into the debates pertaining to democratic defense have remained scattered and unsystematic (Malkopoulou and Norman 2018: 448-50).

The reason for this relative disregard for proceduralist arguments in theoretical discussions of democratic defense might rest with the tension that exists between proceduralism and defensive intentions. Proceduralism is routinely –– and falsely — blamed for the rise of National Socialism in Weimar Germany. But the relationship between the idea of defending existing democratic institutions and theories of democratic proceduralism is a difficult one not only for historical reasons. Quite the contrary, proceduralism's difficulty with the defense of existing institutions is rooted in the core of the latter's normative structure. If procedures are intrinsically valuable, and if procedures enable the radical subversion of existing institutions, then how could a proceduralist justify their maintenance? The perhaps most well-known, and certainly the most emblematic formulation of the ensuing tension is found already in 1932, when Kelsen (2006: 237) seems to reject any defensive intervention and insists that for a democrat, it is imperative to "stay true to one's flag, even when the ship is sinking." This (exaggerated) slogan seems to suggest that democrats must accept the abolishment of democracy as long as it is pursued in ways that are consistent with democratic procedure. Proceduralist arguments for "constitutional limitations" (Saffon and Urbinati 2013: 448) to democratic change, on the other hand, call into question whether Kelsen's apparent defeatism is in fact a foregone conclusion of proceduralist normativity.

Despite such internal tensions, the book contends that democratic proceduralism does constitute a spectral alternative to militant democratic thought at least in one respect. Broadly unable to justify procedural exclusion, democratic proceduralists who argue in favor of defensive practices suggest the use of vastly different *means* than those of militant democracy. That is, they commonly favor the *inclusion* of 'anti-democrats' into institutionalized procedures rather than furthering their *exclusion* with repressive means.[21] This

[21] For an overview of the corresponding "inclusion – moderation thesis," see Tepe (2019).

distinctiveness is what seems to carry suggestions that democratic proceduralism might be a normative alternative to militant democracy (Invernizzi Accetti and Zuckerman 2017: 195). The question that the book raises, however, is whether sharp differences in means allow for such a conclusion. It argues that this is not the case: the dimension of means ultimately defers to the dimension of ends. That is, the normative aims of militant and procedural defenses of democracy ultimately converge, even though proceduralists do not advocate repressive intervention. In so doing, the book offers a decisive re-reading of democratic proceduralism's defensive intentions. It shows that the supposed binary of proceduralism's 'formalism' and 'substantive' democratic theory collapses once their normative structure is considered from the vantage point of democratic defense: a structural institutional conservatism characterizes defensive proceduralisms as much as militant democracy. Proceduralism with defensive intentions draws on extra-procedural normative positivity. The book makes this case via two arguments. Firstly, it demonstrates that at least the defense of existing institutions remains difficult, if not impossible, to normatively sustain from a strong proceduralist perspective — irrespective of tensions internal to procedural thought. Nevertheless, the book argues that the means of procedural integration are ultimately geared towards achieving harmony between political demands and existing institutions. In a defensive context, it is thus argued, militant and procedural democracy do not so much figure as genuine normative alternatives but as different strategic options. Their apparent antagonism collapses once faced with the *normative* question of existing institutions.

1.3.3 Radical democracy

The label radical democratic theory subsumes a number of irreconcilable approaches to democratic theory which diffusely hang together in their opposition to a no less diffuse notion of liberal democratic theory. While any attempt to denote a singular point of convergence would thus inevitably fail, it is possible to outline at least the particular variations of radical democratic thought that are of particular significance for this book. The radical democratic thinkers under consideration are Chantal Mouffe (2000; 2005; 2009; 2013; 2019; 2020) and Jacques Rancière (1999; 2007; 2011; 2014; 2015). The book's focus on these authors is grounded in the observation that Mouffe and Rancière, in different ways, address the question of democratic institutions and thus speak directly to its concerns. Moreover, they frequently phrase their theoretical ambitions as defensive. They do not, however, explicitly speak to the idea of *democratic defense*. In demonstrating their theoretical

preoccupation with the complex of democratic defense as it has been outlined above, however, the book is able to offer a new perspective on radical democratic theory. Radical democracy's defensive capabilities have hitherto received little attention — not least because of its frequently lamented "institutional deficit" (on this see, e.g., Westphal 2019). In emphasizing this particular facet of radical democratic thought, the book also demonstrates that radical democracy constitutes a *historically specific* alternative to militant democracy and procedural democracy insofar as it perpetuates the 'democratic paradox' but intends to resolve it in the direction of radical change.

