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Robert Cover as a Radical Democrat

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Abstract

The political philosophy of radical democracy has made innumerable invaluable contributions to theories of democracy. However, while radical democrats tend to focus on the political, a cogent and comprehensive framework of law appropriate to radical democracy has only recently been begun to be developed. Interpreting the vast tradition of radical democracy to be based at least on the fundamental tenets of radical equality, anti-foundationalism, and to a lesser extent conflict, this paper argues that the oft-forgotten work of the American legal philosopher Robert Cover may provide critical resources for a radical democratic theory of law. According to Cover, every agent living under law is embedded, or embeds themselves, within a nomos or normative universe. From this nomos legal texts become imbued with widely different meanings, many of which will be mutually incompatible. Cover's legal anarchism, moreover, gives way to the argument that no agent or institution has a particularly privileged view of the 'correct' law. Accordingly, every legal texts gives rise to a proliferation of normative universes which due to their mutual incompatibility will eventually come into conflict with one another. This paper shows that Cover's normative commitments are highly congruent with those professed by many radical democrats, and that therefore Cover's legal philosophy furnishes a fruitful basis on which to further theorise a framework of radical democratic or agonistic law that incorporates struggle while remaining committed to equality and disavowing of any determinate foundations.

Keywords Radical democracy · Robert Cover · Agonism · Law and democracy · Nomos

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Introduction

Emerging partially out of a critique of liberal democratic theory and of legalistic formalism and committed to radical equality, radical democratic theory seems to have a natural affinity with critical legal theory. Notwithstanding, radical democratic theory has tended to focus more on politics than on law. While this is perhaps unsurprising given its emphasis on the fact that the political is more pervasive than, for instance, liberal democrats would have us believe, radical democracy would nonetheless benefit from a more systematic incorporation of (critical) legal theory into its philosophical framework.

Moreover, the normative affinities between radical democracy and critical legal theory become even clearer if it is considered that both bodies of theory draw heavily from similar sets of philosophical foundations. For example, different and varied incarnations of critical and radical democratic theory have variously informed critiques of state sovereignty and the law's complicity therein Agamben 1995; Benjamin 1978; Derrida 1992; Glendinning 2016; Loick 2019; Wall 2012), functioned as the basis for critiques of human rights (Boonen 2019; Marx 1994; McLoughlin 2016) or, to the contrary, for the latter's reappraisal as fundamental democratic resources (Eristavi 2020; Honig 2009; Ingram 2006; Lefort 1988; Rancière 2004). These traditions have in common a critique of ostensibly fixed principles of legitimacy in favour of a more democratic and politicised understanding of the way in which authority and legitimacy are constructed. However, a framework for what a systematic theory of *law* appropriate to these radical democratic theories would look like has only recently been begun to be developed (Mańko 2021).

This paper seeks to contribute to the further incorporation of (critical) legal theory into the philosophical framework of radical democracy. More specifically, in this paper I argue that the understudied work of the late Robert Cover may prove to be a valuable resource to analyse, descriptively as well as prescriptively, the intersections between law and radical democratic politics. The legal philosophy of Robert Cover has been studied in relation to its indebtedness to Judaic (legal) thought (Hertz 2020; Klusmeyer 2014), as well as been applied to specific cases to analyse the way in which legal discourses affect the very real persons facing the law (Craig 2016), but in the specific field of critical legal philosophy his work is conspicuously underrepresented, albeit with some exceptions Etxabe 2010; Loick 2019, pp. 147–50). Similarly, a recent critical overview of different conceptions of *nomos* mentions Cover, but refrains from discussing his concept of *nomos* (Zajadło 2020). While some of this might be explained by the fact that Cover's untimely death in 1986 left many of his lines of inquiry unfinished, this silence is nonetheless surprising given Cover's affinity with themes common to critical legal thought. While his work also explores the violence inherent in the law (Cover 1986), Cover is most famous for his theory of *nomoi*; briefly put, legal and normative universes which everyone inhabits, but which are not reducible to each other (Cover 1983). Combined with Cover's self-professed 'legal anarchism' (Cover 1985, p. 181), his oeuvre is therefore a fruitful source for a critique of a hierarchical view of law and, as I shall argue, for radical democratic theory.

The endeavour undertaken in this paper is therefore important because it can add to the specifically critical legal aspects in the conceptual landscape of radical democratic theory as well as suggest further conceptual and normative links between radical democracy and critical legal theory, respectively. To that end, this paper proceeds in the following steps. To set the stage for my argument further on, I will begin by briefly outlining my understanding of the main conceptual foundations of radical democracy. I then move on to introduce Robert Cover's legal philosophy, focusing on his conception of *nomoi* and his self-professed legal anarchism. Subsequently, I argue that, and how, Cover's legal philosophy may make important legal contributions to radical democratic theory. In conclusion, finally, I will recap the foregoing discussion so as to sharpen our view of what Cover's legal philosophy might contribute to radical democratic theory.

What's radical about radical democracy?

The philosophical tradition of radical democracy is vast and multifaceted, and to do justice to it in its entirety is impossible within the confines of this paper. For example, to get ahead of my discussion below, Claude Lefort's insistence on human rights as conceptually necessary for democracy (Lefort 1986, p. 256) might be interpreted to put him a step closer to liberalism (Ingram 2006), while his simultaneous incorporation of conflict into democracy (Lefort 1988, p. 17) shows distinct normative affinities with, for instance, the work of Chantal Mouffe. My discussion here will therefore necessarily remain brief, and focus on what I take to be radical democracy's most central philosophical and normative points. I take the two fundamental tenets of radical democracy to be its anti-foundationalism and the concomitant commitment to radical equality. Equality as a unique feature of radical democracy may seem surprising, given that equality is at least nominally also a concern of liberal democratic theory as well as of much mainstream legal theory. Nevertheless, as I will briefly aim to show, the role played by equality in radical democracy is more fundamental than that played by the concept in liberalism. Indeed, many radical democratic theories are developed as critiques of liberalism's ostensibly overly formalistic reading of equality.

Two of the clearest examples of this insistence on radical equality developed in juxtaposition to a critique of liberalism are probably the philosophies offered by Chantal Mouffe and Jacques Rancière, respectively. Mouffe, most explicitly, develops her account of what she comes to call agonistic democracy or agonism through her discussion of the liberalisms offered by, most prominently, John Rawls and Jürgen Habermas. The crux of her more general objection to liberal democratic theory is its problematic equivocation of liberalism and democracy. While the core value of liberalism is liberty, which is to a large degree interpreted in an individualistic fashion, the main pillars of democracy are equality and popular sovereignty (Mouffe 2005, p. 2).[1] Importantly, liberal democratic theory fails to recognise the irreducible

[1] Mouffe is insistent on the centrality of sovereignty for democracy, likely due to her Schmittian underpinnings. For an excellent overview and critique of the concept of sovereignty, see Loick (2019).

tension between liberty and equality, and by extension that between liberalism and democracy.

