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From ‘fugitive democracy’ to ‘fugitive justice’: Cultivating a democratic ethos

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Abstract Sheldon S. Wolin’s ‘fugitive democracy’ is arguably his most provocative contribution to political theory. Breaking with the understanding of democracy as a constitutional form whose origins he locates in the work of Aristotle, Wolin claims democracy is better understood not as a constitution, but as a ‘rebellious moment,’ making democracy dependent on cultural rather than institutional characteristics. This formulation poses a problem for democracy as a political phenomenon, as political power today tends to be concentrated within institutions. Without institutional expression, democracy is alienated from political power and hence a contradiction in terms. I reconstruct an understanding of Wolin’s fugitive democracy that can avoid such problems, while also being adequate to the current political juncture. I argue that Aristotle’s conception of the practice of justice, read through the lens of Wolin’s ‘fugitive democracy,’ becomes ‘fugitive justice,’ the cultivation of a democratic ethos that might support and sustain fortuitous democratic moments, connecting democratic culture to political institutions. In this way, Aristotle’s work is split: not simply the founder of constitutionalism, through ‘fugitive justice’ Aristotle becomes a resource for radical democrats, and a complement to Wolin’s concept of democracy. *Contemporary Political Theory* (2021) **20**, 119–140. <https://doi.org/10.1057/s41296-020-00381-w>; advance online publication 3 February 2020

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Arguably Wolin’s most provocative contribution to political theory, ‘fugitive democracy’ announces a break with received notions of democracy. Rather than understanding democracy in terms of constitutionally established procedural norms, including fair elections, adequate representation, and the protection of individual rights, Wolin insists that we take democracy literally as the power (*kratos*) of the common people (*demos*) to act together in self-determining ways. From this perspective, Wolin claims that constitutions have not actually supported democracy, but rather have obstructed it. Yet this idea of a more literal democracy is not simply a pining for ancient Athens, for Wolin also locates in Athens the



source of the antidemocratic idea of ‘constitution,’ specifically in Aristotle’s political theory. Thus, tensions that inform politics in ancient Athens become a model with which to understand American politics in the present, their juxtaposition enabling Wolin’s conceptual innovation.

Yet ‘fugitive democracy’ is not without its problems. Through fugitive democracy Wolin frames the power of the *demos* overwhelmingly in cultural terms: constitutions, and with them the state and its institutions, are frequently presented as alien forces with which it cannot be reconciled without surrendering its self-defining power.¹ Yet political power today tends to be concentrated in state institutions whose operations are prescribed by constitutions. Thus, put most forcefully, it can be said that locating the power of the common people *outside* of the constitution, the state, and its institutions, in such a way that denies this power institutional expression, is to deny the participation of common people in the dominant political power, rendering democracy a contradiction in terms. Without *kratos* there is only *demos*, and as the *demos* is a creation of its own power, there is in this sense little in the way of a *demos* either. This contradiction in democracy conceived predominantly in cultural terms thus marks democracy’s dissolution.²

While many have criticized fugitive democracy’s allergy to institutions (Euben, 2001, p. 283; Kalyvas, 2008, p. 6; Kateb, 2001; Wiley, 2006, p. 232), my goal is to recover an understanding of Wolin’s fugitive democracy that can respond to such criticism. To this end, I turn to that ambiguous enemy of democracy, Aristotle. Yet this study does not attempt to reconstruct the historical context in which the theories it draws upon emerged, nor does it attempt to correct Wolin’s interpretations of the philosophers he examines beyond a reconsideration of Aristotle. Where this article offers interpretations of the past, it attempts ‘to reconnect past and present experience,’ so that we might ‘think in different terms about what it means to be political’ (Wolin, 1990, p. 141; 2004, p. 24).³

I begin by outlining the role Aristotle plays in Wolin’s thought, both in relation to democracy and to the idea of constitution. Here, I am not concerned with the historical accuracy of Wolin’s account of Aristotle, but rather how Aristotle operates within Wolin’s texts and is used for thinking about democracy. In reconstructing Wolin’s concept of fugitive democracy, I note not only its opposition to established forms of power, but the problems resulting from its alienation from these forms of power – the risk of fugitive democracy being ineffectual and ultimately irrelevant. I argue that in order to avoid such a fate, fugitive democracy must be supplemented by certain forms of institutionalized power, a possibility Wolin suggests, though leaves largely unexplored. In order to better explore this avenue and so theorize a way to supplement fugitive democracy without compromising its ‘fugitive’ character, I draw upon Aristotle’s concept of justice. As Aristotle’s thought is among the material Wolin uses to shape his understanding of democracy, transforming our understanding of Aristotle thus allows us to confront an undeveloped point in Wolin’s thought with his own



resources, while at once using Wolin's account of democracy to suggest new possibilities for thinking with Aristotle today.

Although there have been numerous attempts to rehabilitate Aristotle in broadly democratic terms (Keyt, 2005; MacIntyre, 1984; Nussbaum, 2001; Ober, 2005; Waldron, 2005),⁴ the path pursued here resonates most clearly with Jill Frank's idea (2005, pp. 10–11) that in Aristotle the self and institutions are dynamically connected. Despite some dissent concerning the question of nature in Aristotle and certain conclusions drawn from it, I argue along lines similar to Frank that Aristotle's understanding of justice relates practices of the self that might produce an *ethos* with the organization of political institutions, thus making each inseparable from the other. This relation serves to complicate Wolin's understanding of Aristotle as the founder of the idea of political constitution without dispensing with it. Rather, in reading Aristotle's justice through Wolin's fugitive democracy, what is retrieved is 'fugitive justice,' a set of practices that serve to connect the insurrectionary dimensions of fugitive democracy that Wolin locates *outside* of political institutions, with the *inside* of political institutions, thus displacing the boundaries of radical democracy without renouncing radical democracy itself. In this way, I hope to understand political possibilities related to what Wolin noted that no modern society had yet accomplished: the democratization of the state (1993, p. 477).

