1. The concept of democracy

I begin my analysis of the relationship of democracy, markets and commons with an analysis of the concept of democracy, because it can generally be said that during the 20th century democracy has become, as Hans-Peter Kriesi affirms, the "only legitimate [political] game in town" (Kriesi 2013: 1). Despite this broad agreement, it often remains rather unclear what democracy actually means. For this reason, I will firstly discuss the contested nature of the concept of democracy. In a second step I will critically reflect diverse models of democracy, with a main focus on the work of the political scientist Wolfgang Merkel. In a third step, I will argue that we must unearth a more foundational meaning of democracy that lies at the heart of all of these different models. Here, I will conclude that democracy inherently entails that people have the rights and capabilities to codetermine their shared social conditions. This definition of democracy will ultimately lay the normative foundation for my subsequent development and defense of the commons.

1.1 Democracy as a contested concept

As is common knowledge, the word 'democracy' etymologically means the rule (*kratos*) of the people (*demos*) (Held 1987: 2). What this precisely means, however, is quite unclear and often highly contested. With Michael Saward (2003), we could even say that democracies exist wherever there is a debate over the definition and interpretation of democracy (Cheneval 2015: 18). Or, in more general terms, it can be agreed upon that there is no agreement on the definition of democracy.

Despite this general disagreement, most democratic theorists assume that democracy provides a method of legitimizing political authority or rule and that different models of democracy exist. Let us therefore begin with the legitimate use of political power. Although he was no democrat, since Thomas Hobbes, it has generally been assumed that the use of political authority and a monopoly on the use of coercive force in society should be legitimized through the consent of the people – be that with an actual or hypothetical social contract or periodic elections and votes in a ballot box (Held 1991: 203). Democratic or, in the words of

Rawls, liberal legitimacy makes it possible for social order to be created through the understanding and acceptance of and therefore the identification with the rules and institutions governing society (Rawls 2005: 137).[1] This form of legitimacy differs, for example, from a theocratic or customary legitimation of political and legal power in which the right to use coercive force is either justified on the basis of a specific religious order of society (transcendental beliefs) or hereditary rights. In both cases, however, the people in power are not necessarily accountable for their actions and their responsibility towards others because their positions and rights – at least theoretically – cannot be questioned, challenged or altered. In contrast, democratic legitimacy not only requires consent, but also provides people and citizens with the possibility to criticize and alter the rules and regulations of one's society either through public debate and the ballot box. Ideally, the withdrawal of support from a political authority increases the responsiveness and accountability of those in power to the demands of the people (Bühlmann/Kriesi 2013).

There are different implicit factors in this notion of legitimacy that lead us, in turn, to a better understanding of democracy. These are most clearly formulated in Robert Dahl's classic statement in which he broadly defines five criteria for a democratic process. These include effective participation, voting equality, enlightened understanding, exercising final control over the agenda and the inclusion of all adults (Dahl 1998: 37-8). Similarly, Francis Cheneval defines the essence of the adjective "democratic" as "members recognized with equal status that are included in collective decision-making processes" (Cheneval 2015: 19; transl. LP). While these definitions are very broad, I would agree with Bühlmann and Kriesi that "under contemporary conditions, democracy essentially means representative government" (Bühlmann/Kriesi 2013: 46). Although representative democracy appears to be the most widespread, it can take on different shapes, including "liberal democracy, protective democracy, competitive elitism, pluralism, or legal democracy" (ibid.: 45). Despite these differences, a common feature of representative models of democracy – in comparison, for example, to more participatory models – is that there is a clear separation between governors and the governed. Furthermore, the democratic process and the legitimacy that results therefrom are confined to the public sphere and the state's use of coercion. While this may be the most widespread understanding, to assume that representative democracy is the best form of democracy would be a naturalistic fallacy. In contrast to this assumption, I will argue that democracy and democratic legitimacy cannot be confined to

1 According to Rawls, "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy" (Rawls 2005: 137).

elections of representatives in government but that they must deal with the question of power more generally and be extended to the sphere of economics in specific. To make a case for this, I will now turn to incremental models of democracy as described by Wolfgang Merkel and with reference to those developed by C.B. Macpherson and David Held.