Mouffe and Rancière, the book holds, converge on the idea that the institutional status quo of liberal democratic orders is deficient and thus needs to be 'radically' transformed. As such, they appear to position themselves in diametrical opposition to militant democracy's institutional conservatism on the spectrum of democratic defense. If radical democracy's starting point is the insufficiency of existing liberal democratic orders, then their maintenance seems impossible to justify within its scope. On the dimension of ends, radical democracy should, at first glance, fall firmly towards the side of institutional transformation and oppose the idea of institutional preservation. Despite this superficial similarity in transformative claims vis-à-vis existing institutions, Mouffe and Rancière pursue vastly different theoretical strategies. Mouffe draws on an ontological distinction between politics and the political to demonstrate that existing institutions always leave *excess*. That is, rather than capturing the totality of possible political configurations, existing institutions constitute but one option of arranging the political. Therefore, it is possible to justify demands for their transformation with reference to their exclusions. Rancière resists any such ontological determination of democracy and prefers aesthetic categories. His theory does not assume a democratic excess external to existing institutional orders. Instead, it posits the nonidentity of these orders with democracy. More plainly: Democracy, for Rancière, is not an institutional order but that which is able to suspend any existing order.

A close reconstruction of the radical democratic theories of Mouffe and Rancière enables this book to sustain its thoroughgoing reinterpretation of radical democratic thought which highlights the latter's necessary preoccupation with institutional questions. The chapter decisively revises the common perception of radical democracy's 'institutional deficit' and demonstrates that the corpus of radical democratic thought offers at least two divergent, genuinely *institutional* theories. It shows that Mouffe's theory is *counter-institutional* insofar as it seeks to transform existing institutions without denying the possibility of institutionalizing democracy. Quite the

contrary, it is demonstrated that her theory falls back to an implicit, positive identification of norm and existing institution and so reproduces even institutionally conservative arguments. As such, the book argues that Mouffe's theory converges with procedural democratic thought insofar as it is faced with the option of discarding the defense of existing institutions altogether and remain normatively consistent, or to maintain the intention of institutional defenses in normatively aporetic ways. It is only in Rancière's theory, the book demonstrates, that the normative-semantic patterns of institutional conservatism finally break. Rancière develops an *anti-institutionalism* in which democracy and institution remain *fully* distinct rather than standing in a non-ideal relationship to each other. It is a contradiction in terms, then, to speak of 'democratic institutions.' This, in turn, seems to obviate the need for an institution-centric notion of democratic defense. Vis-à-vis militant democracy, Rancière's theory thus marks the opposite end of the spectrum of democratic defense. It is concluded that, whereas militant democracy abstractly insists on the maintenance of existing institutions, Rancière's radical democracy must abstractly insist on their perpetual, radical transformation. Yet, the book argues that in so doing, Rancière's theory constitutes the mirror image of militant democracy's normative problems: whereas militant democrats cannot normatively sustain the maintenance of existing institutions, Rancière's theory does not provide normatively consistent reasons for their perpetual transformation.

1.4 Towards a critical theory of democratic defense

With the spectrum of existing theories that pertain to the idea of democratic defense thus mapped out, the contribution of this book can be explicated. Recall that its aims have been identified as examining *how existing theories of democratic defense have responded to the assumption of a 'democratic paradox,'* with emphasis on the co-constitutive relationship between democracy and its defense under conditions of an (assumed) institutionalized potential for democratic self-abolishment. The book's reconstruction of extant engagements with the question of institutional transformation and institutional preservation in democratic theory, as it has been outlined above, identifies a spectrum of arguments the border of which is constituted by two alternatives: the abstract affirmation of existing institutions, at the expense of their radical transformation; the abstract negation of existing institutions, at the expense of