Aristotle and Democracy

Aristotle does not receive independent treatment in Wolin's 'defining' work (Arben Fox, 2015, p. 174) on the history of political thought, *Politics and Vision*. Instead, considerations of Aristotle are folded into larger discussions of the inauguration of political theory in Plato and its subsequent, though not permanent, decline following the rise of the Macedonian Empire. Unlike Plato's vision of a *polis* reconstituted to suit the needs of philosophy (Wolin, 2004, pp. 52–53; 1970, p. 5), Aristotle is presented as a pragmatic counterpoint: a philosopher who recognizes the inevitability of different values and offers a theory of their reconciliation through an appropriation and defense of a quasi-democratic conception of citizenship (Wolin, 2004, p. 53). Unlike Plato's hostility to democracy, Aristotle's theory preserves the democratic idea of public deliberation, even if this idea is now limited by a transformed institutional context that might itself be reconciled to the exigencies of empire. Politically then, Aristotle is ambiguous: he might be seen as an agent of the Macedonian empire, working to subvert Athenian democracy, or as an Athenian sympathizer, concerned with preserving the best of democracy in the face of its absorption by this empire.

In later work Wolin continues to develop Plato's and Aristotle's relation to democracy, allowing us to draw fresh conclusions about their democratic



relevance. As Wolin notes (2016, p. 306), historically philosophers were often opponents of democracy; consequently, insofar as what we know of democracy has mostly been passed down to us by philosophers, our vision of democracy comes to us courtesy of ‘hostile interpreters’ (2016, p. 96). Yet this hostility is not without value for the democratic tradition. For instance, Plato’s claim that democracy is a kind of non-regime, ‘wayward, inchoate’ and ‘inherently formless’ (Wolin, 2016, p. 93) will endow it with a special kind of power, as the ever-threatening ‘outside’ of political regimes upon which Wolin will draw in forming his concept of fugitive democracy. The provocative imagery Plato uses to describe democracy, as a monstrous, multiform beast incapable of being effectively ruled, perpetually transgressing laws, threatening order, and denying the ‘best men’ the chance to reveal their inherent superiority, might actually serve as an inspiration for democrats. In their efforts to discredit and contain democracy, Plato and the antidemocratic tradition he inspired have exaggerated its threat, making the *demos* into a more powerful, more radical actor than it ever really was (Wolin, 2016, pp. 64, 66, 73), giving democrats today an image of unruly democracy worthy of their own banners.

From this perspective, Aristotle’s more measured evaluation of democracy has proven less useful than Plato’s hyperbole, and to understand the insidiousness of its antidemocratic elements, we have to look at the concept of ‘constitutional democracy.’ Wolin claims that not only did the Greeks invent democracy, but they were the first to understand politics in terms of constitutions, and Aristotle is ‘by any measure’ ‘the most famous and influential theorist of constitutions’ (2004, p. 403).

Aristotle and ‘Constitutions’

For Wolin, a political constitution is the means through which society organizes itself in order to generate power. Power is ‘generated’ by the particular relations that exist between the members of society that enable them to speak and act – to make (or be excluded from making) decisions. If these relations are to remain consistent over time, the everyday activities of society’s members must reproduce these modes of speaking and acting. Cultivating the kinds of activities that will reproduce these relations involves cultivating the dispositions of members to respond to each other in certain more or less predictable ways that accumulate over time. That is, these dispositions become the sediment which serves as a historical foundation stabilizing the established relations between society’s members and ensures their continuity into the future. The political constitution is the means of exacting this regularity and training the kinds of dispositions necessary to become the foundation that supports this form of power (Wolin, 2016, p. 381).



Regularizing channels of power makes perpetual those points within a society where power is most easily exercised, and exacts of those occupying such positions a certain collection of abilities (Wolin, 1990, pp. 3–4). Or more bluntly: by regularizing fixed channels of power, political constitutions produce political experts. With political experts come new criteria designed to identify those with the qualifications necessary to share in political power, while excluding others. Insofar as democracy is the exercise of power by those without any qualification to rule but their freedom, political constitutions and democracy stand in fundamental opposition. Thus Wolin writes that we might define 'constitutionalism' as the theory of how to best restrain democracy, while ensuring the predominance of the social groups and classes represented by the 'best men' (Wolin, 2016, p. 81).⁵ 'Constitutional democracy' is a contradiction in terms, for it involves constructing limits that might hinder the very phenomena that the word 'democracy' expresses: the irregular moments wherein common people collectively exert power, denying the forms of restraint that have been imposed upon them with actions other than those exacted by the dominant form of power. As Wolin writes, 'constitutional democracy' is 'an ideological construction designed not to realize democracy but to reconstitute it and, as a consequence, repress it' (2016, p. 79).

Thus the practical, political role of constitutions has been to neutralize and contain the threat of democracy. However, Wolin also holds that the theoretical role played by the concept of political constitution has been equally pernicious. Aristotle identifies the different actors and values he finds in his study of ancient cities with different organizational forms, with which he endows conceptual consistency and permanence. Each particular constitution is found to display certain features particular to its form, and from which can be derived expectations regarding the politics normal to each form (Wolin, 2016, p. 81). Thus aristocracy, for example, is defined as a constitution wherein the city is ruled by the few and the qualification to rule is defined in terms of one's excellence or virtuous conduct (*Pol.* 1294a9–11). Politics in such a city involves the common good being served by the virtues of its rulers rather than common people, whose lack of the necessary virtues serves to marginalize them from most political offices; however, insofar as the rich are also few in every city, there is a danger inherent to aristocracy that the virtuous few will be conflated with the wealthy few and the rule of the virtuous will become the rule of rich, or oligarchy (*Pol.* 1301a28–33). In this way, Wolin finds that the concept of political constitution allows Aristotle to establish the parameters within which politics is understood. Though Aristotle recognizes that actual cities comprise different forms of association and are often organized through a mix of different constitutions that change over time, by establishing the conceptual coherence and permanence of different basic forms of government from which these mixes are composed, Aristotle provides a framework to evaluate politics according to norms of stability and harmony, assuming that the politics within a



given city are directed toward ends inherent to the political organization of that city (Wolin, 2016, p. 92; 2001, p. 135).