1.2 Models of democracy

In discussing the question whether contemporary democracy is in a crisis, Wolfgang Merkel distinguishes between minimalist, medium-range and maximalist models of democracy. Merkel associates the minimalist model with Joseph Schumpeter's competitive and elitist model of democracy. Here, "free, equal, and secret ballots are not only the core of democracy, but democracy itself" (Merkel 2014b: 12). Other names for this type of democracy are, for example, Max Weber's "plebiscitary leadership democracy" (Held 1987: 158) or the "pluralist elitist equilibrium model" (Macpherson 1977: 77). Competitive elitist democracy emphasizes the existence of social inequality in the form of a ruling elite as political producers vis-à-vis the less well-off and less educated masses as political consumers. The model presupposes a pyramidal and bureaucratic structure of society and is based on what Vincent Ostrom calls "machine politics and boss rule" (V. Ostrom 1997: 19). Political power is located at the center and top of society and is made responsive and vertically accountable through competitive elections. Due to the danger of such centralized power, this competitive elitist model of democracy is often coupled with protective and legal models of democracy (Held 1987: 37-71, 243-254; Macpherson 1977: 23-43). To further limit the power of the state and the representatives in office, the minimalist concept of democracy also requires a clear separation of the public from the private and of political from economic spheres. This separation supposedly provides people with a realm of private economic freedom that protects them from state coercion. This is what is normally understood as negative freedom: The freedom from arbitrary interference by the state or public (Berlin 2008: 169-78). In turn, this freedom also disciplines the state through the power of private individuals, which is mostly based on their "countervailing power of private capital" (Held 1987: 160). We will return to this model of democracy when discussing the justification of open and competitive markets later. According to Wolfgang Merkel, this minimalist model does not provide us with the information to discern whether a democracy exists or is in crisis, because we cannot know whether the elected representatives are governing on behalf of the people or "on behalf of large corporations, banks, lobbies, and supranational regimes" (Merkel 2014: 13).

In comparison to this minimalist model, Merkel argues that a medium-range democracy goes beyond periodic elections and vertical accountability. Here, he ar-

gues that a medium-range democracy must be "embedded in guaranteed human and civil rights and in checks and balances" (ibid.). Although Wolfgang Merkel only discusses the rule of law as a central element of democracy in the mid-range model, I would argue that Merkel does not differentiate between specific types of the rule of law. In a minimalist model, the rule of law is limited to the protection of private property, the enforcement of contracts and the guarantee of periodic elections. In the medium-range model, the rule of law is extended to other civil rights which include, most importantly, the right to participation in political decision-making processes (Merkel 2015: 12). This comes close to Cheneval's second definition of the adjective 'democratic', which "means a decision-making procedure of a political community or people, in which all citizens have the right to participate in the organization of collective action and to control the use of political authority/power" (Cheneval 2015: 19; transl. LP). The focus lies here on the input-dimension of democracy and background institutions that provide just procedures. The specific output of democracies is not included in this definition, but, rather, depends on the outcomes of deliberation processes. Input and output, form and substance are separated. The emphasis on political procedures and participation implies that a middle-range democracy includes certain forms of developmental democracy such as the one propagated by John Stuart Mill, in that it enables people to develop their intellect and moral capabilities through political participation (Macpherson 1977: 44-76). This can, in turn, be understood as a formal understanding of positive freedom, or the freedom to reflexively develop one's self in deliberative interaction with others (Honneth 2014: 29-41). Furthermore, Merkel (2015: 12) argues that this model of democracy also theoretically includes more demanding forms of participatory democracy as propagated by Benjamin Barber (1984) and Archon Fung and Erik Olin Wright (2003). It appears, therefore, that Merkel's notion of medium-range democracy is very broad and includes a wide variety of specific democratic concepts ranging from representative to more participatory forms of democracies.