This does not mean, Mouffe thinks, that core liberal values should be abandoned altogether. But an insistence on such values should be recognised for what it is: a political decision (Mouffe 2005, p. 25). Liberalism's view of such principles as dictated by rationality – and here Rawls is her main foil – effectively naturalises the boundary between what can be considered legitimate and what cannot and masks this boundary as natural, thereby obscuring the antagonism underneath any society (Mouffe 2005, p. 48; Schaap 2009, p. 1). Similarly, the inevitable pluralism intrinsic to such societies is reduced to a mere fact, as Rawls does, or considered to be no more than an individualistically conceived 'valorisation of plurality' (Mouffe 2013, p. 16). In the final analysis, Mouffe insists that this view comes down to a hegemonic imposition of a liberal view on society, amounting to the articulation of an ostensible social objectivity through power relations, simultaneously obscuring the inequalities underpinning it (Laclau and Mouffe 2014, pp. 79–132).

How, then, does this view articulate the insufficiency of equality in liberalism? There are, I believe, two main interrelated arguments in favour of this position. The first concerns radical democratic theory's – as well as much of the poststructuralist philosophy from which it draws influence – critique of liberal foundationalism. I return to this below. The crux of the second argument is that liberalism operates under a defective view of human beings and, correspondingly, of politics. By conceiving of humans as individualistic agents guided solely by their rational interests, liberalism is able to conceive of society as a neutral, rationally ordered space in which neutral and detached individuals confront each other's interests (Mouffe 2005, p. 30). This view masks the fact that society is inevitably shaped by power relations, the primary manifestation of which is, in Mouffe's terminology, the crystallisation of social relations into hegemonies. Voicing a similar critique from an ontological perspective, Jean-Luc Nancy's objection to liberalism and capitalism is that it distorts Being, which for him is essentially *being singular plural*, to "being-as-market-value" (Nancy 2000, p. 74). In this way, beings come to be seen as essentially equivalent, as a consequence of which they are reducible to each other, whereas Nancy insists on the necessary nonequivalence of all beings in the sense of their incommensurability (Nancy 2010, p. 23; Prozorov 2018, p. 1098). Accordingly, the liberal concern with equality practically comes down to an equality of an almost entirely formalistic nature. On paper and in theory – whether in philosophical examinations or in legal documents – the individuals of which society is comprised are equal. In actual politics, radical democrats object, political agents and collectives turn out to be far from equal, and therefore to insist on such a formalistic reading is ultimately to remain blind to these inequalities altogether.

The radical democratic concern with equality, however, has deeper roots than just these objections to liberal formalism. This is the other tenet of radical democracy alluded to above: its anti-foundationalism. To see that more clearly, I will shift my focus from Mouffe to Rancière. Rancière, too, is concerned with equality, albeit in a very different way. For Rancière, equality is the necessary presupposition of any politics (Rancière 1999, p. 18). One way to read his insistence on the distinction between politics and police is as being analogous to the tension between this presup-

position of equality and its lack of realisation in reality. Put differently, at the root of politics is the opposition between the groundlessness of any social hierarchy and the actual existence of such hierarchies. This groundlessness is decisive. Rancière refers to the equality that such groundlessness reveals as the *fact* of democracy (Rancière 1995, p. 94).

A slightly different way in which the importance of equality comes to light is in Rancière's discussion of Aristotle's threefold distinction between oligarchy, aristocracy, and democracy. While the former two both have distinctly positive qualifications which would underpin one's entitlement to rule, that of democracy is entirely negative: it is precisely the absence of any positive entitlement to rule or to govern that underpins the democratic entitlement to rule (Rancière 1999, pp. 22–23). As Rancière himself puts it, 'democracy is the specific situation in which it is the absence of entitlement that entitles one to exercise the *arkhê*' (2010, p. 39). As a consequence, a quintessentially democratic act for Rancière is one that *takes* the entitlement to speak or to participate in politics in spite of being denied such entitlement. This taking is important, for as Bonnie Honig points out, democracy always involves some degree of taking in the absence of any entitlement to do so (Honig 2003, p. 99). Precisely this necessitates the presupposition of equality, for one must presuppose at least one's own ability – even if not (legally specified) entitlement – to speak on an equal footing to those already fully partaking of political society (Rancière 1999, p. 18). In Rancière's view, then, the only democratic ground of political rule is 'that there is no ground at all' (Rancière 2010, p. 58). This absence of ground, in turn, shows that equality is crucially important to democratic politics.[2]

This, then, is how radical democracy's concern with equality is connected to its anti-foundationalism. As we have seen, Rancière's emphasis on the necessity of presupposing equality is intrinsically connected to his conception of democracy as the situation in which it is the absence of entitlement that is the only thing that might entitle one to rule. The point is that there never is such an entitlement. The absence of such foundations is also what Lefort's notion of the empty place of power is designed to capture. Indeed, a democratic form of society for Lefort is one in which the social is no longer embodied – whether by one person or a party, as in many totalitarian societies – but in which the idea of an ultimate ground on which society purportedly rests is dissolved and any *posited* ground remains susceptible to questioning and contestation (Näsström 2006, p. 328). Like Rancière, Lefort thinks this groundlessness is the very ground of democracy, and the specificity of democracy is that it is constantly in search of its own ground (Lefort 1988, p. 309).

In short, then, radical democratic legitimacy is never a neutral, natural, or rationally deduced given – as it is in Rawls, for instance – but a permanent question mark or something that is always susceptible to contestation and destabilisation. The artificiality or the political nature of legitimacy is also, to tie Mouffe back into this discussion, captured by the centrality of hegemony as the crystallisation of an alleged social objectivity in Mouffe's and Laclau's work. For the very existence of hegemony and

[2] The way the concept of equality is deployed by Rancière, and the role it plays in his philosophical outlook more generally, has not been without critique. For valuable contributions to that debate, see among others (Myers 2014; Norval 2012). For a defence of Rancière's position, see Inston (2017).

counter-hegemony indicates that neither is ever a natural, objective given, but instead that both are always deeply enmeshed with politics and power.