their preservation.[22] Having identified the normative problems that remain unresolved as long as defenses of democracy are distributed along this spectrum, it then becomes possible to ask *how this relationship can be arranged in different, normatively consistent ways.* The book demonstrates that such a rearrangement is best achieved by first bringing the ends of institutional preservation and radical institutional transformation into sharpest possible contrast. While it may then seem as if these antithetical opposites exhaust the space of possibilities for arranging the relationship between existing institutions and their self-abolishment, the book seeks to consider another, synthetic option. In other words, it asks *whether it is possible to defend existing institutions without affirming them*, or, *whether it is possible to bring into a relation of normative congruence the ideas of radical transformation and institutional preservation*.

Its core argument is that this is the case. Radical institutional transformation and institutional preservation can be reconciled on normative and practical terrain. To make this plausible, the book refers to a tradition of thought that is not commonly considered as part of the canon of democratic theory, namely the philosophy of Max Horkheimer and Theodor Adorno. Given relative neglect of early Critical Theory in democratic theory proper, this requires some justification. While any choice for theoretical interlocutors will entail a degree of selectivity, there are plausible historical and conceptual reasons that suggest the pertinence of early Critical Theory for the idea of democratic defense. Historically, it is a striking peculiarity that Horkheimer's (2009) essay "Traditional and Critical Theory" and Loewenstein's essays on militant democracy were both published in 1937, in response to the collapse of the Weimar republic and the rise of National Socialism. Yet, despite their shared historical situation and anti-fascist motivation, the texts make ideal-typical antagonists: While Loewenstein (1937b: 774) demands the authoritative protection of the "rational system" of liberal democracy, Horkheimer's essay proclaims the necessity of holistically subverting the existing order so as to arrive at a rational constitution of society in the first place. As such, early Critical Theory constitutes a *historically specific alternative* to militant democracy, demonstrating that democratic militancy is but one particular historical response to fascism. More importantly still, Critical Theory

[22] The claims of this book concern the *logical structure* of the theories considered rather than extending by necessity to the actual practices that their authors personally favor or are involved in. Drawing existing theories of democratic defense to their *logical conclusions* allows for bringing them into sharpest possible contrast. This method of 'exaggeration' makes possible the synthetic construction of a theoretical alternative.

constitutes a *conceptually specific alternative* to the spectrum of extant engagements with democratic defense. It continuously rearranges the field of tension between negativity, critique, normativity, and institution in the time frame from Horkheimer's (2009 [1937]) programmatic "Traditional and Critical Theory" to Adorno's (2004 [1966]) *Negative Dialectics*. These conceptual developments resonate with the conceptual development that this book traces in the history of the idea of democratic defense but arrive at markedly different conclusions that, it is argued, point beyond the confines of institutional conservatism.

Before continuing, however, it seems useful to consider the scope of likely objections to this choice. Horkheimer and Adorno, identified with the so-called 'Frankfurt School' and its heterodox project of critical theorizing, may be held to be of little help for retheorizing the defense of democracy for any of the following reasons: they are Marxists and consider liberal democracy a mere epiphenomenon of capitalism while identifying 'true democracy' with post-capitalism (Schmidt 2019: 267; criticizing this characterization: Jay 2020: 33-34); they are radical and overly negativist philosophers who have little to contribute by way of normative or Political Theory (Jepsen 2014; Buchstein 2019; Habermas 2019 [1988]); they have turned away from radical political practice and towards a conservative cultural pessimism by the end of the Second World War which culminates in an affirmative accommodation to the liberal democratic orders of the political West (Krahl 1974; Harcourt 2022; Meisner 2023).

While none of these objections do justice to their target, they all contain a grain of truth. Horkheimer and Adorno do retain a continuous distance to existing institutions, they do venture into a strong philosophical negativism, and, as 'public intellectuals,' they do defend post-war Germany's democratic reconstruction. But taken at face value, the seeming objections culminate in what amounts to a good illustration for why their work is of interest for this book: Despite their normative distance from existing liberal democratic institutions which flows from a negativist and anti-affirmative philosophical stance, Horkheimer and Adorno take to the defense of existing liberal democratic institutions. While it is possible to dismiss this seeming contradiction as a mere inconsistency between theory and practice, between normative conviction and the strictures of real politics, this book argues that it is worth bringing the philosophical concerns of Horkheimer and Adorno's philosophy and the idea of defending existing democratic institutions into convergence.