In contrast to this procedural understanding of democracy in the medium-range model, Merkel argues that the maximalist model of democracy emphasizes the output dimension. According to Merkel, this

> include[s] public goods, such as internal and external security, economic welfare, welfare state guarantees, fairness in the distribution of basic goods, income, social security, and life chances. In particular, they emphasize the need to avoid extreme inequalities in the distribution of income, and view the provision of primary and social goods at the core of democracy. (Merkel 2014: 13)

This, in turn, comes close to Cheneval's third concept of the adjective 'democratic', which "generally means the normative ideas of a form of living that is egalitarian, inclusive, deliberative, transparent, free from oppression and exploitation, fair, etc." (Cheneval 2015: 19). The inclusion of the output dimension or, rather, specific

normative content into the definition of democracy implies an extension of the rule of law to include social and economic rights such as the right to education, housing, health, a minimum wage or the means of production. This maximalist model attempts to deal with the problem of a purely procedural concept of democracy in which the door to participation might be wide open, but if people lack the resources and capabilities to enter the realms of politics, participation becomes an empty promise. The model attempts to give substance to form – and transform formal freedom into a more substantive, positive freedom. However, Merkel is critical of the maximalist model because it does not necessarily require democratic procedures and can easily be realized in more authoritarian regimes (Merkel 2015: 13). Furthermore, Merkel rejects the maximalist model because normative standards are supposedly so high that "only a few democracies can pass their 'social-democratic test'" (Merkel 2014: 14). And because the minimalist model is so meager, Merkel argues that it is necessary to adopt a medium-range definition of democracy that enables people to measure the grades of a democracy without automatically assuming that all democracies are either in perfectly good health or permanently in crisis (Merkel 2015: 14).

1.3 Foundational and surplus dimensions of the concept of democracy

Wolfgang Merkel's three-tier model of democracy is sufficient if one wants to measure existing democracies. Yet, because the model's focus is on measuring the qualities of existing democracies, especially with reference to their procedural institutions, it obviously lacks the ability to grasp the full potentiality of democracies. This would be like attempting to measure a child's future height and weight when it will be an adult. Nevertheless, this is not to say that a democracy must forever remain in the specific form that it currently exists in. Simply because a certain form of democracy is more widespread or easier to measure does and should not imply that this specific model of democracy must be maintained. Put in a more general perspective, I agree with Ernesto Laclau and Chantal Mouffe that all terms and identities are "polysemic" and therefore "overdetermined" (Laclau/Mouffe 2001: 121). This implies that terms bear a "surplus of meaning" that disrupts, breaks up and goes beyond the present dominant and hegemonic understanding of a word (ibid.: 97-114). In the words of Laclau and Mouffe:

> The practice of articulation, therefore, consists in the construction of nodal points which partially fix meaning; and the partial character of this fixation proceeds from the openness of the social, a result, in its turn, of the constant overflowing of every discourse by the infinitude of the field of discursivity. (ibid.: 113)

While this potentiality cannot be easily measured, this does not imply, in turn, that it does not exist. On the contrary, it implies that meanings and realities change over time – for better or worse. In relation to democracy, this is easily shown by the expansion of the enfranchised population from only male adults who own property to all male adults, to women and to people who were previously considered to be slaves. However, the understanding of democratic inclusion must not stop there but could, in the future, also include immigrants, teenagers and children or, as I will later argue, even non-human beings. The same can be said about the understanding of democratic equality which is for some the central aspect of democracy (Christiano 2010: 199; Christiano 2008). There exist, however, different interpretations of democratic equality. We can, for example, understand equality as the equal protection of property rights for the existing distribution of resources and the equal right of citizens to elect a representative every four years (minimalist model). Another notion of equality implies the equal right to participate in politics more actively (medium-range model). Yet another denotes the more or less equal distribution of material resources to enable people to lead a self-determined life in concert with others. Merkel, for example, accepts the shift in the rule of law from minimal property rights to other basic civil rights that aim to secure political participation but, in turn, rejects the further shift to equal socio-economic rights. Furthermore, he completely ignores the question of why democracy is limited to the public sphere. Put in such an historical context, Merkel's normative demarcation appears contingent and arbitrary, suppressing a more fundamental, dynamic and normatively demanding understanding of democracy. To be fair, we must distinguish here between political science that aims to measure reality and political theory that opens up possibilities of how this reality can or should be transformed. While Merkel is of the former camp, I would position my argument, which I will develop here, in the latter group.