Inevitably, my discussion here has been brief, perhaps too brief. Nevertheless, it has shown that equality and anti-foundationalism are at the root of the radical democratic project, and moreover that these are intimately intertwined. The radical democratic concern with equality, furthermore, is more fundamental or, dare I say, radical than it is in liberal democratic theory. One might at this stage still wonder why radical democratic theory needs an account of law. To begin with, its concern seems to be first and foremost with politics rather than law. It may furthermore appear to be the case that law's oftentimes rather formalistic character is vulnerable to the critique radical democrats frequently level at liberalism. In light of this, is it not more apposite to accept that radical democratic theory is simply not concerned with law, and that its focus is on politics?

I believe there are several reasons why radical democracy would nevertheless benefit from a more structural engagement with legal theory. To begin with, radical democratic theorists frequently invoke law in a variety of ways, but often refrain from developing an account of what they consider law to be. To limit myself to the authors whose work has been my focus above, Mouffe for instance takes issue with such theorists as Hardt and Negri, who tend to favour a wholesale rejection of institutions, whereas she advocates an engagement with institutions instead (Mouffe 2009; 2013). While she often remains rather vague about which specific institutions she envisages, it seems hard to see how law is not among the foremost political institutions. While she is critical of what she identifies as the tendency to depoliticise conflicts by the encroachment of the juridical (Mouffe 2005, p. 115), she also stresses that her insistence on engagement is due in part to a dissatisfaction with the idea that a 'reconciled society beyond law, power and sovereignty' would be possible or, indeed, even desirable (Mouffe 2009, p. 236). While Mouffe is thus critical of the role law plays in political constellations today, and specifically of the democratic deficit excessive juridification tends to give rise to, she by no means denies that law has a role to play.

The same holds for Rancière and Lefort. For the latter, the originality of democracy lies in the disentanglement of power, law, and knowledge, so that these are no longer embodied in one being or refer to one fixed basis (Lefort 1988, p. 34). This does not mean that they dissolve entirely, but rather that they no longer have an unconditional ground. If law had no role to play in Lefort's model of democracy, the dissolution of any unconditional ground it might otherwise have would be of little relevance. Rancière also explicitly involves law in his political thinking. In *Dis-agreement* he goes so far as to identify law with the police entirely (Rancière 1999, p. 19), whereas many of the political moments he highlights display significant litigious elements in that they involve specifically the inscription of hitherto unseen subjectivities into law (Etxabe 2018). This is also attested to by the fact that he distinguishes the founding wrong of politics from the lawsuit because the lawsuit is a conflict between two pre-existing objectivities, whereas the subjectivities emerging in politics are, by definition, at that stage unrecognised by law (Rancière 1999, p. 33). If law is equivocated to police in Rancièrian political thinking, this furthermore helps relate the question pertinent to this paper to a frequent criticism of Rancière. His extensive focus on politics and subjectivation, critics such as Myers (2014) and Gündoğdu (2017) allege,

ultimately lead Rancière to neglect or at least undertheorise police. Accordingly, if 'law represents the principle of social reproduction' (Douzinas and Gearey 2005, p. 4), a consideration of law will be necessary to theorise more comprehensively how such Rancièrian (or otherwise) egalitarian inscriptions are to be given any degree of relative permanence.

As this brief overview has shown, in all these cases law plays an important part in these authors' more general frameworks. All this then raises the question this paper seeks to address: how is 'law' understood in the context of radical democracy, both in terms of its concept as well as its workings, normatively or descriptively? To drive the point home, consider briefly that not just any model of law will do. Take, for example, Kelsen's legal positivism. While Kelsen may admit the ultimate contingency of the *Grundnorm*, his model is less favourable to the persistent questioning of law and its grounds mandated by, for example, Lefort. Similarly, Mouffe's insistence on the constitutive nature of the political seems inconsistent with presupposing a Kelsenian *Grundnorm* as the constitutive ground of legal legitimacy. These brief remarks are not intended to offer any deeper insights than just the fact that not just any legal theory comfortably fits radical democracy. The question therefore stands: what do we mean when we talk about law in the context of radical democratic theory? I do not labour under the illusion to be able to resolve this frankly momentous question in its entirety within the confines of one paper. I do, however, believe that a careful consideration of Robert Cover's legal theory in light of radical democratic theory can contribute to such an endeavour.

A multiplicity of universes: the legal philosophy of Robert Cover

As the above discussion has intended to indicate, it is not immediately clear what model of law would be appropriate to radical democratic theory, other than that it must be able to accommodate its anti-foundationalism and insistence on radical equality. This is so despite the inclusion of law as an institution or concept into radical democratic theory. While the aforementioned Rancière is by no means a legal philosopher, his political thought displays significant litigious elements (Etxabe 2018). This becomes especially clear in some of the paradigmatic examples he deploys to illustrate his political thought. For instance, the well-known case of the 19th century French radical Auguste Blanqui concerns specifically the incorporation of the subjectivity of 'proletarian' into a legal register, and the episode takes place in front of a judge (Rancière 1999, pp. 36–38). Despite this, Rancière has never developed a systematic theory of law, and neither has Mouffe, nor have many other theorists typically associated with radical democracy. To be sure, this need not be a defect in their philosophical frameworks as such. But the project of radical democracy would benefit from a more systematic consideration of legal theory within its purview. As mentioned before, attempts at remedying this lacuna have only recently begun to be developed (Mańko 2021). In this section, I begin outlining some of the key concepts of Robert Cover's legal philosophy, so as to subsequently argue that it contains important critical resources for a radical democratic theory of law.

Against the prevalent view of 20th century legal positivists that law should be understood exclusively as a system of rules (e.g. Hart 1961; Kelsen 1967), Cover's key point of departure is that merely positing a system of rules overlooks some crucial aspects of the way in which law operates. As Hans Lindahl highlights, law may indeed be a system of rules, but it is also not *just* that (2018, p. 69). No rule, Cover argues, makes sense outwith a narrative in which it is embedded and from which it receives its specific meaning. Law, in short, is only meaningful in the context of a *nomos* or a normative universe (Cover 1983, p. 4). If law needs a narrative in order for it to make sense, the opposite is also true: every narrative must have a normative point (Cover 1983, p. 5). Now, at first glimpse this might not seem terribly original. After all, it seems obvious that a political community not only has a set of rules used to prescribe itself behaviour, but also a story to narrate its law's or constitution's origins. For example, Chiara Bottici (2007) has done much work on elaborating a political philosophy of myths used to narrativise and self-justify the existence of a political community, which there are good reasons to believe extends to its legal institutions. But the distinctive feature of Cover's legal philosophy, apart from his rich discussion of the various ways in which such *nomoi* function, is his legal anarchism (Cover 1985, p. 181).