The book makes this case by engaging with the relationship between negativity, critique, normativity, and institution in early Critical Theory in three phases of its development: A phase of immanent critique that is epitomized in "Traditional and Critical Theory" (Horkheimer 2009); a phase of negativist rearrangement that occurs with the *Dialectic of Enlightenment* (Horkheimer and Adorno 2016); and a phase that is characterized by Adorno's negativism as it culminates in *Negative Dialectics* in particular (Adorno 2004; Adorno 2015a). The book's thoroughgoing re-reading of *Negative Dialectics* emphasizes that Adorno's magnum opus constitutes not a retreat from genuinely political theorizing but an attempt to retain capacity for such theorizing under adverse historical conditions. *Negative Dialectics*' theoretical concerns dovetail with those of the institutionally conservative theories of democratic defense insofar as they both adopt what this book calls a 'negative heuristic.' They assume in different ways a (democracy-relative or universal) potential for catastrophe and derive from this distinctive imperatives of "non-regression" (Niesen 2023). *Negative Dialectics*, it is maintained, is a resource uniquely suited for retheorizing democratic defense because it raises these concerns from the vantage point of an *emphatic negativism* that precludes a positive identification of existing institutions as normatively valuable. As such, it can inform a critical theory of democratic defense that circumvents the problem of institutional conservatism without surrendering the capacity for normatively consistent institutional preservation.

Through its critical engagement with these major contributions to early Critical Theory and their extant interpretations (especially Benhabib 1989; Albrecht et al. 1999; Finlayson 2002; Abromeit 2011; Hammer 2013; Mariotti 2016; Freyenhagen 2013; Habermas 2019; Gordon 2023), the book arrives at the insight that Adorno's negativism in particular contains useful resources for a retheorization of democratic defense that surmounts the antithesis between institutional transformation and conservation. In so doing, it makes a rather counterintuitive case. Interpretations of Adorno either argue that his philosophy surrenders political capacity or that it contains only a 'residual' politics, a rarefied politics of (unqualified) marginal resistance to the social order and its institutions. This book instead interprets fragments of *Negative Dialectics* as pointing towards what it calls a 'negative institutionalism.' While seemingly not primarily interested in institutional questions, *Negative Dialectics* stresses the normative significance of institutional disintegration. In developing from fragmented hints at negativist institutional theorizing a thoroughgoing re-reading of *Negative Dialectics*, the book prepares the development of a negative theory of the institution. The resulting theory not only revises the scope of possible receptions of *Negative Dialectics* but further

subverts received notions of the relationship between critical theorizing and particular existing institutions.

The negative institutional theory developed in this book suggests a form of engagement with existing institutions that centers on excavating their concrete negational potential, that is, the particular ways in which they contain the disintegrative potential for internally consistent self-abolishment. Institutions contain such potential wherever their normative conception and procedural structure can be brought, via the practice of negation, to jointly 'make space'[23] for self-abolishment. Rather than treating self-abolishment as a problem to be resolved, it is argued that a negative institutionalism can consistently sustain the — historically and contextually sensitive — defense of existing institutions precisely *via* the ambiguous normative force of disintegration contained within their negational potential. Yet, in so doing, it remains normatively committed only to the potential for radical transformation. A negative institutionalism is a theory of institutional disintegration with defensive *and* transformative capabilities. As such, negative institutionalism constitutes a synthetic alternative to existing theories of democratic defense and their opponents in democratic theory. This is the case insofar as it overcomes the binary of institutional conservation and radical transformation, the ostensible 'democratic paradox,' that existing engagements with the defense of democracy constitutively presume. In so doing, it further constitutes a pathway towards a new research agenda for critical theorizing that brings together normative reconstruction in Political Theory, comparative institutional analysis in Legal and Political Science, and Sociological reconstruction of institutionalized practices. This agenda seeks to open up towards a 'critical theory of politics' (Bohmann and Sörensen 2019) and is further driven by the impetus to 'offer' radically transformative potential to social agents, thus avoiding the 'authoritarian' imposition of defensive or transformative imperatives by the critical theorist (on the problem of authoritarianism in critical theory, see Cooke 2005).

