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Nick Sciuлло

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THE UN-REALITY OF DEMOCRATIC ORDER: AN ALTERNATIVE

NICK J. SCIULLO*

I. INTRODUCTION

While recent events in the United States have cast renewed doubt on the fragile democratic experiment that is this country, the more accurate account of an alternative reality is the idea of democratic order, which has often been described as central to democratic governance. This is the belief that democracy is necessarily ordered, and that order is consistent with democracy. But the existence of this order is dubious at best, and this has been historically true. Indeed, much of what is colloquially described as “American democracy” is deeply flawed.¹ There is no democratic order and never has been. It is not QAnon,² Trump, Fox News, and OAN³ that threaten democratic order, but rather it is the idea that democracy is or ever has been ordered.

If we focus too much on democracy’s perceived benefits and remain convinced that it is the best of all possible options despite wide-ranging

* Assistant Professor of Communications, Texas A&M University – Kingsville. Ph.D., Georgia State University; Grad. Cert., University of Central Florida; M.S., Troy University; J.D., West Virginia University College of Law; B.A., University of Richmond. Thanks to the Editorial Board of the *University of St. Thomas Journal of Law and Public Policy* for hosting the symposium on which this article is based. Thank you to my wife, Melissa C. Villalpando, whose steadfast support of my writing and eccentricities is kind beyond compare. Thank you as well to my father, Rick Sciullo, whose constant ribbing makes me a sharper thinker.

¹ Yoni Appelbaum, *Americans Aren’t Practicing Democracy Anymore*, ATLANTIC (Oct. 2018), <https://www.theatlantic.com/magazine/archive/2018/10/losing-the-democratic-habit/568336/>.

² QAnon is an amorphous conspiracy theory that alleges some group of Satanic, cannibalistic pedophiles lead a global sex-trafficking ring that somehow conspired against Trump. It has been widely discredited but remains popular. Associated Press, *QAnon Moves into the Shadows but Movement Remains Active*, ALJAZEERA (July 9, 2021), <https://www.aljazeera.com/news/2021/7/9/qanon-moves-into-the-shadows-but-movement-remains-active..>

³ One American News Network is a right-wing conservative news network that has been fiercely loyal to Trump and promoted many conspiracy theories believed by his followers. Rachel Abrams, *One America News Network Stays True to Trump*, N.Y. TIMES (Apr. 18, 2021), <https://www.nytimes.com/2021/04/18/business/media/oan-trump.html>.

critiques, then we miss the opportunity to critique democracy and challenge some of our ideas about democracy to promote a better form of democracy. Deluding ourselves about some classical democratic age that we ought to aspire to softens our ability to do the hard critical work needed to build more supportive and participatory schemes of governance. In an era of fake news, deception, post truth, and related concepts, we need to be that much more critical as we are inundated with the uncritical because we are all affected by the deluge of information that makes it more difficult to make sense of the world.⁴ The information age has given us access to so much more information than we could ever process, there is little doubt democracy is constantly struggling to keep up and falls victim to wide-ranging misinformation and disinformation campaigns and conspiracy theories.⁵

Perhaps the best written summary of the dangers of misinformation and disinformation comes from Eric Rosenbach and Katherine Mansted who write:

Democracy is built on the crucial compact that citizens will have access to reliable information and can use that information to participate in government, civic, and corporate decision-making. The technologies of the Information Age were largely built on the assumption that they would strengthen this compact. However, as typified by Russia's ongoing use of information operations against the United States and Europe, key information technologies have evolved quickly over the past five years and been weaponized against democracies. The trajectory of data-driven technologies, including machine learning and other aspects of artificial intelligence, will increase the scale, complexity and effectiveness of adversary information operations. As technology advances, and as geopolitical and ideological tensions between democratic and authoritarian states rise, information operations are likely to become more numerous, insidious, and difficult to detect. Democracy is resilient: few, if any, democracies will crumble under the coming wave of information

⁴ See Eric Emanuelson, Jr., *Fake Left, Fake Right: Promoting an Informed Public in the Era of Alternative Facts*, 70 ADMIN. L. REV. 209, 210-212 (2018).

⁵ See Janna Anderson & Lee Raine, *Concerns About Democracy in the Digital Age*, PEW RES. CTR. (Feb. 21, 2020), <https://www.pewresearch.org/internet/2020/02/21/concerns-about-democracy-in-the-digital-age/>.

warfare. But absent a new national security paradigm and real action, the weaponization of information technologies threatens to jeopardize democracies' ability to govern and protect their national security, and to undermine people's trust in democracy as a system of government.⁶

While these authors leave open the question of what democracy is resilient for or toward what end, the reality of an interconnected world that depends on information to make decisions about everything from who to date to who to start a war with makes information central to functioning government and interpersonal communication. Yet, we do not live in a time where information is ordered nor a time where many people can make sense of the disordered. And, at least several authors are not as positive about democracy's ability to withstand misinformation and disinformation, suggesting that democracy has already succumbed.⁷

Democracy has been wrought with disinformation, conspiracy, propaganda, and discrimination from its beginnings. Even those credited with inspiring democracy from Ancient Greece and Rome have struggled to experience a democratic order. Those times were war-torn, disease-ridden, and deeply divided economically,⁸ politically, and socially. Anti-immigrant sentiment ran rampant.⁹ Women and children had few if any rights.¹⁰ And, despite the common belief that Athens was a direct democracy, not everyone could vote.¹¹ Life was not, as one might say, good for a lot of people.

⁶ Eric Rosenbach & Katherine Mansted, *Can Democracy Survive in the Information Age?*, BELFER CTR. FOR SCI. AND INT'L AFF. (Oct. 2018), <https://www.belfercenter.org/publication/can-democracy-survive-information-age>.

⁷ Sean Illing, "Flood the Zone with Shit": How Misinformation Overwhelmed Our Democracy, VOX (Feb. 6, 2020, 9:27 AM), <https://www.vox.com/policy-and-politics/2020/1/16/20991816/impeachment-trial-trump-bannon-misinformation>.

⁸ Branko Milanovic, Peter H. Lindert, & Jeffrey G. Williamson, *Measuring Ancient Inequality*, WORLD BANK POL'Y RES. WORKING PAPER 4412, 4, (Nov. 2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1033224.