That being said, I would like to push this argument for a more demanding understanding of democracy a little bit further. In our discussion of models of democracy, there appears to be an implicit normative linearity from bad to good to best. One could argue that this linearity corresponds with the chronological linearity of the development of democracy from a minimal model in the late 19th and early 20th centuries to a medium-range, proceduralist model since the Second World War and possibly to more substantive forms of democracy in the future. Here, substantial participation is nice to have, yet not a necessary and inherent aspect of democracy. Contrary to this account, I would argue with numerous others such as Chantal Mouffe, Axel Honneth and Charles Taylor that both minimal and proceduralist accounts of democracy are already expressions of substantive values. As Mouffe explains with reference to Wittgenstein:

> Rules [of law], for Wittgenstein, are always abridgements of practices, they are inseparable from specific forms of life. The distinction between procedural and substantial cannot therefore be as clear as most liberal theorists would have it. In the case of justice, for instance, it means that one cannot oppose, as so many liberals do, procedural and substantial justice without recognizing that procedural justice already presupposes acceptance of certain values. It is the *liberal* conception of justice which posits the priority of the right over the good, but this is already the expression of a specific good. (Mouffe 2000: 68; original emphasis)

As we can see, this procedure–substance dichotomy is based on the "liberal" distinction between the right (form/procedure) and the good (substance). Mouffe argues, however, that the specific definition of the right is also always an expression of a specific good. In other words, while procedural democracy emphasizes an individual or particularistic concept of the good, the realization of such individual rights is based on more fundamental social freedom. Along these lines, in his book *Freedom's Right* (2014), Axel Honneth defines the concept of social freedom in contrast to negative and reflexive positive freedom:

> While the idea of negative freedom […] must fail because the 'content' of action cannot itself be grasped as 'free', the idea of reflexive freedom is insufficient because it opposes the actions it views as free in substance, viz. as self-determined acts, to an objective reality that must continue to be regarded as completely heteronymous. […] Not only must individual intentions be developed without any external influence, but the external, social reality must be able to be conceived as being free of all heteronomy and compulsion. The idea of social freedom, therefore, is to be understood as the outcome of a theoretical endeavor that expands the criteria underlying the notion of reflexive [positive] freedom to include the sphere that is traditionally set in opposition to the subject as external reality. […] The idea is rooted in a conception of social institutions in which subjects can grasp each other as the other of their own selves […] Because the individual's striving for freedom can thus be fulfilled only within – or with the aid of – institutions, the 'intersubjective' concept of freedom expands once again into a 'social' concept of freedom. A subject is only 'free' if it encounters another subject, within the framework of institutional practices, to whom it is joined in a relationship of mutual recognition; only then can it regard the aims of the other as the condition for the realization of its own aims. (Honneth 2014: 43-4)

Or in somewhat simpler terms: "We must first regard all subjects as integrated in social structures that ensure their freedom, before they then participate as free beings in a procedure that monitors the legitimacy of the social order." (Honneth 2014: 57) This implies that form and content, procedure and substance, other and self, and an objective social order and subjective freedom always exist in circular, dialectical

and interdependent relationships that advance each other. In the debate between liberalism and communitarianism, this implies that social, democratic freedom and the definition of a common good are inherent ontological preconditions for individual freedom (Taylor 2003). Or in other terms, democratic rights can only be realized through substantial participation in collective action – which often involves questioning and contesting existing democratic norms and laws. Translated back into the debate on democracy, this implies that the supposed 'maximalist' model of democracy in fact underlies both minimalist and medium-range models. Norms that underlie the maximalist model can be understood as the foundation of all other existing forms of democracy.