[23] The metaphor of "making space" is taken from Menke (2022: 206) who, in turn, takes it from Siegfried Kracauer's claim that "revolutionizing negativity" ought to be a negativity that leaves "room (empty spaces) for the unsaid positive."

1.5 Chapter outline

In preparation of its substantive argument, the book begins by outlining its methodological propositions in chapter 2. Situating the book's aims at the intersection of the History of Ideas and Political Philosophy, the chapter critically engages with the relationship between texts, contexts, and concepts in these disciplines (2.1). The chapter proceeds by clarifying the ontological, epistemological, and normative status of interpretation with reference to Adorno's distinction between conceptuality and nonconceptuality (2.2). From these premises, it develops a particular approach to immanent critique which proceeds *from text to context* (2.3). In so doing, the chapter proposes to basically invert the inferential strategy of extant interpretive approaches. It demonstrates the utility of close readings of particular textual fragments for making inferences *towards* their social mediation.

The book begins to utilize this approach for a historical reconstruction of militant democracy's institutional conservatism in chapter 3. Taking its bearings from a single quotation in Carl Schmitt's (2004) *Legality and Legitimacy*, it begins to inscribe militant democratic thought in a tradition of conservative normativity. Schmitt's essay is shown to anticipate militant democracy's abstract preference for the existing order (3.1). This preference, the chapter demonstrates, moves towards the emphatic terrain of *institutional* conservatism with Karl Loewenstein's (1937a; 1937b) idea of a defense of institutions qua institutionality and with Karl Popper's (2020) institutional rationalism (3.2). Loewenstein's 'institutionalization' of militant democracy achieves a (limited) rationalization of conservative preferences and ceases to rely on the irrational, substantive justifications of Schmitt's theory. Popper radicalizes this process of rationalization and flatly identifies democracy with the minimal negative capacity to vote a government out of office. The chapter proceeds by arguing that contemporary theories of militant democracy further radicalize both the institutional minimalism and the institutional conservatism of their forerunners (3.3). Inscribing the history of militant democracy into a more general tendency towards 'desubstantialization' in conservative thought, the chapter concludes that militant democracy is predicated on a conservative epistemology that drives it into normative aporia (3.4).

After situating the historical trajectory of militant democracy in relation to the problems of conservative normativity, the book begins to discuss spectral alternatives to the basic idea of repressive intervention for the sake of institutional preservation. In so doing, it seeks to establish where the structural, normative-semantic pattern of institutional conservation ceases to reproduce in

order to mobilize potential for a retheorization of democratic defense beyond militant democracy. In chapter 4, the book considers the idea of procedural integration of anti-democrats. To introduce procedural democratic thought, the chapter distinguishes proceduralism's conception of intrinsic institutional value from the idea of democratic minimalism with which it is commonly conflated (4.1). This conception of intrinsic value, the chapter shows, produces tensions within procedural democratic thought: While some proceduralists insist that procedural value cannot justify the defense of institutionalized procedure against self-abolishment, others emphasize the necessity of boundaries to procedural change (4.2). The chapter concludes that this tension indicates that procedural democrats must either accept normative aporia or stand idly by whenever procedural democracy is abolished in procedurally consistent ways (4.3). In practice, some proceduralists appear to favor aporia: The suggestion of achieving harmony between political goals and existing institutions via procedural integration undermines any firm distinction between militant and procedural defenses of democracy in ends.