This conception of politics serves to radically reduce the degree of indeterminacy that characterizes political activity and forecloses the possibility of grasping genuinely new political innovation (Yack, 1993, p. 240). Moreover, Wolin claims that understanding democracy as a constitution comparable to monarchy or aristocracy is already to falsify the experience of democracy by attributing to it the features of its opponents, which then serve as the evaluative measures of democracy's 'success.' Evaluated as a constitution, democracy is denigrated for being disorderly, unstable, and short-lived – clearly lacking the strengths characteristic of a good constitution. But this is precisely Wolin's point: the power of common people has always emerged in fleeting moments of collective contestation of established order, not constitutional design. Where such contestations have ended in stable constitutions, the result has typically been to limit the power of common people, and to walk back their demands in order to avoid the destruction of the constitution. Though Wolin does not say so explicitly, from this perspective, the great heroes of Athenian democratization, such as Cleisthenes, are actually conservative figures who limited the demands of the *demos* by balancing them with the ruling elites. In this light, Athenian democracy was less the result of the intentions of Cleisthenes and other constitutional reformers than it was the expression of political power: Athens became more and less democratic in disproportionate relation to the ability of the few to contain the power of the *demos*. The concept of form, applied to democracy, serves to obscure this question of power.

As we have seen, adopting Aristotle's starting point and thinking of democracy as a constitution like any other is already to adopt a perspective hostile to democracy, a perspective that persists to the present. As Wolin notes, while 'modern political discourse, especially in its social science version, has largely abandoned the ancient vocabulary of "form",' it has not abandoned the idea. 'The concept of "organization" or its equivalents "bureaucracy," "administration," or "management"' (Wolin, 2016, p. 82) is for Wolin the modern variants of form which continue to weigh on the brains of the living. A genuinely democratic theory, then, must break with Aristotelian constitutionalism.

Fugitive Democracy

'Fugitive democracy' is Wolin's contribution to political theory that most clearly contests Aristotelian constitutionalism and so offers the possibility of a theory of democracy shorn of its dependence on the idea of 'constitution.' The concept can be understood along descriptive, normative, and political lines – distinctions Wolin does not explicitly make, but which can elucidate just how radical the implications



of fugitive democracy are to our understanding of both the history of democracy and democratic practice today.

'Democracy,' Wolin writes, 'is a project concerned with the political potentialities of ordinary citizens ... with their possibilities for becoming political beings through the self-discovery of common concerns and of modes of action for realizing them' (1994, p. 11). It is important to note that the 'common concerns' that facilitate the exercise of these political potentialities are the result of a 'self-discovery': they are discovered, that is, they seem to pre-exist the democratic project, which involves inventing practices for addressing that which is common, yet at the same time this discovery is hyphenated by a self that discovers, a self that only comes into being through the democratic project that posits its common concerns as both its ground and its goal. In this sense, we should understand what is common to the constituent parts of a *demos* to be radically contingent and open to revision, for what is understood to be a common concern – the difference between public and private – is the product of the ongoing decisions made by the *demos*.

While philosophers and bureaucrats may come up with lists of what ought to be public and private, such pre-given ideas remain part of the constitutional paradigm of political thinking that fugitive democracy contests. For fugitive democracy, the *demos* does not emerge from or as a blank slate, and is consequently likely to be internally riven by disagreement concerning public and private. What it discovers to be common among its members, its own self-identity, is the process of deciding on what is common, of accepting or contesting received ideas of public and private, a process composed of negotiations, demands, and other displays of power. Consequently, one must be careful not to flatten Wolin's account of democracy, treating the *demos* as having emerged from a particular cultural context with an existing identity, bound by the parochial limits of that context and identity (Cane, 2018, p. 238).⁶ Rather, the *demos* re-invents its culture as the conditions of its own emergence, and thus, potentially, a support for its future. Decisions on what the *demos* considers to be common – its self-making – continue so long as its power to decide remains in effect.

Moreover, not only is fugitive democracy not determined by pre-existing ideas of public and private that might serve as a kind of foundation for its practice, but it even contests pre-existing notions of nature. Wolin writes that it is 'by *stasis* not by *physis* that the *demos* acquires its civic nature' (1994, p. 13). Thus, the 'political potentialities of ordinary citizens' noted above, 'their possibilities for becoming political beings,' are not even given in advance by virtue of their nature as human beings. Instead, these potentialities are created through 'revolutionary transgressions' of the boundaries thought to constitute political possibility. One is not, as Aristotle claims, a political animal by nature; rather, people become political animals by collectively refusing the boundaries that delineate their place in the social whole. This claim has important consequences for understanding the history of democracy.⁷



For instance, by claiming that democracy is a creation of political actions rather than the expression of a political nature, Wolin would sever the link between philosophical anthropology and political practice that persists in Aristotle, and that has persisted throughout much of the history of political thought, whereby political practices are given extra-political justification through appeals to human nature.⁸ Instead, the possibility of democracy is immanent to political possibilities, which are in turn structured by the relations of power that make up the historical sediment of a given society. Non-democratic relations of power tend to function by way of exclusion, and the manner in which these exclusions have served to constitute a society historically give rise to the possibility of their democratic contestation. It is for this reason that Wolin writes of democratic action beginning outside the system of constituted power, fusing scattered experiences of powerlessness into a collective actor that gives itself shape by contesting established points of power in the constitution of society. This democratic actor is autonomous insofar as it gives itself shape through its own actions, and is specifically political insofar as it would contest established politics so as ‘to enable itself to emerge’ (Wolin, 2016, p. 54).⁹

In this sense, Wolin will write of a ‘*political* anthropology’ rather than *philosophical* anthropology, through which Plato’s ‘multiform beast’ will *become* a political animal. This passage is the history of the collective self-education of the *demos* for politics, a history that includes coming to the aid of neighbors, ‘interceding for those threatened with slavery; responding to the call for witnesses to crimes; shouldering communal responsibility for actions by its members; relying on violence, ... to redress wrong; and, not least, rebelling against unpopular authorities’ (Wolin, 2016, p. 66).¹⁰ Through these responses to oppression the *demos* acquired a sense of solidarity and self-consciousness, inventing itself as a political actor within the city, which was itself transformed by these actions.