⁹ Rebecca Futo Kennedy, *Rejecting 'Greekness': Classics Athens' Anti-Immigrant Policies and Practices*, CLASSICS AT THE INTERSECTIONS (July 18, 2019), <https://rfkclassics.blogspot.com/2019/07/rejecting-greekness-classics-athens.html>; Nathan Smith, *Metics and Immigration in Ancient Athens*, BREWMINATE (Nov. 6, 2018), <https://brewminate.com/metics-and-immigration-in-ancient-athens/>.

¹⁰ See Zhulduz Amangelidjevna Seitkasimova, *Status of Women in Ancient Greece*, 3 OPEN J. FOR ANTHROPOLOGICAL STUD. 49 (2019).

¹¹ N. S. Gill, *Democracy Then and Now*, THOUGHTCO. (Oct. 25, 2019), <https://www.thoughtco.com/democracy-then-and-now-111997>.

Democracy is not stable. It necessarily entails conflict. Public opinion has turned against democracy in many parts of the world.¹² But, rather than think this is a reason for the rise of the alt-right and extremist politicians, it seems a natural outgrowth of the ebb and flow of political order and the power of the political party of the day. History is replete with movements back and forth on a traditional conservative-liberal political spectrum. The U.S. ebb and flow of Clinton-Bush-Obama-Trump-Biden demonstrates this seemingly natural cycle. But extremism existed long before both the political right and the political left lost faith in the United States government during the Obama and Trump years. Those extremists, conservative in this case, certainly gained power during the Trump years because of his open embrace, but these actors were not a new creation. Various anti-government factions, conservative Christians, militias, and racists existed long before Trump. One might ask, as Adam Gopnik has, “not what causes autocracy (not to mention the conspiratorial thinking that feeds it) but what has ever suspended it.”¹³

Rather than assume or wish for a better democratic world, scholars should double down on democratic disorder to appreciate and improve the tremendously flawed pursuit of democratic order and change course by taking a more radical democratic alternative. Until we free ourselves from the promise of democracy, we will never experience democracy. As Henry Farrell and Bruce Schneier write about the belief that democracy is resilient: “We need new frameworks to understand the limits of this optimistic view.”¹⁴ Too much optimism is, in short, a recipe for disaster.

The weight of democracy’s potential is simply too much. It allows us to wish and dream of a world where we only need to change this one thing, wait for this politician to leave, pass this piece of legislation, or invite this group of people to the policy-making table. Alas, all the democratic dreaming in the world has struggled to produce anything that looks like a government for and by the people. As Admiral James Stavridis notes, “We paint

¹² Yascha Monk & Roberto Stefan Foa, *This is How Democracy Dies*, ATLANTIC (Jan. 29, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/confidence-democracy-lowest-point-record/605686/>.

¹³ Adam Gopnik, *What We Get Wrong About America’s Crisis of Democracy*, NEW YORKER (Dec. 27, 2020), <https://www.newyorker.com/magazine/2021/01/04/what-we-get-wrong-about-americas-crisis-of-democracy>.

¹⁴ Henry Farrell & Bruce Schneier, *Democracys’ Dilemma*, BOSTON REV. (May 15, 2019), <http://bostonreview.net/forum-henry-farrell-bruce-schneier-democracys-dilemma>.

democracy as a utopia, but it is not. It has been called, as Churchill noted, the worst form of government except for all the others—subject to abuse and manipulation and often sclerotic.”¹⁵ This of course does not mean giving up on democracy, and Stavridis certainly concludes with a hopeful vision, but it does mean accepting democracy’s errors.¹⁶ Much of the American democracy Alexis de Tocqueville wrote about simply does not exist anymore.¹⁷ The norms, institutions, and even language of democracy are not what they were 200 years ago.¹⁸ While I would not go so far as to idealize the democratic experiment Tocqueville observed, I do understand why it could be perceived as better than the bumbling democratic lab in which we concoct new, but also nostalgic, serums for democratic order today.

II. AN OPENING CRITICAL GAMBIT

Thus, what I propose is disenchanting our obsession with democratic order through critical theory in order to challenge the faith we have in democracy. This is not intended to suggest democracy is somehow evil or that we ought to move toward a more authoritarian form of government, but rather to suggest that radical critique is necessary to save democracy from itself. Using the work of Jacques Rancière, Ernesto Laclau, Chantal Mouffe, and Slavoj Žižek to theorize a response to Jacques Derrida’s notion of a “democracy to come,” I argue that only when we become radically critical, not necessarily pessimistic, of democracy, can we ever begin to imagine a world built on respect, equality, liberty, and related notions at the heart of democratic theory. We have to learn when to say, “enough is enough,” but not in the way that embraces a Biden-driven return to normalcy, nor in the hagiographic adoration of Alexandria Ocasio-Cortez or Bernie Sanders. To be sure, I believe all of these people are better people, better politicians, and more representative of what many in the United States hope it will be than Donald Trump but being better is not enough.

This then entails accepting that Trump, QAnon, and conspiracy theories are central to democratic order, and in turn that democracy is quite

¹⁵ James Stavridis, *Democracy Isn’t Perfect, But It Will Prevail*, TIME (July 12, 2018), <https://time.com/5336615/democracy-will-prevail/>.

¹⁶ *Id.*

¹⁷ Anne Applebaum & Peter Pomerantsev, *How to Put Out Democracy’s Dumpster Fire*, ATLANTIC (Apr. 2021), <https://www.theatlantic.com/magazine/archive/2021/04/the-internet-doesnt-have-to-be-awful/618079/>.

¹⁸ *Id.*

disordered. Freeing ourselves from liberal and progressive views of a more just world, an optimistic farse, as well as the conservative or Republican mythology of “Make America Great Again,” will lay the foundation for a radical democratic alternative that is responsive to the realities of democracy’s failings and better position us to reckon with democracy’s divisive past and uncertain future.