Within what is nominally described as one state, Cover stresses, there exists an abundance of law even if there is but a singular legal text. Given, moreover, that everyone is to a greater or lesser degree embedded in a *nomos*, no Archimedean point from which to neutrally decide the 'correct' *nomos* is available. To slightly get ahead of ourselves here, the absence of such an Archimedean point corresponds to Claude Lefort's aforementioned designation of the empty place of power as the hallmark of democratic society (Lefort 1988, p. 55; Caillé 1995, p. 49). For Cover, this means that no agent or institution has a particularly privileged view of the law. A Supreme Court Justice's interpretation of the law, which in the official discourse of precedence *is* law, is not necessarily better or more legitimate than anyone else's (Cover 1983, p. 53). As a consequence, one single text may give rise to a host of different *nomoi*, all of which are *prima facie* valid. This point gives way to what is perhaps Cover's most important pluralistic insight: far from being the source of a singular and neatly delineated set of rules, singular legal texts generate a proliferation of law and legal communities, a process Cover describes as legal *mitosis* (1983, p. 15).[3]

Legal *mitosis* entails the splitting of one legal community into two (or more) based on their respectively different interpretive commitments. This does not mean that a new legal text is written, but rather that an extant one is interpreted – though not only that – in mutually incompatible ways. A fruitful way of understanding the *nomoi* this gives rise to is, as Julen Etxabe proposes, to view it as a normative language rather than a system (2010, p. 120). This has the benefit of leaving its precise workings rather open-ended. Hence to inhabit a normative universe is to know how to move about in it or how to live in it (Cover 1983, p. 6), which includes speaking its language and knowing its prescriptions, but extends to knowing how certain acts or

[3] Most notably, Cover has dedicated a considerable amount of work to studying the way in which the same legal text, the US Constitution, has been interpreted and put into effect in radically different ways in the context of various antislavery movements (Cover 1975).

signs are *charged* within said normative universe (Etxabe 2010, p. 120; Cover 1983, p. 21). Accordingly, the meaning of an act is changed depending on the nomic context within which it takes place: banking a paycheck and refusing to pay income tax are different acts which may nevertheless be embodied in the same practical activity, and changed only by the normative context within which they are carried out (Cover 1983, p. 8).

More concretely, this normative context imbues acts with a specific meaning and normative significance. Cover calls this constitutive element of *nomoi* their 'alternity'. Law, on this view, consists of a bridge connecting two states of affairs, one the case and one 'other than the case' (Cover 1983, p. 9). Normative behaviour in this sense enacts in the present a vision for a not-yet-realised future reality (Cover 1985, p. 182). As a means to give a purpose to the present and a vision for the future, law's legitimating objective is then not bureaucratic but prophetic (Cover 1985, p. 189). Accordingly, the meaning of law is clearly deeply enmeshed with politics. Seeking to devise a 'pure theory of law', which leaves out all elements of what Kelsen calls 'legal sociology' (Kelsen 1967, p. 101), is hence set up to fail to explain the nature of legal orders.

This is so because law emptied of what Kelsen calls its sociology, on Cover's view, fails to be law. This brings us to a further constitutive element of Cover's notion of *nomos*: commitment, or the way in which law is intertwined with its *praxis*. In short, if the *nomos* is 'the process of human action stretched between vision and reality' (Cover 1983, p. 44), commitment to bridging this gap between vision and reality, and literally *realise* its vision, is required for any norm to be law. A legal interpretation no one is prepared to live by cannot give rise to legal meaning. In this, Cover's legal philosophy also shows distinctive normative affinities to Jacques Derrida's philosophy of law and undecidability, in which an important role is reserved for performativity (Derrida 1992; see also Glendinning 2016). In Etxabe's reading, Cover's legal philosophy on this point attempts to bridge the allegedly insurmountable gap between 'is' and 'ought' by supplementing these terms with a conditional 'what might be' (Etxabe 2010, p. 122). This is so because commitment here turns on the objectification of a demand. A certain interpretation of a legal text gives rise to a demand for a particular kind of behaviour (ought), by presenting a vision of a world governed by said norm (what might be), which is objectified by a legal community through its commitment to meeting the demand, transforming it into a real instance of law which is lived by (is). Hence a legal community objectifies a legal interpretation if it posits it externally to itself, as that which it obeys but is not identical with. To complete the circle, narrativisation is a crucial aspect of this process, telling, retelling, and mythologising how a legal community's law came to be and what it strives to become (Cover 1983, p. 45).

Cover calls this process *jurisgenesis* (1983, p. 11). It should hence be clear how Cover comes to conceive of legal texts giving rise to an abundance of different laws and legal meanings. To give but a simple example, take the recent protests against highly restrictive anti-abortion legislation in Poland. Now, if for the sake of argument we assume the normative commitments of both sides of this ongoing conflict to be genuine, the Polish government might be taken to honestly believe it is protecting the right to life and bodily integrity of unborn children, whereas the many

women and allies protesting against such restrictions view them as no more and no less than attempting to regulate and control women's bodies, embedded in a long history of misogynist (state) violence. Clearly, these two views are incompatible with one another, but taken in the context of Cover's thought they can be interpreted to be based on the exact same precept: the right to bodily autonomy. Both affirm this right, but embed it in substantially if not radically different normative universes, accordingly leading to drastically different practical outcomes. While this brief description is no doubt highly oversimplified, it thus gives a clear idea of how Cover's idea of a plurality of *nomoi* based on singular legal texts plays out in the world.

Finally, I should say a bit more on Cover's legal anarchism as one of the reasons his legal philosophy may prove a fruitful basis for a radical democratic theory of law. By anarchism, Cover specifies, he understands 'the absence of rulers, not the absence of law' (1985, p. 181). Indeed, given his call at the end of *Nomos and Narrative* to 'invite new worlds,' Cover normatively approves of the proliferation of law he describes (1983, p. 68). What he objects to is the default adoption of 'the perspective of the state official looking out' (Cover 1983, p. 32), which presupposes that the state and its officials have a privileged view of law and its intended meaning. Indeed, Cover stresses that courts inhabit their own *nomos* from whose perspective they judge the law, and which at its root is only one *nomos* among many. It is true that courts are *accorded* a privileged position in terms of state-mandated hierarchy, but this is a matter of contingent fact rather than anything intrinsic to the concept of law.