Democracy is thus an experience of the political that contests established authority, both in terms of opposition to representatives of that authority, and in dispensing with the higher-order justifications offered by that authority, in order to give birth to itself as a new political actor. However, we might note a tragic element here,¹¹ for what makes democracy explicitly political in this conception, its collective transformation of society into the stage for its appearance, is at once a form of constitution that serves to limit the self-creation of the *demos*, and to return it to a fixed position within a constituted social whole – often with the result of undermining the democratic moment.¹²

Thus, while the possibilities available for common people to collectively exert power will depend on the balance of forces of a particular socio-historical context, democracy still appears doomed: there is nothing to guarantee its success, or even its continued availability as a political possibility; yet even its success has historically been fleeting, swiftly followed by the emergence of forms of limitation that have undermined its autonomous character. Democracy has thus been



dependent upon a certain cultural memory for its preservation, which serves to bind it to political experience. Wolin's democracy is less an institutional form than it is an experience of the political, preserved in the cultural memory of its practice: of the transgression of laws and contestation of established political orders that served to reclaim political power, and the bitter disappointment of defeat.¹³ In this sense, Wolin follows Tocqueville in conceiving of democracy as a *political culture* rather than a social whole structured by a constitution (2001, p. 207): democracy is a rebellious moment of collective power exerted by common people, and the shape impressed upon political culture by the experience of this collective power and its defeat. The impermanence of this power and its scattered remains render it 'fugitive' in this descriptive sense (Wolin, 2004, p. 602).

By deriving the concept of 'fugitive democracy' in part from the history of Athenian democracy, Wolin offers a descriptive conception of democracy: if we accept Wolin's account of the emergence of the Athenian *demos* and his criticism of Aristotle's constitutionalism, then 'fugitive democracy' represents a more accurate account of democracy, one that cuts through the bias that has obscured it historically. Yet I do not believe that Wolin's principal aim was to improve the scholarship on democracy in the history of political thought (Wolin, 2004, p. 24). Rather, there is a strong normative dimension to Wolin's quest for historical truth. Truth is not sought simply to accurately describe the world, but as part of a practice of the self concerned with investigating the right way to respond to others, and make personal decisions in situations inhabited by them. Wolin's well-known critique of the sterilized conception of truth employed by social scientists (2016, p. 16), his polemic against the liberal ironist's indifference to truth (2016, p. 314), and his definition of the philosopher as 'anyone whose vocation is the critical nurturing of public values' (2016, p. 236), bespeak an almost Socratic vocation.¹⁴ Wolin's political thought, and with it the concept of fugitive democracy, is the performance of a civic duty (Wolin, 2016, p. 27). Doing political theory is Wolin's own attempt to live in a manner that takes into consideration the good of others and seeks to respond to them in ways that might promote this good. Wolin seeks the truth of democracy in the interest of preserving its cultural memory and so contributing to future democratic moments in which this history might be recalled and inspire new instantiations of collective power and new political innovations.

While this relationship to truth underscores Wolin's view that political theory is primarily a civic rather than academic activity (Wolin, 1990, p. 1), it does little to show what 'fugitive democracy' as an explicit political project would look like. That is, despite its civic concerns, we might distinguish the normative dimension of Wolin's fugitive democracy from political activity in so far as it is ultimately a theory, the product of an individual reflecting on the political and finding ways s/he can respond and contribute to it. This individual dimension of the activity of political theory differs from political activity *as such*, which is the undertaking of collective decisions and actions and assuming responsibility for them. Politically,



one is always immediately more than oneself – one decides with and for others, and is responsible for these decisions that exceed one's own direct and individual control.¹⁵ This does not mean that the political is extricable from a normative dimension – the normative dimension is a necessary supplement to political activity in order for it to be political, rather than being reduced and transformed into domination or administration. The political is an instance in time and space wherein people can relate to each other and meaningfully participate in collective action, sharing responsibility for the organization of their lives. The normative dimension concerns the ways in which individuals orient themselves to others, to the community and its mores. While the normative dimension serves to support or hinder the political at the individual level, the normative dimension remains non-identical to the political, for it ultimately involves making decisions for oneself, acting individually, and assuming responsibility for these decisions and actions, which, though mediated by the political, nevertheless remain attached to individual authorship in a way political action does not.¹⁶ From the normative dimension of the concept of fugitive democracy and the theoretical activity that produced it, then, we are led to a third dimension of this concept that directly relates to fugitive democracy as a political practice.¹⁷

Wolin notes that the modern conception of power, the modern nation state, and the principal norms that inform contemporary global capitalism, including 'efficiency, incentives to unequal rewards, hierarchical principles of authority, [and] expertise' (2016, p. 47), all serve to enforce a structure of society that is deeply hostile to democracy. From this perspective democracy appears to be something from another time, fundamentally out of synch with the present. And just as democracy was never best understood as a constitution, the obstacles that have risen to its emergence in recent years ensure that 'democracy in the late modern world cannot be a complete political system.' Moreover, and given the terrifying heights to which power has climbed, Wolin holds that democracy as a complete political system ought not to even be 'hoped or striven for' (1994, p. 23).