Democracy has always dealt with misinformation and disinformation. While there has been increased media attention paid to these phenomena during the Trump era,¹⁹ Trump and his supporters did not invent misinformation and disinformation. Politicians and activists of all stripes engage in misinformation and disinformation.²⁰ Disinformation was rampant during the Cold War, often attributed to communists by anti-communists.²¹ Disinformation as propaganda has been practiced by a wide range of countries.²² Companies regularly mislead us about their products and services. And, generalized disbelief in sources or authors to which one is opposed, and parody combine to erode trust in a multitude of information sources.²³ The problem with claims of fake news, propaganda, and bias is that they taint legitimate news sources and obscure facts that should serve as a common place for democratic participation and legislative action.²⁴

Disinformation and misinformation are not United States-only problems. Indeed, the connectedness of countries resulting from technological advances that have produced constant connection through social media have made these problems not only worldwide, but shareable

¹⁹ David O. Klein & Joshua R. Wueller, *Fake News: A Legal Perspective*, 20 J. INTERNET L. 1, 6 (Apr. 2017).

²⁰ See William A. Galston, *The Enduring Vulnerability of Liberal Democracy*, 31 J. DEMOCRACY 8, 8 (July 2020), <https://www.journalofdemocracy.org/articles/the-enduring-vulnerability-of-liberal-democracy/>.

²¹ Jennifer M. Miller, *Democracy and Misinformation: The Cold War and Today*, PERSP. ON HIST. (June 10, 2019), <https://www.historians.org/publications-and-directories/perspectives-on-history/summer-2019/democracy-and-misinformation>.

²² Davey Alba & Adam Satariano, *At Least 70 Countries Have Had Disinformation Campaigns, Study Finds*, N.Y. TIMES (Sept. 26, 2019), <https://www.nytimes.com/2019/09/26/technology/government-disinformation-cyber-troops.html>.

²³ See Klein & Wueller, *supra* note 19, at 6.

²⁴ *Id.* at 12.

worldwide.²⁵ Yet, social media is not the reason for disinformation nor polarization, even if it does exacerbate these problems.²⁶ Some authors suggest the greatest vision of democracy is demanding digital media “address manipulation and abuse on their platforms,”²⁷ but such hopeful calls seem at one level at odds with democracy (isn't the ability to spread misinformation and disinformation part of democratic communication even if it produces disastrous results?) and at another all solution with no plan nor enforcement mechanism.

Disinformation is different from misinformation. Disinformation is “false or inaccurate or misleading information spread with a willful intent to deceive.”²⁸ Misinformation is “false or inaccurate or misleading information that has spread for any number of purposes.”²⁹ These two concepts are similar, and related, but not the same. Both pose a threat to democracy. Primarily, they both hinder the formation of an informed public, which is a cornerstone of democracy.³⁰ Although, since misinformation and disinformation have been with us for so long, and we continue to discuss democracy as if it exists, one wonders if an informed public, whatever that might mean, is crucial for what democracy pundits consider democracy.

These attempts at distorting facts and logic, no matter their source, create behavior that damages our relationships with each other.³¹ The harms include violence, refusal to think critically, and overt and covert bias.³² It is, thus, difficult to maintain a democracy under such conditions, no matter how imperfect that democracy might be. Particularly alarming is that the effect of

²⁵ Terry Lee, *The Global Rise of “Fake News” and the Threat to Democratic Elections in the USA*, 22 PUB. ADMIN. AND POL'Y: AN ASIA-PACIFIC J. 15, 15-18 (2019).

²⁶ Nicholas Thompson, *Why Are We Polarized? Don't Blame Social Media*, Says Ezra Klein, WIRED (Feb. 13, 2020), <https://www.wired.com/story/why-are-we-polarized-dont-blame-social-media-ezra-klein/>.

²⁷ Robert Faris & Joan Donovan, *The Future of Platform Power: Quarantining Misinformation*, 32 J. DEMOCRACY 152, 156 (July 2021), <https://www.journalofdemocracy.org/articles/the-future-of-platform-power-quarantining-misinformation/>.

²⁸ Madison Arnold, *Disinformation and Democracy: A Q&A with Scott Ruston*, ARIZ. STATE KNOWLEDGE ENTERPRISE (June 26, 2020), <https://research.asu.edu/Disinformation-democracy-QA-Scott-Ruston>.

²⁹ *Id.*

³⁰ *Id.*

³¹ Samantha Hay, *“Alternative Facts” and Hate: Regulating Conspiracy Theories that Take the Form of Hateful Falsity*, 29 SO. CAL. INTERDISC. L.J. 659, 660 (2020).

³² *Id.*

fake news, alternative facts, and conspiracy theories, is that once one believes them one becomes more likely to believe others.³³ So whatever democracy we have, or we think is resilient, is struggling at best.

Some prominent critical theorists offer guidance on the fragility of democracy. This guidance will be counterintuitive to many, but it is nonetheless helpful for understanding the more radical and revolutionary course I am suggesting. These theorists come from a variety of traditions and owe their critiques to a range of theories that can be described as Marxist, Hegelian, psychoanalytic, phenomenological, socialist, and more. The goal is not to propose one set of solutions nor frame a correct theoretical path, but rather to expose the wide-ranging intellectual tools available to those who take democracy seriously enough to be broadly critical of it.

III. JACQUES RANCIÈRE

Rancière's critique of democracy emphasizes the likely continued existence of political institutions, while also focusing concern on the ways we misapply the label democracy to a range of governmental practices that are representative and not democratic.³⁴ That is, just because something is representative does not mean it is democratic, and we often apply the label *democratic* to things that are merely *representative*. He says in an interview translated in 2019:

Those who warn us about the 'fragility of democratic institutions' deliberately contribute to the confusion that weakens the democratic idea. Our institutions are not democratic. They are representative, therefore oligarchic.

...

To speak of the threats to 'our democracies' then has a very specific meaning: it means blaming the democratic idea for the instability of the representative system, saying that if this system is threatened, it is because it is too democratic, too subject to the uncontrolled instincts of the ignorant mass.³⁵

All this talk about democracy may be well-meaning, but it is also wrong. It misses the point of democracy and mischaracterizes it. Of course, this is not the nail in the coffin for politics or democracy. We confuse terms all the time.

³³ *Id.* at 664.

³⁴ Jacques Rancière, *Jacques Rancière: The Crisis of Democracy*, VERSOBOOKS (Dec. 2, 2019), <https://www.versobooks.com/blogs/4576-jacques-ranciere-the-crisis-of-democracy>.