This normative reversal of the sequence of democratic models opens our insight, firstly, to the fact that procedure and substance in democratic models cannot be so clearly separated and that means and ends are reciprocally determined (Dorf/Sabel 1998: 284). Second, it has become clear that democratic freedom should be inherently understood as deeper and broader than minimalist and medium-range models. But what does this mean for our definition of democracy? It suggests that although democracy is often understood either as representative democracy or the more active participation in political decision-making procedures, the word democracy simultaneously bears a normative surplus, which invariably points to transformations and – in an optimistic interpretation – improvements of social arrangements.

On the one hand, and in Rawls' somewhat technical language, this refers to the realization of a more just or democratic basic social structure that realizes "the fair value of the equal political liberties that enable citizens to participate in public life" (Rawls 2001: 148). On the other hand, this dynamic and social reading of democracy also demonstrates that democracy has an inherent tendency to overflow from political spheres into other spheres of social life, be that the family, church, media or the economy. Or more precisely, democratic politics constitutes these other social spheres. However, this does not imply that democracy originates in the political sphere. Instead, I would agree with John Dewey's well-known saying that a "democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience" (Dewey 2008: 93). Here, democracy is understood as an inherently intersubjective and social form of being in everyday life. Or, that our everyday and intersubjective reality is or, rather, has the potential to be democratic.

Nevertheless, I would go further than this somewhat vague notion of everyday associative democracy and specify with Joshua Cohen and Joel Rogers that a democratic way of living implies "the idea that free and equal persons should together control the conditions of their own association" (Cohen/Rogers 1983: 18). In this definition it remains unclear, however, how the specific relation between the individual and democratic freedom is to be understood. To comprehend this rela-

tionship, it is helpful to turn to David Held's "principle of autonomy", which takes the relationship between individual and democratic freedom into account:

> Individuals should be free and equal in the determination of the conditions of their own lives; that is, they should enjoy equal rights (and, accordingly, equal obligations) in the specification of the framework which generates and limits the opportunities available to them, so long as they do not deploy this framework to negate the rights of others. (Held 1987: 271)

Although this concept of autonomy is framed as individual, it is essentially social and democratic in that it enables people to participate in the codetermination of the institutions that structure one's life. Important aspects of this principle for Held are the "key conditions for the realization of the principle of autonomy" (ibid.: 275), which include, for example, the limitation of private property, access to resources and necessary changes in the organization of household or care activities. Here, our concepts of democracy and politics are broadened to deal with the distribution of resources and questions of power more generally. As Held writes, democratic politics

> is about the capacity of social agents, agencies and institutions to maintain or transform their environment, social or physical. It is about the resources that underpin this capacity and about the forces that shape and influence its exercise. Accordingly, politics is a phenomenon found in and between all groups, institutions (formal and informal) and societies, cutting across public and private life. It is expressed in all the activities of cooperation, negotiation and struggle over the use and distribution of resources. It is involved in all the relations, institutions and structures which are implicated in the activities of production and reproduction in the life of societies. Politics creates and conditions all aspects of our lives and it is at the core of the development of problems in society and the collective modes of their resolution. (ibid.: 275-7)

For this reason and according to Held, politics are considered "a universal dimension of human life" (ibid.: 277), which should be subject to democratic legitimacy based on the principle of autonomy and democratic decision-making procedures. It can be said here with Laclau and Mouffe that politics become more 'political' in that they are now understood as "a practice of creation, reproduction and transformation of social relations [that] cannot be located at a determinate level of the social" (Laclau/Mouffe 2001: 153). Democracy thus becomes more 'political' as it is understood to be the ability to alter and determine the diverse arrangements that structure society. Furthermore, democracy is understood as a means to deal with the distribution of resources, power and the problems that result therefrom. It is this broad yet fundamental concept of democracy that I will further develop in relation to the ecologically grounded concept of commons.

For the moment, however, let us now turn to an analysis of the relationship between the market and the state, for I will now show that this concept of democracy is ultimately incompatible with the open and competitive market.