But what is the vocation of the democrat, if democracy has never been a political system, ought never to be a political system, and thus its establishment as a system should not even be a goal held by democrats? If we might answer that the role of the democrat today is to nurture the cultural memory of democracy and look for opportunities to collectively contest oppression before the next inevitable defeat, do we not serve in advance to exile democracy from the halls of power, placing limitations on the potential forms it may take? And does this insistence not contradict the conceptually open, contingent, and unstable status of democracy, reifying a specific shape of democracy found at certain historical moments? To address these questions, we must examine Wolin's understanding of the relationship between democracy and institutions.



The Return of Form

Wolin describes institutionalization as a process depending on the normalization of ruler and ruled. This normalization proceeds through the ritualization of their behavior, enabling functions of the state such as revenue collection, mobilization for war, law making, punishment, and various forms of coercion. Political institutions, Wolin claims, tend 'to produce internal hierarchies, to restrict experience, to associate political experience with institutional experience, and to inject an esoteric element into politics' (2016, p. 82). Institutions might be understood as the component parts of a constitution, and thus every bit as hostile to democracy. Moreover, there appears to be no substantial difference in the hostility institutions express toward democracy when they are operated by left or right governments: in fact, the systematic introduction of professional management into the ranks of American government is a product of the New Deal (Wolin, 2016, p. 388). Thus, what is often considered the high water mark for the success of social democracy in the United States becomes in this account an instance of the expansion of the powers of the state, which, through its institutions, manages to consolidate the power of some at the expense of others in the constitution of American society, institutionalizing political marginalization, and so further obstructing democratic moments and the emergence of a democratic political actor (Wolin, 1990, pp. 79, 160–162). Yet Wolin also writes that social democracy has become entwined with democratic possibilities, and that the entitlements introduced through the welfare state could make possible a more participatory democracy – an idea he supports with the example of Athens paying the poor for public service (2016, p. xi). In this vein, two more Athenian examples may be instructive.

We can understand the rebellious democratic culture of 5th century Athens as culminating in a series of popular struggles between 403 and 399 BCE that serve to institutionalize the supremacy of the *demos*. While the results of these struggles have served to motivate antidemocratic writers in creating the nightmarish accounts of democracy already mentioned, Wolin gives a more ambivalent account of the institutionalization of Athenian democracy. Far from the simple expression of the power of the *demos*, certain institutions established in this period actually served to work against the dynamic democratic culture of Athens. For instance, Wolin claims that *graphe paranomon*, which made it possible for a citizen to be indicted for proposing a law that contradicted existing laws, and *eisanglia*, which made it possible for citizens to be impeached, established grave consequences for law-breaking that had the effect of narrowing the range of citizens likely to engage certain political responsibilities (Wolin, 2016, p. 88).

While the animating force behind such institutions may have been the *demos* attempting to protect itself from political reaction and subversion, the consequence



was to begin to undermine its own autonomy and power as a dynamic, collective actor. While this insight is in-keeping with Wolin's critique of political institutions, not all democratic institutions had such effects. According to Wolin, the institutions of rotation and lot represented an element of 'rational disorganization,' disrupting the continuity of personnel and so preventing the capture of office through claims of expertise or hereditary entitlement. In this way, rotation and lot actually worked against the common tendencies of political institutions: they are paradoxical examples of institutions that subvert institutionalization (Wolin, 2016, p. 87). While the power and function of the institutions of rotation and lot are indeed particular to ancient Athens, far removed from the contemporary world of nation states, modern power, and global capitalism, they nevertheless provide historical examples of the possibility of subversive institutions upon which we might draw to better understand fugitive democracy. The institutions of rotation and lot show us that it is possible for institutions to support the collective exercise of power by common people and so sustain the emergence of a democratic political actor. Consequently, fugitive democracy as a political project must not necessarily be hostile to all forms of political institution, even if Wolin writes little about how other institutions might be democratic, and this historical precedent might serve as an interpretive key for understanding the kinds of democratic interventions necessary today.

Wolin claims that 'Nothing short of a long revolution, aimed at deconstituting the present structure of power, makes much sense' (2016, p. 393). Wolin also writes of a right to revolution that includes the right 'to create new forms' (2016, p. 376), forms that might be what constitutions 'truly are: life forms for taking care of a part of the earth and of the beings who are there' (2016, p. 393). Given the massive obstacles to the realization of such 'true constitutions' presented by the modern state and global capitalism, and the necessarily ongoing and piecemeal nature of this revolutionary task, the forms to which Wolin refers must include establishing subversive institutions that, like Athenian rotary and lot, serve to rationally disorganize and undermine the generation of power as it is presently constituted. Power from a democratic perspective, Wolin writes, is not reducible to the force generated, but includes 'experience, sensibility, wisdom, even melancholy' (2016, p. 378; 2008, p. 61): it is a collection of dispositions excluded from the training exacted by the political constitution.¹⁸ Thus, the creation of new forms will attempt to foster those dispositions of power that are suppressed by the established constitution. This project will not only involve cultivating democratic culture, but of translating this democratic culture into disruptive institutions that open a space for the political, a space for 'initiating cooperative action with others' (Wolin, 1990, p. 150).



The Return of Aristotle: Fugitive Justice

As we have seen, the principal problem confronting Wolin's fugitive democracy as a political solution to the problems presented by constitutionalism is: how might fugitive democracy offer a politics that is 'non-cooptable' (Wolin, 1990, p. 150) without becoming irrelevant?