³⁵ *Id.*

But Rancière's point is important. The problem is that we fail to understand democracy, and then suffer politically and philosophically as a result. If we continue to call things *democratic* and a *democracy* that are not, our ability to be democratic is threatened.

The threat is not a democracy that is too democratic, and we must then fear whatever populism *de jure* rules the day, but rather that democracy is not democratic enough. Not all forms of representative government are democratic. Perhaps, then, critics of democracy are merely critics of representative governments masquerading as democracies. Of course, now we have a fear of too much democracy on the political right and the left in the United States, while at the same time claiming that democracy in the United States is dead. It is interesting how fickle we are about democracy depending on who is promoting it. There is always a good democracy, a bad democracy, and my democracy. It seems we have too much democracy when someone's noise becomes a discourse that we do not like, to read Rancière again.³⁶ Rancière writes:

Political activity is whatever shifts a body from the place assigned to it It makes visible what had no business being seen, and makes heard a discourse where once there was only place for noise; it makes understood as discourse what was once only heard as noise.³⁷

It is funny though how we are fearful of democracy when those we dislike are claiming it. It seems not at all to be the participatory marketplace of ideas that is central to democracy. We want a market that sells our democracy. That is not to argue that we should not be enraged by the rise of white supremacy, anti-LGBTQ violence, Islamophobia, and anti-blackness. Indeed, we must be enraged. Yet, these commentators, troublemakers, hate-filled political hacks, and violent individuals and groups thrive because of the democracy we claim can work. In order to challenge these violent discourses, we must perhaps be less democratic, which in cyclical fashion is perhaps the most democratic thing we can do. I run the risk of falling into Rancière's trap, however. He writes:

We are accustomed to hearing that democracy is the worst of governments with the exception of all the others. But the new antidemocratic sentiment gives the general formula a

³⁶ JACQUES RANCIÈRE, *DIS-AGREEMENT: POLITICS AND PHILOSOPHY* 29-30 (1999).

³⁷ *Id.* at 30.

more troubling expression. Democratic government, it says, is bad when it is allowed to be corrupted by democratic society, which wants for everyone to be equal and for all differences to be respected. It is good, on the other hand, when it rallies individuals enfeebled by democratic society to the vitality of war in order to defend the values of civilization, the values pertaining to the clash of civilizations. The thesis of the new hatred of democracy can be succinctly put: there is only one good democracy, the one that represses the catastrophe of democratic civilization.³⁸

I do not want to be a doom and gloom anti-democratic messenger that falls into the conservative foolishness of not wanting certain people to participate in politics nor the liberal foolishness that worships at the altar of a democratic society that does not exist nor that we can even imagine. It does not help efforts for equality, participation, rights-promotion, and the like to go to the uncritical extremes. Thinking about democracy is indeed laudable, and extreme criticism can have beneficial impacts like progressive criticism of the Democratic Party in the United States.³⁹ But extremism threatens democracy especially in a diverse, multicultural world increasingly connected economically, technologically, and communicatively.⁴⁰

Ranciere's point is that there is a danger in both being uncritically critical and that believing that democracy should be critiqued in order to

³⁸ JACQUES RANCIÈRE, *HATRED OF DEMOCRACY* 4 (2005).

³⁹ See Danielle Kurtzleben, *More and More Democrats Embrace the 'Progressive' Label. Here's Why*, NPR (Sept. 13, 2021), <https://www.npr.org/2021/09/13/1035971261/more-and-more-democrats-embrace-the-progressive-label-heres-why>;

Leah Greenberg & Ezra Levin, *House Progressives Are Building Something New, Exciting, and Powerful*, ROLL CALL (Nov. 20, 2020), <https://www.rollcall.com/2020/11/20/house-progressives-are-building-something-new-exciting-and-powerful/>;

Letitia Stein, Susan Cornwell, & Joseph Tanfani, *Inside the progressive movement roiling the Democratic Party*, REUTERS (Aug. 23, 2018), <https://www.reuters.com/article/us-usa-election-progressives-specialrepo/inside-the-progressive-movement-roiling-the-democratic-party-idUSKCN1L81GI>;

John F. Kowal, *When Will Progressives Make Democracy Reform a Top Priority?*, BRENNAN CENTER (Nov. 11, 2016), <https://www.brennancenter.org/our-work/analysis-opinion/when-will-progressives-make-democracy-reform-top-priority>.

⁴⁰ Jennifer Lynn McCoy, *Extreme Political Polarization Weakens Democracy – Can the US Avoid That Fate?*, CONVERSATION (Oct. 31, 2018), <https://theconversation.com/extreme-political-polarization-weakens-democracy-can-the-us-avoid-that-fate-105540>.

check some as yet unknown catastrophe. Criticism must have a point, and that point is neither recklessly abandoning what we have good reason to think is a good option nor critiquing for the mere purpose of critiquing. In order to build a democratic vision, we must neither condemn democracy to the trash bin of history nor accept that democracy will inevitably come and be wonderful.

IV. ERNESTO LACLAU AND CHANTEL MOUFFE

Laclau and Mouffe are widely credited with advancing a radical democracy built on multicultural participation, yet even they too find fault in democracy.⁴¹ Even as they may aspire to a radical democracy that lives up to its emphasis on the *demos*, they realize the democracy that pundits and politicians claim does not exist now. People are not nearly as involved in democracy as they would like, thus their call for radical democracy. This is an important reminder for activists who must acknowledge diverse democratic struggles if they are ever to experience democracy. A democracy where only one movement succeeds or is acknowledged can never enable a broad notion of the *demos* necessary for a democracy. Thus, hope for democracy only makes sense, and is only likely to produce democracy, if social groups can articulate their demands in a multicultural world. Laclau also argues that movements cannot forget the economy, and that a social movement that has forgotten economic concerns is unlikely to be successful, and potentially not even democratic.⁴²

Laclau and Mouffe's stress on the importance of antagonism also relays a much more important point about democracy—that for it to exist we must invite antagonism. The idea of a utopian pluralistic society is not democratic because it inevitably entails denying the conflicts between groups and the varied and competing structures of power and ideologies that conflict with each other. We cannot wish away this struggle nor argue that all we need is harmony and understanding because democracy does not function that way. As Mouffe writes:

⁴¹ See generally ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY AND SOCIALIST STRATEGY: TOWARDS A RADICAL DEMOCRATIC POLITICS* (2nd ed. 2001) (arguing that democracy exists when multiple and sometimes conflicting democratic movements challenge traditional liberal notions of democracy and political order).