A seemingly more radical alternative is discussed with reference to the eponymous tradition of radical democracy in chapter 5. The chapter begins by situating the particular thinkers under consideration within the breadth of theories that the moniker of radical democracy subsumes (5.1). It highlights that the central role of institutions for the thought of Mouffe and Rancière renders their work especially pertinent for this book. Mouffe, the chapter shows, resolves the problem of institutional conservation by differentiating between ontological negativity and ontic political struggle (5.2). This approach, it is argued, runs into problems of normative consistency when it comes to transformed, but not abolished institutional positivity. Ultimately, it confronts Mouffe's theory with normative contradictions similar to those of procedural democracy. Rancière, on the other hand, denies that institutions can ever be democratic and identifies democracy as the other of institutional form instead (5.3). This, the chapter shows, seems to obviate the need for democratic defense altogether and instead amounts to a demand for perpetual radical transformation. The chapter argues, however, that Rancière cannot consistently uphold this demand if not referring to a quasi-teleological normative argument that is impossible within his theory. Nevertheless, Rancière's theory is identified as the spectral opposite of militant democracy's institutional conservatism. As such, it is held to enable the formulation of a synthetic alternative, which a discussion of 'aporetic choices' emerging from the spectrum of existing theories of democratic defense points towards (5.4).

The subsequent chapter 6 engages in a reconstruction of the field of tension between negativity, critique, normativity, and institution in early Critical Theory. In so doing, it prepares the formulation of a critical theory of democratic defense that sublates the antipodes of institutional conservation and perpetual radical transformation. To this end, the chapter first reconstructs Horkheimer's early notion of immanent critique and puts this notion in dialogue with theories of democratic defense and their extant alternatives (6.1). It argues that Horkheimer relies on normative affirmation to justify institutional transformation. In a second step, the impact of the *Dialectic of Enlightenment* for this notion of critique is considered (6.1). The chapter demonstrates that the totalizing notion of negativity that the *Dialectic* develops renders impossible any firm distinction between norm and institution. This demands a rearrangement of critical certainties. The metacritical assumption that 'latent' normative resources could be 'redeemed' can no longer be maintained. A revision of the tense relationship between norm and institution in particular, the chapter shows, can be pursued on the basis of Adorno's post-war philosophy (6.3). Considering extant interpretations of Adorno's negativism at length, the chapter highlights its normative-political function in particular. It concludes that Adorno's negativism constitutes a philosophical position that is suspended between minimal, defensive, and maximal, radically transformative, normative demands.

This tension between a defensive normative minimalism and a transformative normative maximalism, chapter 7 holds, is constitutive for a reading of *Negative Dialectics* as anticipating the problem of democratic defense. The chapter utilizes this possibility to develop a theory which it coins a *negative institutionalism*. This theory is developed, firstly, by identifying negative institutionalism as a potential alternative to the previously reconstructed field of tension (7.1). *Negative Dialectics* is then reinterpreted through the lens of democratic defense (7.2) to argue that its emphasis on the normative undecidability of institutional disintegration enables a theory of the institution that relies only on the force of negation. This notion is subsequently developed into that of a 'negational potential,' the institutionally inscribed potential for self-abolishment. This disintegrative potential, the potential for radical transformation, grounds the formulation of a negativist theory of the institution which is capable of normatively sustaining the defensive maintenance of existing institutions without reducing their negational potential (7.3). The chapter proceeds to argue that it is in reconstructively establishing the potential for institutional self-abolishment that a critical theory of democratic defense should take its bearings. The defense of existing institutions, the chapter insists, is best justified with reference to their potential radical transformation.

The status of the resulting 'imperative' of defending negational potential is further clarified with reference to three conceptual interventions in contemporary critical theory (7.4). It is argued that a negative institutionalism contains the anti-authoritarian (Cooke 2005) imperative to maintain the non-regression (Niesen 2023) of potential liberation (Menke 2022). The research-practical implications of this theory of democratic defense, then, are spelled out at the end of the chapter (7.5). Here, it is argued that the theory of a negative institutionalism should be developed into a full-fledged research program that integrates disciplinary contributions from Philosophy, Political Science, Law, and Sociology in order to engage in a practice of 'offering' negational potential to political subjects. The book thus concludes on the notion that democratic defense ought to be conceived 'the other way around.' Rather than presupposing the 'democratic paradox,' it should start by establishing the potential for self-abolishment in specific institutional configurations and make normative use of this situated potential. As such, democratic defense can be reconceived in terms of a defense of that which remains to come (8).