Robert Cover as a radical democrat

Let's now circle back to one of the main contentions I defend in this paper. Where does Cover's legal philosophy leave us with regard to furnishing an account of law that might supplement radical democratic theory? A straightforward answer would be to suggest that the legal conflicts discussed by Cover constitute the legalistic counterpart of the political agonistic struggle between adversaries that Mouffe has in mind. Similarly, Cover's legal anarchism may be taken to echo Lefort's insistence on the empty place of power in which, notably, he includes law as one of its poles (1988, p. 13). Hence, when two *nomoi* conflict and are brought to court with a judge needing to kill off one of these legal meanings, this amounts precisely to the moment of decision stressed by Mouffe (2005, p. 76).

Let me first draw attention to a recent attempt to construct an account of law apposite to radical democratic theory. Calling for more attention to be devoted to an agonistic model of law, in a recent paper Rafał Mańko has sought to begin developing precisely such an account. Most succinctly, the objective of such an endeavour is to provide a critical framework which can be used to interpret, theorise, and analyse agonistic and antagonistic struggles as they are fought within the domain of law (Mańko 2021). Proceeding from the observation that many of the antagonistic struggles described by Mouffe take place not only in the streets, but also in the courts, Mańko proposes a tentative typology of the antagonisms that may be contested through legal institutions: *economic*, relating predominantly to divisions of labour; *ideological*, concerning the ethical questions permeating the juridical; and

socio-political, pertaining to questions of the political community itself and membership therein (2021, pp. 10–12). Specifically, such antagonisms always involve the construction of (partially oppositional) identities through equivalential chains (Mańko 2021, p. 12; see also Laclau 2005) which emerge in agonistic struggles precisely through such contestations, rather than being formulated as pre-existing. In this vein, Mouffe prefers to refer to identities as *identifications*, suggesting a more active mode which helps bringing her agonistic politics a step closer to the *praxis* of and commitment to law involved in Cover's framework (Mouffe 2005, p. 56). In Mańko's analysis, the specifically juridical aspect of the struggles under discussion is the medium through which they are fought.

Importantly, such struggles must always contain a minimal common point of reference or shared conceptual language, despite the potentially radical differences of the opposing antagonisms. The reason this must be so, as Mouffe herself stresses, is that without such minimally shared conceptual or normative framework, communication would not be possible, let alone adjudication. For antagonistic struggles to be fought out in court, both parties to the conflict must start from the minimal position of recognising the legitimacy of courts, as well as that of the legal text on whose basis the court ostensibly adjudicates (Mouffe 2005, p. 103). Put differently, the differences and oppositions internal to democratic society may be radical but not absolute (Menga 2018). This juridified conception of agonistic politics sits well with Cover's theory of *nomoi*, but Cover supplements it further. For Mouffe, the construction of identities is always more or less oppositional, and occurs in terms of identification. In simple terms, a conflict emerges that brings to the fore an antagonistic distinction between two groups on either side of that distinction, but which groups only emerge and become vectors for identification by being in conflict with one another.

This may be an acceptable formulation from Cover's perspective. Cover, however, adds that such identification already occurs before any direct confrontation is in question. Moreover, in Cover's thought this is framed in specifically legal terms, supplementing a legal basis to Mouffe's focus on the political. Social and legal identities are constructed through identification with a narrative and concomitant normative commitment to a certain legal meaning, and to some extent multiple such identities may coexist despite their ostensible incompatibility. The underlying potential for agonistic struggle is thus only realised once some direct conflict emerges. This is illustrated, for instance, by one of Cover's favourite examples, *Bob Jones University v. United States*, 461 U.S. 574 (1983).

I will not go into the details of the case here (Cover 1983, pp. 26–29; 51–62), but merely stress that the main point of contention – and concomitantly, the diverging normative commitments and nomic constitutional interpretations – had been permitted to persist for years and only became the subject of a court case when Bob Jones University's racist practices threatened to relieve it of its tax exemption.[4] To be

[4] As an aside, Cover's criticism of the judicial ruling in *Bob Jones University v. United States* is an illustrative example of his general framework. The case had arisen because the IRS threatened to withhold the University's tax exemption due to its racist and discriminatory practices. In Cover's criticism of the ruling in favour of the IRS, his contention was not that the court did too much but that it did too little. Cover takes issue not with the Court's argument, whether in form or in content, but with 'the failure of the Court's commitment' (1983, p. 66). Its ruling amounted to little more than admitting that the IRS was not wrong,

sure, there is no reason to believe that Cover is committed to an essentialism about identities. But that also need not mean that identities exclusively become identifiable through struggle. Crucially, then, while Mouffe stresses how identities are constructed by conflicting with one another, Cover highlights the fact that the involved identities may be latent long before potential struggles emerge. The key feature here, however, is not that identities only emerge through struggle. The more important element is that identities are always constructed in the active rather than the passive mode: as identifications. Hence, while Cover does not incorporate struggle into his model of law to the same extent as Mouffe does, his emphasis on commitment and on the importance of legal meaning being committed to and actively lived suggests that law and the identities constructed by it are never passive, imposed, or given, but always adopted, constructed, lived, and practiced.

Legal anarchism and the normative point of joint action

To drive home the point that Cover's legal thought is a valuable resource for a radical democratic theory that incorporates law, this section draws on some of Hans Lindahl's recent insights to further interpret Cover's thought, so as to further underline its strong affinity with some of the radical democratic theories I have been discussing thus far. Recall that one of the presuppositions underpinning Cover's thought is that to conceive of law as a system of rules *and only* a system of rules is to miss something fundamental about what law is. Taking a phenomenological approach to law, Hans Lindahl suggests that what these mostly positivist approaches miss is law's practical aspect (2013, pp. 16–17). While prominent positivists concerned with the question of legal unity, such as Hart or Kelsen, would of course agree that law is concerned with human behaviour, they do not consider such behaviour from the perspective of those whose behaviour is in fact guided by law. Accordingly, the question of legal order is not only a question of a unity of multiple rules or norms, but also a question of the *practical* unity of a pragmatic order whose unity is putative (Lindahl 2018, p. 230).

What this means is that the primary practical question of law is that of the normative *point* of joint action under law. It asks: 'what is/ought our joint action to be about?' (Lindahl 2018, p. 69). I will not delve deeply into Lindahl's apposite and rich legal thought here, for that would be beyond the scope of this paper. I will instead just note the following concerning how this very brief exposition helps us make sense of Cover's legal thought as a critical resource for radical democratic theory. The fact that law as a pragmatic putative unity is concerned with the question of what joint action ought to be about raises a number of important points. First of all, and perhaps most obviously, note that it is underpinned by the idea that law is by definition a collective affair. Similarly, Cover consistently refers to legal *collectives*. Law necessitating a collective may seem obvious, but note here that it is important to stress here given the opposition to liberal individualism stressed by radical democrats.