⁴² Lincoln Dahlberg, *Radical Democracy in Contemporary Times*, E-INT'L REL. (Feb. 26, 2013), <https://www.e-ir.info/2013/02/26/radical-democracy-in-contemporary-times/>.

When the shortcomings of liberal theory are taken into account we can understand why, in order to understand the nature of democratic politics and the challenge to which it is confronted, we need an alternative to the two main approaches in democratic political theory—the aggregative and the deliberative ones—because neither of them acknowledges the antagonistic dimension of the political.⁴³

A problem for democratic theory, or at least that of the optimistic or utopian type, is that it does not acknowledge antagonism. I do not think this is particularly revelatory, but it does help us understand the dangers of wishful thinking. Often the democracies we imagine are conflict free, and all groups are magically accounted for, appreciated, and engaged. Anne Marie Smith argues that Laclau and Mouffe are opposed to the version of democratic thinking that imagines identity-based politics as simply a “seamless progression towards liberal democracy’s triumphant resolution of political conflict.”⁴⁴ This is, of course, because political and social conflict are part of democracy. And it is also true that we cannot hope every new movement for rights and recognition will necessarily entail some democratic promise as we have noted with struggles after the Arab Spring and with Occupy Wall Street’s mixed results. There is a blunt and simplified way to imagine what Laclau and Mouffe are getting at—there is no need for an idealized democracy because that idealization is not at all democratic.

History knows of no such democracy, and the belief in this democracy seems to be a belief in the democracy Laclau and Mouffe do not envision. It is in no way radical as the democracies we are experiencing at present are not the democracies Laclau and Mouffe envision. As Anne Marie Smith writes, “Laclau and Mouffe’s texts should be read as political theory—as an intervention in concrete historical conditions rather than an abstract exercise.”⁴⁵ This necessarily puts Laclau and Mouffe in opposition to abstraction. And, as discussed below, Derrida’s abstraction is simply too obscure and too optimistic to be radically democratic.⁴⁶ When we ignore

⁴³ Chantal Mouffe, *Democratic Politics and Conflict: An Agonistic Approach*, 9 POLITICA COMUN (2016), <https://quod.lib.umich.edu/p/pc/12322227.0009.011?view=text;rgn=main>.

⁴⁴ ANNE MARIE SMITH, LACLAU AND MOUFFE: THE RADICAL DEMOCRATIC IMAGINARY I (1998).

⁴⁵ *Id.*

⁴⁶ See *infra* notes 64-74.

antagonism, the inevitable clash of ideas, values, priorities, and policies, we deny the very nature of democracy.

V. SLAVOJ ŽIŽEK

Slavoj Žižek is everyone's favorite least-favorite cultural critic,⁴⁷ a contrarian to his core, he has built a career critiquing leftist politics around the world for their often-conservative political nature.⁴⁸ His wide-ranging books and articles demand a sincere reckoning with the dangers of liberal thought in the modern world.⁴⁹ Pursuing lines of thinking that range from Marxist to Hegelian, psychoanalytic to just provocative, Žižek's central role in critique has made him a force to be reckoned with even as criticism against him has mounted for what many term severe missteps in his critical approach.⁵⁰ He has also increasingly been used in legal analysis.⁵¹

Although my personal interests in Žižek's Marxist-Hegelian-Lacanian web of thought are strong, I want to focus on his critique of democracy, and how we might use it to (re)invigorate a much better discussion of democracy's flaws in order to appreciate democracy all that much more. One of Žižek's central claims is that appeals to the political sphere ignore Marx's focus on social relations, which are where a democratic moment could arise. Žižek writes:

Here, Marx's key insight remains as pertinent today as it ever was: the question of freedom should not be located primarily in the political sphere – i.e. in such things as free elections, an independent judiciary, a free press, respect for

⁴⁷ See e.g., Katie Engelhart, *Slavoj Žižek: I am not the World's Hippest Philosopher!*, SALON (Dec. 29, 2012), https://www.salon.com/2012/12/29/slavoj_zizek_i_am_not_the_worlds_hippest_philosopher/.

⁴⁸ Cindy Zeiher, *And What of the Left? Žižek's Refusal of the Current Leftist Parable*, 10 INT'L. J. ZIZEK STUD. 1, 1-2 (2016); Marcus Browne, *Slavoj Žižek: 'Trump is Really a Centrist Liberal'*, GUARDIAN (Apr. 28, 2016), <https://www.theguardian.com/books/2016/apr/28/slavoj-zizek-donald-trump-is-really-a-centrist-liberal>.

⁴⁹ Michael Schulson, *Slavoj Žižek on Obama, Bernie, Sex and Democracy*, SALON (Oct. 11, 2015), https://www.salon.com/2015/10/11/slavoj_zizek_on_obama_bernies_sex_and_democracy_thats_the_reality_of_global_capitalism_everyone_is_violating_the_rules/.

⁵⁰ Conrad Hamilton & Matt McManus, *In Defense of Slavoj Žižek*, JACOBIN (June 11, 2021), <https://www.jacobinmag.com/2021/06/slavoj-zizek-leftist-philosophy-ideology-postmodernism-neoliberalism>.