It was found that, despite the strong cultural bent of fugitive democracy and Wolin's hostility to both constitutions and institutions, Wolin also notes historical examples of political institutions that have worked against the process of institutionalization in favor of democracy. Moreover, certain of Wolin's statements regarding both the contemporary necessity of revolution and what such a revolution might entail suggest that these historical examples are not irrelevant to the present, but that it may be possible to reconcile fugitive democracy with the creation of new political institutions, or even the refashioning of old ones. However, Wolin's thoughts on this possibility are suggestive and impressionistic – it remains unclear exactly how a radically democratic culture might express itself institutionally without becoming coopted by an established constitution that narrows the range of democratic expression and so betrays itself. To the end of understanding how translating democratic culture into disruptive institutions might be possible, an old enemy may prove helpful: Aristotle – specifically, Aristotle's conception of justice.

The concept of justice does not play a prominent role in Wolin's thought, and in perhaps his most direct treatment of it, 'Injustice and Collective Memory,' we are given a hint why: justice in the contemporary United States, Wolin claims, is understood primarily *as distributive justice*, a function of the political economy (1990, p. 44). In Wolin's terminology, political economy is a system of total power emerging out of the wreckage of social democracy and the Reagan Revolution, 'an order in which the limits of politics are set by the needs of a corporate-dominated economy and of a state organization that works in intimate collaboration with corporate leadership' (1990, pp. 147, 155).¹⁹ Distributive justice seeks to smooth over the ills of political economy to facilitate its continued operation and expansion. Such justice is the kid glove on the hand of social discipline, which serves to exact from the populace the dispositions that reproduce the unequal exercise of power that characterizes the current constitution of American society. Wolin even muses that American society may be entering an era where justice ceases to figure as 'the main category of collective existence' (1990, p. 45), so integrated has it become with the imperatives of economic production. While this statement is not elaborated upon, insofar as Wolin claims elsewhere that experiences of justice and injustice enable the demos to think and construct itself (2016, p. 261), we might think that this cooptation and even disappearance of the concept of justice proves a serious obstacle to democracy and 'the need to



subordinate economy to polity' (Wolin, 1990, p. 46). Moreover, even if we were to concede that distributive justice in the Rawlsian variant dominant in the United States is as antidemocratic and antipolitical as Wolin claims (2016, pp. 262ff),²⁰ Rawls need not have the last word on distributive justice.

Ironically, it is in returning to Aristotle and his theory of constitution that we might find a political theory of justice amenable to fugitive democracy. As Castoriadis notes, Aristotle has no doubt that economy is subordinate to polity (1984, p. 281). Aristotle claims that though community is fostered by the natural need the different have for one another and satisfy in exchange, the terms of exchange are a result of common conventions and law, and hence subject to change (*Nicomachean Ethics* 1133a17–34). Insofar as these terms and their related conventions and laws are subject to change through collective decision, they are political. How political decisions are made, the reasons one offers in their support, and the consequences of the decisions themselves, are the purview of justice. Justice for Aristotle thus exists in two registers simultaneously: it is that which informs actions and choices, and consequently the particular *ethos* produced through individual actions and choices that serves to make a person the kind of person she is; and also, it is that which informs the organization of a polity, such as who it includes/excludes, the distribution of offices, and modes of participation (*NE* 1131a25–29; 1134a1–6).²¹

Justice thus concerns both the kinds of actions to which one is disposed, and the order of the polity one inhabits, and serves to connect the two. The particular organization of a polity will demand certain kinds of actions of its members in order to sustain itself, and these actions are called just in that polity. In a similar way, citizens expect the actions they consider just to be expressible, and even rewarded, in their polity. The conception of justice embodied in political institutions, on one hand, and individual actions, on the other, are mutually sustaining. Yet, in noting different, contesting conceptions of justice particular to different polities, Aristotle concludes that 'unqualified' (*haplos*) justice is not identical to the justice of any particular polity, nor is the best individual, the person striving to act justly, identical to the just person of a given polity. Rather, justice is also 'a judgment [*krisis*] about the just and the unjust' (Aristotle, *NE* 1134a31–2). It is this irreducibility of the concept of justice to its particular manifestations that give it a critical dimension amenable to fugitive democracy.

Drawing on this critical dimension of justice, it is possible to mobilize a democratic conception of justice against the prevailing function of justice as social discipline. Aristotle will not himself follow this line of thought, choosing instead to attempt to limit the critical dimension of justice by associating this irreducibility with what is natural to all and hence unchanging (*NE* 1134b18–24), giving the best polities and human lives a natural foundation.²² Yet as we have seen, fugitive democracy breaks with the forms of higher-order justification, such as philosophical anthropology, which Aristotle uses to domesticate justice and the political.



Seen in the light of fugitive democracy, justice as a judgment of what is just and unjust becomes a process internal to democratic struggle and the contestation of established authority. We might call this fugitive justice.

Like Aristotle's justice, fugitive justice involves the cultivation of an ethos produced through habits, which are the product of repeated actions and decisions. Unlike Aristotle's conception of justice, however, fugitive justice aims to cultivate an ethos that *opposes* rather than mirrors the organization of its polity: it aims to cultivate a democratic ethos through the habit of acting and deciding in ways that contest the unequal distribution of power in the established constitution of society and its authority. Aristotle is thus split: through fugitive democracy, justice is mobilized against the constitutionalism Aristotle helps found, as a set of practices that cultivate and sustain the kind of radical democratic actor whose emergence is theorized in the concept of fugitive democracy.

The actions that democrats might cultivate against the unequal exercise of power within the current constitution of society are those actions repressed by the subject of constitutionalism, the abstract self in its Cartesian formulation. For Wolin, the Cartesian self is 'a controlled self, translucent, autonomous' (2001, p. 85): a self released from the excess of historical meanings that presented obstacles to the seamless operation of modern power. Fugitive justice might contest the persistent abstraction of this self through the recovery of its forgotten historical dimensions, including the history of democratic betrayals and defeats, but also the cultivation of the dimensions of democratic power suppressed by the Cartesian self, including sensibility and wisdom dependent on collective experience, care for others, and insistence on public goods irreducible to the self-interested calculation and maximization of individual benefit. In this sense, the practice of fugitive justice involves a return of the repressed, as a kind of overburdening of the abstract self with an excess of historical meanings. In the flood of excavated meanings, collective deliberation and decision-making concerning values, their place in the polity, and the dimensions of the polity itself are brought to the fore and demand attention, upsetting the smooth operation of the established order facilitated by the abstract, Cartesian self.