Second, note that one of Lindahl's primary critiques of legal philosophers conceiving of law merely as a system of rules is that such an approach is reductive. Cover

rather than more strongly committing to a non-racist interpretation of the Constitution which would have held Bob Jones University to account.

would nod in agreement here. As the brief but crucial phrase quoted above highlights, law is fundamentally concerned with human action. Similarly, as we have seen, a legal interpretation nobody is committed to act on cannot give rise to cogent legal meaning and, for Cover, therefore could not be law. This spills over into the third point I want to draw attention to. Authority, for Lindahl, is intrinsically connected to the conditions under which a collective can recognise a set of norms as 'ours' (2018, p. 230). Hence Lindahl's phenomenological approach entails that authority becomes diffuse in the sense that it is not merely a matter of legally prescribed authority in the form of a vertical imposition, but instead a question of *recognition*. Accordingly, a set of norms summarised by the general normative point of joint action is only authoritative insofar as the collective whose behaviour it purports to govern in fact *recognises* the normative point it prescribes as *their* point.

This step is decisive. It effectively reverses the question of authority. Instead of asking which rules or offices are authoritative in light of some deductive trail leading back to, for example, a Kelsenian *Grundnorm*, which is superimposed vertically, it asks: by virtue of what normative commitments can the collective whose behaviour these norms are supposed to govern recognise said norms as theirs? Transposing this insight onto Cover's theory of *nomos*, it is able to offer a slightly more sophisticated defense of Cover's legal anarchism. As noted, Cover's anarchism refers to an absence of rulers but not an absence of law. Accordingly, one legal text engenders a multiplicity of legal universes whose participants are committed to living by its legal interpretation or, to borrow Lindahl's terminology, who subscribe to its normative point. If authority requires recognition, this entails that authority is here interpreted as a subjective concept. As a consequence, no legal order can guarantee the objectivity of its own distinction between legal and illegal (Lindahl 2013, p. 152). This then also holds *ipso facto* for specific *nomoi*. Hence, no *nomos*, for instance that inhabited by Supreme Court Justices, can guarantee the objectivity of its own legal interpretation. Granting this point shows Cover's legal anarchism in a new light: the absence of an Archimedean point from which the meaning of law can be authoritatively viewed can then be more clearly seen not as a subjective normative commitment, but as an ingredient feature of the concept of law itself.

Conflict, Commitment and Equality

To continue bringing Cover's legal thought into closer harmony with radical democracy, some more attention must be devoted to the congruence in some of their key terms, in this instance in particular Cover's notion of commitment and the radical democratic insistence on conflict. It is not necessarily the case that Cover's notion of commitment and the radical democratic emphasis on the conflictual nature of politics can easily be equivocated. Rather, I would like to suggest, commitment might be understood as a type of *activation* that itself is part of what gives rise to the centrality of conflict in politics and, in the context of Cover's thought, law. Commitment in this sense would carry the function of highlighting an active component of law. Law on this view is not merely a superimposed set of rules that is generally followed, but rather an active *praxis* that is generated from inside a community committing themselves to living by its meaning.

An important clue to this interpretation is found in a footnote to one of Cover's discussions of the aforementioned *Bob Jones University v. United States*. What Cover criticised the Justices for was ultimately not the mere fact that they ruled against Bob Jones University's racist practices; rather, it was that they did so with a lack of commitment to the legal meaning that could be found in such a ruling. Commitment to an interpretation that would invade an insular *nomos* would lead to problems, Cover writes, but adds that it *should*. Without commitment, such invasion is based on nothing but 'the passing will of the state' (1983, p. 67, n.195). Elaborating the distinction further, Cover specifies that absent this commitment, 'we are left with no principled law at all, but only administrative fiat' (1983, p. 67, n.195). Interpreting this in terms of an active component of law, a ruling based on administrative fiat would simply superimpose the state's will on those inhabiting a different *nomos* without engaging in any struggle over the principles justifying any *nomos*; the state here does nothing more than reiterate its formal hierarchy. This also flies in the face of the radical democratic insistence on equality. While many if not most radical democrats will admit that conflictual situations will eventually settle into provisionally stable ones – hegemony or police – they will object strongly to a simple top-down imposition of such stabilities. Normatively, both for Cover and for many radical democrats, these must be the outcome of principled legal or democratic struggles.

As noted above, normative behaviour in the context of a *nomos* is about enacting a vision for the future in the present, and in this sense law is not primarily bureaucratic but prophetic (Cover 1985, p. 189). To reduce law to administrative fiat then is to abrogate its prophetic function in favour of its bureaucratic one. This furthermore ties in with Cover's self-professed legal anarchism. If judges have no particularly privileged view of which *nomos* would be intrinsically better or 'correct' – they cannot merely produce rulings by administrative fiat. Indeed, such rulings are the result of the judicial class' inability to recognise that they, too, inhabit a *nomos* of their own. And if this is so, the only way to adjudicate between *nomoi* is to engage in a *principled* struggle over what law should be, do, and what kind of normative universe we want to inhabit. The point thus is that if neither the formal legal hierarchy of state officials nor some determinate ground can offer a decisively correct interpretation of law, such interpretation can then only emerge out of principled conflict over varied commitments to *nomoi*. Given, moreover, that Cover never implies that this would generate a determinately correct view, this struggle remains a permanent and constitutive feature not only of politics, but also of law.

One might at this stage wonder whether all this does not fly in the face of Cover's emphasis on insular *nomoi*. What insular communities seek to do, after all, is to carve out a space where they can live out their narratives and *nomoi* while being left alone by anyone who would interfere with them. There are two main reasons, I believe, why insular *nomoi* nonetheless play an important part in such legal conflict. The first is that Cover himself suggests that it is not necessarily problematic, nor perhaps even avoidable, for insular *nomoi* to be 'invaded' by the state or judicial class (or perhaps other, non-state *nomoi*, but Cover does not go into this). Rather, as the aforementioned footnote suggests, what matters is how this is done. What the judiciary must avoid is to invade insular *nomoi* by mere administrative fiat and disband their legal community because it can simply by virtue of established formal hierarchies. This

would hardly give rise to principled struggle and, indeed, would not be accepted by any radical democrat as an instance of democratic conflict. What it must do instead is ground its challenge to any insular *nomos* not in some fixed foundation, but in a principled commitment that is at least as forceful as that of the *nomos* being challenged.