⁵¹ See Nick J. Sciallo, *Zizek/Questions/Failing*, 47 WILLAMETTE L. REV. 101 (2011); Ben Wardle, *Legal Facades*, 25 GRIFFITH L. REV. 525 (2016).

human rights. Real freedom resides in the ‘apolitical’ network of social relations, from the market to the family, where the change needed in order to make improvements is not political reform, but a change in the social relations of production.⁵²

If we depend too much on the promise of democracy, we will simply reproduce the inevitable inequality of democratic governance. This cannot be so. We must orient ourselves to a change in social relations, and those changes include the appreciation of each other as thinking and sometimes unthinking people in a system that seeks to divide us. Democracy simply cannot free us from democracy. Žižek argues:

[B]ut it must be borne in mind that democratic mechanisms are part of a bourgeois-state apparatus that is designed to ensure the undisturbed functioning of capitalist reproduction. Badiou was right to say that the name of the ultimate enemy today is not capitalism, empire, exploitation or anything of the kind, but democracy: it is the ‘democratic illusion’, the acceptance of democratic mechanisms as the only legitimate means of change, which prevents a genuine transformation in capitalist relations.⁵³

In a world of rampant global capitalism that functions on a supranational level, democracy will fail because it is both unable to address capitalist inequalities and open to cooption by “rightest populism.”⁵⁴ Democracy and capitalism are inextricably linked in our times, and a crisis in one entails a crisis in the other.⁵⁵ The goal should be to make democracy “not just a ritual of legitimizing decisions made elsewhere.”⁵⁶ Yet, in ritualizing democracy we foreclose democracy’s potential. While it is easy to dismiss Žižek as an anti-democratic leftist totalitarian, his position is rather that we need to be more radical if we are to achieve and benefit from democracy,⁵⁷ which is why being critical of democracy is so important. As Cindy Zeiher writes:

⁵² Slavoj Žižek, *Democracy is the Enemy*, LONDON REVIEW OF BOOKS (Oct. 28, 2011), <https://www.lrb.co.uk/blog/2011/october/democracy-is-the-enemy>.

⁵³ *Id.*

⁵⁴ Slavoj Žižek, *Democracy’s Fascism Problem*, IN THESE TIMES (Apr. 29, 2016), <https://inthesetimes.com/article/slavoj-zizek-democracys-fascism-problem>.

⁵⁵ Slavoj Žižek, *The West’s Crisis is One of Democracy as Much as Finance*, GUARDIAN (Jan. 16, 2013), <https://www.theguardian.com/commentisfree/2013/jan/16/west-crisis-democracy-finance-spirit-dictators>.

⁵⁶ See Žižek, *supra* note 54.

⁵⁷ *Id.*

He also frames anti-racism, gay rights and multiculturalism as being within capitalism's insidious and systematic appropriation of postmodern relativism. For Žižek, these kinds of movements merely set up a false notion of democracy that urges the subject to imagine that democracy in its fullest expression, will somehow one day eventuate under capitalism and that in the meantime, we simply need to be patient and implement these tolerances, until democracy and capitalism find equilibrium and mature in a seamless marriage. For Žižek and many of the Left this is nothing more than an emanation from the capitalist propaganda machine.⁵⁸

When we discuss changes in media literacy, changes in electoral politics, changes in education, and access to legal rights, we are certainly discussing important issues that have their benefits, and Žižek agrees,⁵⁹ but we remain trapped in the political apparatus that got us here. Democracy has not stopped disinformation and misinformation, it has not continuously protected the rights of marginalized people, it has not produced fair and accessible participation in government, and it has not promoted a critically thinking public sphere. Anti-communist propaganda and the Voice of America are two sides of the same coin. No matter how one flips it, the United States remains built on its assertion of continuity and democratic promise. The appeals to democracy implicitly accept that democracy has something to offer, and that this offer is available to all, actualizable, and productive. But this returns us to democracy yet again. Democracy is Fox News and MSNBC, OAN, *Dissent Magazine*, QAnon, 4Chan, Breitbart, and *The Nation*. Unfortunately, leftists and rightists exist in democracies seemingly inevitably.

While calls of fake news have resounded more during the Trump Era,⁶⁰ people have been critical of media bias for decades if not centuries.

⁵⁸ See Zeiher, *supra* note 48, at 2.

⁵⁹ See Žižek, *supra* note 52.

⁶⁰ Alex Woodward, "Fake News": A Guide to Trump's Favourite Phrase – and the Dangers it Obscures, INDEPENDENT (Oct. 2, 2020), <https://www.independent.co.uk/news/world/americas/us-election/trump-fake-news-counter-history-b732873.html>.

Indeed, there is nothing new about claims of fake news.⁶¹ Charlatans and scam-artists, flim-flam men and hucksters have sold us illegal and unhelpful medicines, promised us a chance to view unicorns and four-headed seals, and assured us that our money would double in as little as six months. Žižek of course cites the proliferation of conspiracy theories as both a threat to any sense of democracy and an indication that democracy is doing exactly what we intend it to do.⁶²

Žižek is the most directly confrontational critic of democracy, and although his arguments are at times hyperbolic, and his jokes at times border on indecency, we must take seriously the threats democracy raises if we are to be more democratic. Democracy's main purpose is sustaining democracy, or as Alain Badiou puts it, "If democracy is a representation, it first of all represents the general system, which sustains its form. In other words, electoral democracy is only representative insofar as it is first the consensual representation of capitalism, which is today renamed 'market economy.'"⁶³

Beholden to itself, in a self-referential tautological affirmation, democracy is nothing more than the existence of the democratic form. That seems neither representational nor radical, and as such democracy's relationship to the *demos* in modern times seems questionable at best. Democracy is not the solution to alternative facts and conspiracy theories—it is the precondition for them.

VI. JACQUES DERRIDA

Derrida's conception of a democracy to come is perhaps the most important concept in his later work.⁶⁴ For Derrida, democracy to come represents the unknowable potential of democracy.⁶⁵ It is not, according to some sort of Hegelian or Marxist notion of dialectical history, what is

⁶¹ Jackie Mansky, *The Age-Old Problem of "Fake News"*, SMITHSONIAN MAG. (May 7, 2018), <https://www.smithsonianmag.com/history/age-old-problem-fake-news-180968945/>; Peter S. Field, *Fake News was a Thing Long Before Donald Trump – Just Ask the Ancient Greeks*, CONVERSATION (Feb. 25, 2021), <https://theconversation.com/fake-news-was-a-thing-long-before-donald-trump-just-ask-the-ancient-greeks-155867>.

⁶² Slavoj Žižek, *The Limits of Liberal Democracy*, PHIL. SALON (Oct. 26, 2020), <https://thephilosophicalsalon.com/the-limits-of-liberal-democracy/>.