Yet fugitive justice also weighs directly upon collective decision-making and action and thus concerns the institutional organization of the polity, insofar as institutions serve to structure the possible forms of collective decision-making and action. Without this institutional dimension, the burden of contesting the established constitution becomes private, addressing only moral behavior, and the responsibility to oppose inequality would rest squarely on the individual. Like Aristotle, however, fugitive justice recognizes that the actions and decisions that generate habits, which in turn become an ethos, are themselves facilitated and supported by institutional parameters, and these parameters remain important even for actions and decisions that contest or transgress them. Consequently, the actions and decisions that compose the practice of fugitive justice will include those that



establish laws and institutions that obstruct the reproduction of constitutional power, and that facilitate the emergence of collective political action. In other words, fugitive justice includes the creation of institutions that allow for the crystallization of diverse political experience and the emergence of a new political actor, the *demos*, whose emergence Wolin had served to locate within a cultural sphere he saw as existing largely outside of institutions.

Such institutions can take a wide variety of forms, involving changes to laws regarding the right to unionize and strike, weakening of the rights surrounding private property and its use, or the proliferation of afterschool programs providing meals, sports, and arts education – all of which, depending on political context, might encourage equality and facilitate the exercise of collective political power. An example of a movement embodying this idea of fugitive justice can be found in Salvador Allende’s Chile, where a complex matrix of direct political action found support and further expression at the level of (some) of the state’s institutions through Allende’s election and the alliance between political parties that made his government possible. While it is not possible here to examine this case in depth, it is worth noting that the power of the *Unidad Popular* coincided with an emerging political plane that not only provided a space for workers to occupy and in some cases directly manage their own factories, and for squatters to gain some reprieve from police and in some cases have their homes legally recognized – but this space was also accessible to *UP*’s opponents, who made use of this political space to organize and mobilize *against* Allende (Trumper, 2016, p. 45; Shayne, 2004, Chap. 3). Consequently, what we see here cannot be reduced to the reformist redistribution of offices among allies; rather, we see a radical attempt to utilize state institutions to restructure society so as to enable a genuinely new political subject to emerge, as uncertain a project as this may be.

This fugitive justice can be seen perhaps most clearly in the creation of neighborhood courts staffed by lay people to mediate local disputes. Such courts were the result of a complex interplay between the direct political action of people who lived in these neighborhoods, who took it upon themselves to organize and enforce a given court’s decisions, and the Chilean state, which offered both support and criticism of the courts, serving to prevent their capture by any one group and avoid descending into mob rule. Though messy and imperfect, these courts created a space for common people to participate in the political power that shaped their lives at the local level, and so counteract authorities that had previously preponderated, such as business owners, landlords, and state officials. In this sense, neighborhood courts subverted the historical role played by the state in the denial of the political competence of the poor, attacked sources of elitism, and facilitated the political learning of an emerging political agency (Spence, 1979, pp. 107–111).



While the effort to establish neighborhood courts as a permanent feature of the state failed, and Allende's government ultimately met a violent end, from the perspective of fugitive justice these failures cannot be seen as evidence of the inevitable fate of democracy, forever doomed to flourish and wither in a springtime of political exuberance, remaining only as a memory pressed in the book of political culture. Rather, failure to gain a firm institutional foundation for neighborhood courts was a result of real political opposition from within the state and the political divisions that characterized the Chilean government and might have played out differently had other corners of the state been occupied by supporters. Or more bluntly: the Chilean example serves to remind us not of the ephemeral *nature* of radical democracy, as fugitive democracy occasionally suggests, but of the fatal consequences a demos can suffer should its *practices* remain isolated from institutional power.

Thus, we see how moments of fugitive democracy are mediated by institutions: institutions not only provide limits to rebel against, as is often Wolin's focus, but can also support rebellion. Likewise, the capture of institutions does not mark the inevitable taming or betrayal of democratic *conatus*, but can be used as support for further democratic activities. The state today tends to be a tangle of diverse institutions with various terrains of operations and objectives; it is rarely, if ever, a single, self-same, political actor. By recognizing the particular relation between political action and political institutions, fugitive justice theorizes the exploitation of the diversity of the state, capturing institutions amenable to democratic pressure and turning them against those institutions that would limit the power of the demos. In this way, we find that fugitive justice theorizes the 'rational disorganization' praised by Wolin in the Athenian institutions of lot and rotation, and so develops our understanding of the permeability of the cultural and institutional spheres in radical democratic action that Wolin acknowledged but left marginal.

While I have argued that institutions are necessary to supplement the cultural emphasis of Wolin's fugitive democracy, this is not to say that the state and its institutions are necessarily the primary terrain on which democratic struggles should be fought. The danger of the state coopting political movements is exceedingly real, as Wolin makes clear, and which has been born out in many other political struggles, especially those led by historically dispossessed and marginalized peoples (Coulter, 2014). Yet a fugitive justice capable of subjective refashioning through the cultivation of a democratic ethos, together with a struggle within the terrain of established political institutions to make space within them for this democratic ethos, seems a necessary step to ensure radical democrats not become isolated from the networks of political power traversing society.



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About the Author

Caleb J. Basnett completed his PhD in political theory at York University, Toronto, Canada. His research draws upon the tools of critical theory and the history of political thought in order to examine questions of democracy and domination. He has published essays in *Contemporary Political Theory*, *Radical Philosophy Review*, *The European Legacy*, and the recent collection *Posthuman Dialogues in International Relations*, edited by Erika Cudworth, Stephen Hobden, and Emilian Kavalski (Routledge, 2018).