Cover explains this further when highlighting what the point of all this is in his view. Cover ends *Nomos and Narrative* by appealing to invite new worlds (1983, p. 68). The most direct consequence of this is a proliferation of legal meanings. What would be the use of this? Calling for an end to 'the statist impasse in constitutional creation', Cover adds that such an end is unlikely to emerge from within the judicial class (1983, p. 67). Instead, the entire purpose of multiple *nomoi* as Cover envisages it – and here he stresses that this is so whether they are redemptive or insular – is to hold a mirror to the face of a sluggish judicial class afraid to commit to any principled interpretation of the law, stalling legal progress (1983, pp. 67–68). Accordingly, insular *nomoi* have an important role to play in this struggle just as much as redemptive ones do. The distinction between insular and redemptive *nomoi*, then, is to highlight differences in their internal logics, not to fundamentally differentiate the functions they fulfil in the wider legal and political landscape.

This point also, and finally, helps clarify the connection I have sought to make between Cover's legal anarchism and the radical democratic insistence on radical equality. It is true that Cover does not emphasise equality in the same way as, for example, Mouffe does. Nevertheless, to bring Cover's legal thought and radical democratic theory in closer harmony, I would like to raise two suggestions here, a weaker one and a stronger one. On the weak side, while it is simply the case that Cover does not address equality in much detail or at all – or at least not in the way that many radical democrats do – his framework is at least *prima facie* compatible with such an insistence. There is very little in his writings to suggest that he would favour any sort of hierarchy in the creation of legal meanings. Therefore, one way to take this up is to accept that equality as such was simply not a concern of his. Regardless of what views Cover held on (radical democratic) equality, then, the framework he offers can be a useful supplement to radical democratic theory, and in no sense contradicts the equality the latter insists on.

More strongly, many of Cover's arguments make little sense outwith some underlying conception of equality. While it remains true that Cover does not discuss law or *nomoi* in terms of equality as such, particularly his legal anarchism seems to mandate an underlying view of elementary equality. This equality is elementary, I would suggest, in the sense of Rancière's insistence on the ultimate voidness of any hierarchy because there is no (metaphysical) reason why anyone should rule and another should be ruled. Indeed, Cover explicitly specifies his legal anarchism as meaning an absence of rulers. Epistemically, this is because judges inhabit a *nomos* of their own, and therefore do not necessarily have a privileged position to create law or see which law is better. This further helps link Cover's framework to the radical democratic insistence on conflict, for it is precisely the absence of such an 'Archimedean point' which, for example for Lefort, necessitates the 'institutionalisation of conflict' (1988, p. 17). Accordingly, the fact that no determinate ground or position from which to decide the better *nomoi* is available suggests that any such decision can only be based

on a persistent struggle which proceeds from the ultimate (though not necessarily institutionally recognised) equality of its participants.

Similarly, Cover's call to welcome new worlds suggests at least an initial equality in the creation of legal meanings. I say initial because, as his discussion of principled commitment suggests, there may be further *principled* reasons why some *nomoi* are better rejected. But these always come afterwards: if Cover seeks to avoid a legal order based on administrative fiat, favouring instead principled law, one reason for this is that administrative fiat would simply presuppose a formal hierarchy and reject alternative *nomoi* based only on the fact that the state official is supposedly in an exclusive position to make law and create legal meaning. In Cover's view, thus, there may at some stages be principled reasons to reject or to challenge certain *nomoi*; in the initial creation of legal meanings, however, no agent has any particularly privileged position over any other.

In sum, what Cover's legal philosophy may help to explain is how *nomoi* can play an active role in the conflicts which radical democrats tend to emphasise. Radical democracy's aforementioned anti-foundationalism may be interpreted to form the condition of possibility for the importance of conflict within its framework. A foundational politics (which, for many radical democrats, would be no politics at all) furnishes for itself a determinate ground which gives rise to its legitimacy, meaning, and conditions for existence. Accordingly, such a politics can avoid conflict in the radical democratic sense by referring any disputes back to its origins, which offers a determinate answer. If the question was put to Cover who might be in a position to create legal meaning the answer would be 'in principle, anyone at all'. Cover, in other words, shares the view with radical democrats that no distinction between who counts and who does not, to use Rancière's terminology, can be made on any *a priori* basis. This results in a proliferation of legal universes, whose coexistence is almost bound to result in confrontations between some of them, and therefore in conflict. Such conflicts, if they are principled and committed, for Cover, are ultimately productive because they assist in interrogating the legal meaning propagated by what views itself as not one *nomos* among many, but *the nomos*: the judiciary or the state. Tying this back into my earlier discussion, what Mańko seeks to do, and what Cover's theory may assist in, is to forge an agonistic theory that fits within extant legal resources so as 'to make sense *within the limits of legal discourse*' (Mańko 2021, p. 15). This is certainly an important endeavour, but it also risks missing the more radical potential of challenging the completeness or the astuteness of that legal discourse itself. Concretely, if what judges in agonistically conceived cases aim at is 'to establish order in a context of contingency' (Mouffe 2018, p. 88), Mańko's foremost suggestion is to analyse the inscription of judicial decision-making in hegemonic practices so as to help construct alternative interpretations (Mańko 2021, p. 15). Given Cover's appraisal of a multiplicity of *nomoi*, he would presumably approve of this endeavour, but he would add that such alternative interpretations of extant legal texts are already prevalent. Nonetheless, while Cover absolutely insists on the absence of any privileged perspective from which to judge law, he may not always be sufficiently attentive to the role played by power relations in ordering hierarchically the different perspectives that exists. Therefore, not only is Cover's legal thought an

important resource for radical democratic theory, but the opposite is also true: radical democratic insights add much to Cover's legal multiverse, too.

It is then time to turn back to radical democracy and its normative affinities with Robert Cover's legal philosophy. One way to incorporate the present view of law into radical democratic theories is to begin by looking at Lefort's conception of democracy. As noted above, for Lefort the hallmark of democracy is the disappearance of the markers of certainty due to the absence of any position from which the ends of society could be grasped in their ultimate totality, which gives way to the insight that democracy's ground of legitimacy is a permanent question mark. The proliferation of a multiplicity of *nomoi*, seen in this context, is a specifically legal expression of this more general idea. For Cover, as I have argued above, the absence of any privileged position from which to authoritatively and decisively interpret law is best seen as an ingredient feature of his concept of law altogether. For Lefort, in quite similar fashion, the absence of such a position is an ingredient feature of democracy.