⁶³ Alain Badiou, *De Quoi Sarkozy est-il le Nom?*, Paris: Editions Lignes 42 (2007).

⁶⁴ Daniel Matthews, *The Democracy to Come: Notes on the Thought of Jacques Derrida*, CRITICAL LEGAL THINKING (Apr. 16, 2013), <https://criticallegalthinking.com/2013/04/16/the-democracy-to-come-notes-on-the-thought-of-jacques-derrida/>.

⁶⁵ *Id.*

inevitable by the mere progression of history, but precisely the unpredictable potential of a system that is constantly in conflict.⁶⁶ Democracy does not so much promise a new set of political relations as it rather leaves open the possibility of an as yet unrealized new political order. This seems to be in keeping with the critical positions I have outlined above, but that is not so as the remainder of this section lays out.

Derrida differentiates between the future and that which is to come.⁶⁷ The future is knowable and determined.⁶⁸ That which is to come is not. Derrida here seems right to notice a difference. We do work hard to program our future, to make sure the future delivers to us precisely what we want. The future always has a result or results. Something always happens in the future. But a democracy to come is not predictable nor programable. Matthias Fritsch argues:

For Derrida not only affirms the absence of a pre-given (natural, theological, or transcendental-pragmatic, procedural) universality of norms that could support democracy. He suggests that the affirmation of a radically open future – a future that undermines metaphysical foundations – entails its own intrinsic normativity, a normativity that is helpful in reconceiving democracy.⁶⁹

The question remains, however, does Derrida's hopeful note make sense given the constant conflict he understands in democracy? Here we must put Derrida to the task of both understanding what democracy is and is not, as well as what may result from a democracy to come that might appear nothing like the democracy we hoped would come. Rather than read the future onto the coming, I suggest we take a critical stance against the hopeful vision of a democracy to come. Derrida acknowledges reasons to do this, yet he still seems hopeful despite democracy being "riven by tensions and contradictions."⁷⁰

To critique Derrida's notion of democracy to come is in many ways a fulfillment of his democratic vision that democracy is always open to

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Matthias Fritsch, *Derrida's Democracy to Come*, 9 *CONSTELLATIONS* 574, 574 (2002).

⁷⁰ Paul Patton, *Derrida, Politics and Democracy to Come*, 2 *PHIL. COMPASS* 766, 772 (2007).

critique and never closed.⁷¹ Critique is necessary for democracy, yet critique is difficult in Derrida's world of democratic waiting. If we are always waiting for democracy, we may always be waiting for critique.

This is not a blanket rejection of hope, which I have written elsewhere can be a powerful political strategy.⁷² Rather, I have in mind a critique of Derrida's non-normative commitments, which seem to leave open a democracy that is no democracy. Derrida's failure to elaborate on what his democracy is committed to opens up the possibility of a transition to a non-democratic order that is likely no better than the democratic disorder we are in.⁷³ Such a commitment, then, leaves open a possibility for real harm that Derrida casually avoids in his non-normative hope. Indeed, for democracy to work, we likely need some normative set of beliefs in those ideas and practices democracy's supporters claim are necessary to its success.⁷⁴

Derrida does not make clear how the democracy to come ever manages to break free from the democracy of the present. This of course seems to support his distinction between future and that which is to come, and here Derrida is being sly. He cannot tell us much about the democracy to come because that would make it the present-future democracy that is riddled with inadequacies. The radical democracy Derrida envisions would become nothing more than the democracy he critiques.

The more radical critiques presented by Rancière, Laclau and Mouffe, and Žižek take seriously the inadequacy of democracy, and provide a necessary critique and warning for the democracy I understand Derrida articulating (or failing to articulate). We should be guided by them as we resist being awash in democratic potentialities.

Derrida's democracy is simply too dangerous, too utopian, and too promising. While it may be easy to support some of his interest in a better world, and political possibilities that are as yet unknown, but somehow more inclusive, equal, and fair, to do so prevents the necessary critical perspective to assure his political hope. We need to caution ourselves against the best of our desires.

⁷¹ Daniel Friedrich, Bryn Jaastad, & Thomas S. Popkewitz, *Democratic Education: An (Im)possibility that Yet Remains to Come*, 42 EDUC. PHIL. & THEORY 571, 582 (2010).

⁷² Nick J. Sciallo, *Atlantean Prose and the Search for Democracy*, 2 CRIT: A CRITICAL L. STUD. J. 130 (2009).

⁷³ See Fritsch, *supra* note 69, at 593.

⁷⁴ *Id.* at 592.

VII. SOME PRACTICAL STRATEGIES FOR OUR UN-DEMOCRACY

There are several practical ways we can be mindful of disinformation and misinformation, which encompass discussions of everything from national elections to abortion to climate change.⁷⁵ Indeed, they have both been with us so long, that we are no doubt used to them, and there is a good chance many of us are using strategies to fight back against them. Regardless of what democracy any of us has in mind, we need to think critically about the world around us. To truly resist democratic disorder, we have to stop fretting about order and start getting into our disorder.

Ruston argues that there are five strategies to avoid being deceived: “read widely, determine whether an article is news or opinion, be attentive to time, confirm information with another source, and pay attention to your emotions.”⁷⁶ These are not difficult, but any conversation with one’s relatives, students, or colleagues demonstrates that as much as many of us are engaged in these practices and thinking about these ideas, many are not. Education can help us if we are willing to do the work.⁷⁷ Indeed, people can be taught to recognize disinformation if they are given the resources and strategies to do so.⁷⁸

This is relevant to law students, legal practitioners, and legal scholars as well.⁷⁹ Many will often be asked to present versions of facts in and out of court, assess logical reasoning, serve as expert witnesses, advance certain policy objectives, and even occasionally communicate all of this with the public at large. As Martin Dell writes:

Law schools have a mandate to graduate law students who are effective, ethical, and responsible members of the legal profession. The “practice-ready” law school graduate is not completely educated if he or she lacks the essential critical thinking skills necessary to problem-solve and

⁷⁵ Allison Orr Larsen, *Constitutional Law in an Age of Alternative Facts*, 93 N.Y.U. L. REV. 175, 177-178 (2018).

⁷⁶ See Arnold, *supra* note 28.