Notes

- 1 Pejoratively referred to by some as an ‘anarchist’ strain in Wolin’s thought. See Lacey (2008, pp. 172, 176); Wilson (2015, p. 207).
- 2 This is not to ignore or oppose important work on the dynamic interweaving of culture and politics to focus on institutions *à la* Waldron (2016), but rather to insist that democracy needs more than culture. On the importance of culture and cultural studies for politics and political theory, see Chambers (2006); Dean (2008); Hall (2016, 2019).
- 3 On past and present in Wolin, see Marasco (2017, p. 66); Robin (2015, pp. 168, 170–171); Vázquez-Arroyo (2015, pp. 146–163); Xenos (2015, p. 188).
- 4 On interpretative pitfalls, see Wallach (1992).
- 5 While Wolin makes a distinction between ancient political constitutions and modern ‘constitutionalism’ (2004, p. 404), this particular claim applies to both.
- 6 Cf. McIvor (2011, p. 79); Haro and Coles (2019).
- 7 Such as Wolin being at odds with his conventionally humanist interpreters. See Lacey (2008, pp. 176, 187, 191, 195); Hauptmann (2004, p. 36); McWilliams (2015, p. 196).
- 8 See Cooper (2005, p. 68); Kullmann (1991, p. 100); Ober, (1998, p. 295); Strauss (1978, p. 17). On the modern continuation of this tradition, see Ripstein (1987); Kateb (2011, pp. 122, 125, 114).
- 9 Cf. White (2001, p. 174).
- 10 Fugitive democracy may thus offer a more radical vision of democracy than the recent focus on agonism; see Hirsch (2011, p. 177).
- 11 By ‘tragic,’ I do not mean colloquial synonyms such as ‘disastrous.’ Rather, like the tragic hero whose virtue also brings about his or her downfall, democracy’s power to institute itself serves to limit its power.
- 12 This suspicion of established order is a theme in radical democratic theory; see Breaugh (2013, pp. 17–18, 41, 100, 102). It is unclear the degree to which forefathers of ‘plebeian politics,’ such as



- Lefort, Abensour, or Rancière, may have influenced Wolin. On similarities between Lefort and Wolin, see Dallmayr (2001, pp. 67–70).
- 13 On defeat and Left political culture, see Tassin (2007); Traverso (2016).
 - 14 Cf. Lacey (2008, p. 177).
 - 15 Cf. Strong (2012, p. 390).
 - 16 See Orlie (2001, p. 139). For a discussion of responsibility inspired in part by Wolin, see Vázquez-Arroyo (2016).
 - 17 This distinction between the normative and the political leads to the question of whether or not political theory should be considered political action. Though Wolin has been criticized for allowing his politics to color his theory too deeply (Barber, 2006, p. 544), others have seen in Wolin's political theory a laudable attempt to align theory with democratic practice. For instance, Frank notes Wolin's challenge to 'self-congratulatory expectations of the tasks and goals of political theory' (2017, p. 77). Rimmerman (1991) and Tronto (2017), drawing on Wolin, find the democratic dimension of theory in its pedagogical function: as education for political action. Yet while these authors show why political theory is a valuable support for political action, I do not think that necessarily makes political theory a kind of political action. Political action involves making, upholding, and contesting decisions that concern the organization of a community, and it is democratic where no substantial barriers to equal participation in these actions exist within the community. While political theory opines on political actions, in contemporary societies it tends to be isolated from the power to make, uphold, or contest these decisions, insofar as 'contest' means not simply 'register dissent,' but also possess the power to potentially reverse a decision. Moreover, insofar as participation in producing political theory tends to be limited to those possessing academic qualifications, the suggestion that doing political theory is democratic seems to place authorial intent over participation, drifting toward the self-congratulations Wolin warns against. We must acknowledge that while political theory can support political action normatively, by influencing how people orient themselves to others, how they think, and the kinds of decisions they make, we live in societies where political theory has largely been divorced from the organs of political power, making it a kind of hubris to exaggerate its influence.
 - 18 Cf. Gibson-Graham (2006, p. 5), who singles out melancholy as regressive and punitive, rather than as a power of remembrance.
 - 19 Wolin also calls this 'Economic Polity' (1990, p. 29). Today, it is more commonly called 'neoliberalism.' Cf. Brown (2015).
 - 20 Cf. Geuss (2008, pp. 89–90; 2016, pp. 82–84, 101).
 - 21 This link between character and justice is developed via discussions of choice (*proairesis*) and the voluntary (*hekousia*), themes which are woven throughout the *NE* (1111b5ff; 1135a17ff). For my purposes, I note that actions have characteristics (*hexeis*) that serve to impart a character (*ethos*) to the actor, and this character serves to both support and limit further actions (*NE* 1114a19–22; 1114b26–1115a3). The characteristic of an action and its merit will depend on its relation to the laws, and these laws relate in turn to their polity (*NE* 1129b12–16; 1131a25–29).
 - 22 Frank offers another account of nature and politics, arguing that Aristotle 'does not use nature to establish the pre-political and necessary conditions of politics' (2005, p. 19), but rather scrutinizes political exclusions said to be natural. On Frank's account, nature and activity are mutually determining, leaving both changeable, open-ended, and continually in-progress (p. 47). Yet if Aristotle's or Frank's inquiries really were without necessary conditions framing and guiding the changeability of the terms under scrutiny, then one might expect the political positions at which each arrives to look less like the points from which they begin. Aristotle continues to support the exclusion of women, slaves, and most laborers from the political community – all exclusions thought to be part of the natural conditions of politics in Athens among Aristotle's milieu – just as Frank's 'democracy of distinction' resembles a classic social democracy, but with arguably greater space for cultural diversity and individual achievement: 'one large middle class of many virtuous citizens' (p. 175).



Without a more radical reconsideration of the terms of the debate (Wolin's fugitive democracy), one can at best perfect the terms already given, thus remaining within the constellation of available political possibilities.

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