If Cover concludes his *Nomos and Narrative* with a call to invite new normative universes, Lefort's concept of democracy is precisely the form of society in which such normative universes are given the opportunity to proliferate. This is so because if no Archimedean point from which to grasp the ultimate ends or the full being of society exists, accordingly there can also be no normative basis on which to raise a claim to superimposing any vision that formulates those ends. Importantly, while Lefort's view on authority thus also has an anarchistic ring to it, like Cover there is no reason to believe that this would imply an absence of law. Lefort is, after all, quite insistent in his incorporation of human rights into the very concept of democratic society. Hence, the point stands: an absence of rulers, not of law.

Recall that the two main tenets of radical democracy identified at the start of this paper are its commitment to radical equality and, relatedly, its anti-foundationalism. By first bringing together Cover's legal thought and Lefort's democratic theory, the above two paragraphs have shown that both are committed to these same ideals. Cover's perspective is notably bottom-up in that it starts from the norms and legal meanings that participants in legal universes are committed to. This means that legal meaning primarily flows from those participants rather than from some determinate ground which is authoritatively superimposed.

These insights also sit well with Mouffe's conception of agonistic struggle and hegemony. Cover recognises, but does not approve, that in commonplace legal understanding courts and judges are *accorded* a privileged position regarding legal interpretation. Objections to the singularity of the perspective this results in are part of what sparked the first wave of critical legal studies and their defence of the indeterminacy thesis (Unger 1977). Interpreted somewhat liberally, what the initial critical legal studies movement objected to was the *hegemony* of a dominant discourse within the justice system, initially in the United States, which was a result of the fact that courts are typically accorded this privileged position. Accordingly, many of Cover's case studies can be interpreted as instances of hegemonic struggle, though often local, in which not a minor interpretive feature of the law was being challenged, but an entire normative universe was at stake.

If the radical equality underpinning radical democracy is interpreted, as Rancière does, as the absence of any positive entitlement to rule, this too is congruent with

Cover's legal philosophy. Besides the fact that the absence of rulers is literally Cover's take on legal anarchism, one might also wonder whence any agent would gain an entitlement to rule. In conceptions defending the superiority, moral or otherwise, of courts and judges in interpreting extant law and making law, as for instance Dworkin does, it would be easy to make the case that this constitutes the kernel of an entitlement to rule. But as we have seen, Cover categorically rejects such a privileged position. Given his insistence on there being no Archimedean point from which to judge law in its totality and his admonishment against adopting the default perspective of the state official looking out, one would be hard-pressed to deploy Cover's concept of law as a basis for any positive entitlement to govern.

This point, finally, also shows Cover's basic agreement with radical democratic anti-foundationalism. The radical democratic objection to such naturalised or neutralised foundations is concerned first of all with the allotment of hierarchies and positions allotted to different agents or collectives in societies. As we have seen, while Cover as a matter of empirical observation accepts that normally such hierarchies *do* exist – as does Rancière – he rejects the idea that this is due to something intrinsic in those institution or the concept of law. Accordingly, if Cover believes that no default entitlement to rule exists, it would *ipso facto* be simply inconsistent if he were to hold that natural foundations for such entitlements do exist, even though he never explicitly stresses this point.

Conclusion

In this paper I have argued that Robert Cover's legal philosophy, and specifically his conception of *nomos* coupled with his legal anarchism, can provide critical resources for a radical democratic theory seeking to incorporate a more systematic account of law into its fold. As I have pointed out, Rafał Mańko has already taken an important step in developing such a framework recently. Mańko himself suggests that his theory's internal perspective may be viewed as a limitation thereof, but should simultaneously be interpreted as a strength because it allows for an agonistically oriented engagement with arguments whose form is in principle already considered valid within the legal domain (Mańko 2021, p. 16). My argument welcomes Mańko's contribution, but also adds a number of crucial points.

While some notion of law plays an important role in many radical democratic frameworks, supplementing these with some of Cover's insights can help furnish a richer account of how such democratic struggles occur specifically over law and legal universes. One important element this can bring to the table is a stronger emphasis on engagement with institutions as part and parcel of the radical democratic enterprise. While this necessity is often – though certainly not universally – recognised, it is also often left unspecified. Cover's legal thought on the workings of law and the relations between various normative universes helps drive home the point that democratic struggle also occurs internal to its institutions, therefore redirecting our attention to them. This is not to say that democratic politics outwith formal institutions is now to be neglected, but rather that these struggles as they play out inside them are to be paid greater attention to. Moreover, the fact that Cover's thought has been implemented

in ways fully detached from one common legal framework (such as one constitution) suggests that there is no need for us to assume that Cover presupposes the *a priori* validity of one specific legal order (Berman 2013; Mullender 2006).

Hence, as I have sought to argue, Cover's legal philosophy may help furnish a richer account of the normative conceptions underpinning agonistic or radical democratic struggles as they play out within the domain of law. The concept of *nomos* as Cover deploys it is best interpreted analogously to the concept of world as it is commonplace in the phenomenological tradition. Interpreted as world, a *nomos* is not a static given but 'a nexus of meaningful relations' (Lindahl 2018, p. 35) which connects objects, agents, events, and acts in ways that make them signify something or other. Accordingly, a *nomos* is only meaningfully so for the agents committed to the legal meaning that governs it. When through the process that Cover describes as legal *mitosis* a multiplicity of *nomoi* emerge, these may or may not be mutually incompatible. Given that these nonetheless share the same physical space – in a territorial but not necessarily worldly sense – and draw influence from the same legal text, it is precisely between such conflicting and mutually incompatible *nomoi* that radical democratic struggles may come into existence in a specifically juridical way.

Thus far Cover's descriptive contributions to radical democratic law. Normatively, his assertion that one cannot neutrally decide which is the objectively 'correct' *nomos* signals the absence of determinate foundations and introduces a fundamental indeterminacy into his view of law. This brings his thought in line with, for instance, Derrida's insistence on the undecidability of law (Derrida 1992), but also meaningfully connects Cover's legal thought to some of the central precepts of radical democratic theory. Specifically, it is here that his commitments to radical equality and anti-foundationalism come to the fore, commitments he shares with many a radical democrat. Furthermore, while Cover does not conceive of jurispathic courts specifically in terms of conflict, seen from a radical democratic perspective it is a natural extension of the existence of mutually incompatible *nomoi* that this is a primary source of radical democratic conflict within the sphere of law. While radical democrats incorporate conflict into their political philosophies in widely different ways and to varying degrees, most if not all maintain that full consensus on the ends of society is neither attainable nor desirable. Conflict thus remains a quintessential element of radical democratic politics, and Cover's concept of *nomos* offers a richer account of how such adversarial struggles play out within the law.

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