⁷⁷ Cynthia Miller-Idriss, *QAnon Moves from Pro-Trump Rallies to Local Schools*, MSNBC (July 10, 2021), <https://www.msnbc.com/opinion/qanon-moves-pro-trump-rallies-local-schools-n1273616>.

⁷⁸ Beth Goldberg, *Psychological Inoculation: New Techniques for Fighting Online Extremism*, MEDIUM (June 24, 2021), <https://medium.com/jigsaw/psychological-inoculation-new-techniques-for-fighting-online-extremism-b156e439af23>.

⁷⁹ Martin Dell, *Fake News, Alternative Facts, and Disinformation: The Importance of Teaching Media Literacy to Law Students*, 35 TOURO L. REV. 619, 621-623 (2019).

research as a media savvy student. Only when including media literacy education in their programs will law schools fully discharge their obligations to their students and the legal profession under ABA Chapter 3 and truly prepare their students to be members of the legal community.⁸⁰

With increased attention being paid to misinformation and disinformation, even if the phenomena are not new, legal workers must be able to research, advocate, and write ethically, even if there is a temptation to not do so. It would be virtually impossible to have effective lawyers and even legal scholars without some critical orientation to media. Regardless of what one thinks of democracy, although this article implicitly contends that the obsession with an idealized democracy enables misinformation and disinformation, we must teach legal workers to consume media critically.

Reading widely is one of the easiest ways to check understanding and have a broad base of knowledge against which to compare new information. The smartest people I know are voracious readers. They read books and articles. They read fiction and non-fiction. They read across disciplines. They read new authors. They rely on a diversity of websites. They read people with whom they are likely to disagree.

Ruston's other tips all urge us to think critically, to weigh evidence, to challenge our beliefs, and to confirm our information with other sources. These are the basic ways we teach critical thinking in universities across the country. Yet, we also have to accept that this is the world we live in, and that only when we challenge the norms of democratic order, and the inherent logic of democracy, its beneficial sharing and exchange of information, and its supposed embrace of our critical faculties, can we begin to do Ruston's work. In this way, Ruston's practical approach is fairly consistent with the critical democratic approaches of the theorists discussed in this article.

Ruston's last piece of advice is not anti-emotion, but rather advice to consider how our emotions impact our ability to engage in democratic practices and question democracy. If we demonize half the world, then we cannot get anywhere because the world will simply become a constant battle of *us* versus *them*. While that has a ring of virtue associated with Laclau and Mouffe's antagonistic understanding of democracy, constantly casting the "other" as the "Other" risks inevitable theoretical gridlock. Demonization is not a process only one political party engages in, and in times of political

⁸⁰ *Id.* at 647-648.

polarization there has been an uptick in this type of behavior.⁸¹ There are a litany of reasons why these divides occur, and a number of distinct harms they cause.⁸² These harms include “segregation in our communities, antagonism, increased hate, more difficulties with our families, a less altruistic way of being, physical health issues, increased stress, pressure to conform, increased deception, damaged government institutions, negative economic impacts, a lack of trust in government, trouble coming together to solve problems, and increased violence.”⁸³ If we keep waiting for a democracy to come, we are likely to miss our ability to engage the world critically and challenge the harms that presently face us. Democratic dreaming is inconsistent both with theoretical critiques of democracy and with the practical advice offered to challenge the misinformation and disinformation in our current political environment. Polarization is a result of an uncritical attitude toward democracy even as it may recognize critiques of democracy.

Polarization is fixable, however.⁸⁴ We should call out ridiculous actions. Nothing about critiquing polarization prevents us from critically analyzing the arguments people make. Kwame Anthony Appiah discusses this regularly in his writings and talks on cosmopolitanism.⁸⁵ The point is not everyone is right, but that we have to engage people and take them seriously if we want to tell them they are wrong. And, we have to appreciate different ways of doing good in the world. If something promotes some notion of the good, we should allow that even if it’s not the way we would do it ourselves or our culture would. Yet, without critiquing democracy we will lack the wherewithal to challenge polarization, misinformation, and disinformation.

⁸¹ Christie Aschwanden, *Why Hatred and ‘Othering’ of Political foes Has Spiked to Extreme Levels*, SCI. AM. (Oct. 29, 2020), <https://www.scientificamerican.com/article/why-hatred-and-othering-of-political-foes-has-spiked-to-extreme-levels/>.

⁸² Zaid Jilani & Jeremy Adam Smith, *What Is the True Cost of Polarization in America?*, GREATER GOOD MAG. (Mar. 4, 2019), https://greatergood.berkeley.edu/article/item/what_is_the_true_cost_of_polarization_in_america.

⁸³ *Id.*

⁸⁴ Rachel Kleinfeld & Aaron Sobel, *7 Ideas to Reduce Political Polarization. And save America from Itself*, USA TODAY (July 23, 2020), <https://www.usatoday.com/story/opinion/2020/07/23/political-polarization-dangerous-america-heres-how-fight-column/5477711002/>.

⁸⁵ *See generally* EXAMINED LIFE (Sphinx Productions 2008) (Astra Taylor interviewing Kwame Anthony Appiah about cosmopolitanism).

VIII. CONCLUSION

In order to address the antagonisms in political life, we must call into question its foundational elements. This is counterintuitive advice, but if we continue to worship at the altar of democracy then we risk constant disappointment, stress, violence, and conflict at the local, national, and international level. If we reframe our understanding of democracy so that we recognize its flaws, its atrocities, or at least its imperfections, then we will be in a better place to judge the reality in which we live, and act in ways that value each other, and reject violence, discrimination, exclusion, and totalitarianism. We also will have the practical skills necessary to manage our day-to-day experiences with misinformation and disinformation that demand critical insight.

We do not need to believe democracy can solve all our problems to have a democratic vision. We also need not believe in democracy as a cure-all for our political woes. Hoping for some democracy to come risks accepting the evils in our present world. We risk becoming distracted by what we imagine democracy could be so that we allow atrocities to exist as simply a stumbling block on the way to democracy. Democratic dreaming does not provide the political foundation for addressing democracy's problems in the present.

It is better to say "no" to democracy, or at least its idealized utopia and mythic status as the best possible form of government, so that we can actually act democratically and have a democracy in the Derridean future.