**Brian Milstein**

Research Associate and Lecturer in International Political Theory

Excellence Cluster “The Formation of Normative Orders”

Goethe University Frankfurt

*email:* brian.m.milstein@gmail.com

Bio: Brian Milstein works on questions related to crisis theory and the concept of crisis in social and political thought. He studied politics at the New School for Social Research, where he received the Hannah Arendt Memorial Award in Politics for his dissertation work on Kant, Habermas, and the pathologies of the modern international state system. Milstein previously held postdoctoral fellowships at the Collège d'études mondiales in Paris and the Freie Universität Berlin, and his work has appeared in the *European Journal of Philosophy*, *European Journal of Political Theory*, and *Philosophy & Social Criticism*. He is author of *Commercium: Critical Theory from a Cosmopolitan Point of View* (Rowman & Littlefield International, 2015), and he recently finished editing a volume of dialogues between Nancy Fraser and Rahel Jaeggi, *Capitalism: A Conversation in Critical Theory* (Polity Press, forthcoming).

**Democratic Orders of Justification and the New Politics of Legitimation Crises**

Keywords: Democracy, legitimation crisis, justification, partisanship, Rainer Forst

The 2016 Brexit and Trump votes present a challenge to both democracy and to democratic theory. Both decisions were results of formally legitimate democratic processes, and yet citizens and elites in both the UK and US have been at pains to interpret these decisions as authentic expressions of a collective democratic will, creating states of division and conflictedness on how to proceed and leading some to question the reliability of democratic processes in producing rational decisions.

In this paper, I argue that we can understand results like Brexit and Trump as a particular kind of “legitimation crisis” that may occur when an order of political hegemony begins to falter, but society cannot marshal the resources necessary to replace it. How this happens can be elucidated by understanding democratic decision-making in terms of what Rainer Forst calls “orders of justification.” Actually existing democracies comprise at least three orders of justification: the *deliberative order*, which includes the political public sphere and is the primary site of democratic opinion- and will-formation; the *aggregative order*, which gives democratic decisions the force of law via voting and elections; and the *partisan order*, which comprises the political party system and serves as a bridge between the other two orders, channeling reasonable disagreements in the deliberative order and presenting them back to citizens as discrete electoral choices. Each possesses its own distinct logic and each runs on its own internal standards of justification, and each carries out an essential function in the democratic process. Yet, as orders of justification, each also relies on a certain legitimation narrative, which grounds its status as a legitimate generator of justifications, and against which it can be measured, held to account, or even rejected.

Under ideal conditions, these three orders of justification work in tandem, taking justifications generated in one and channeling them into the next. Under non-ideal conditions, however, the linkages between these three orders are vulnerable to contradictory incentives and distortions by unequal power. This is particularly true of the partisan order, which purports to exhaust the range of reasonable alternatives available for deliberation, yet which can also generate a form of political hegemony that *restricts* the scope of deliberation. In times of crisis, a citizenry may find the partisan order unresponsive to the need for new alternatives and reject its legitimation narrative; however, this can have the further consequence that the three orders of justification become de-linked from one another. Such a scenario can render the political system prone to erratic decision-making, which appear democratic in form, yet which remain unrecognizable as the product of a general democratic will. Not only are citizens unable to see themselves as co-authors of the decisions to which they are subject, they become less able to even understand themselves as participants in a common demos.

Using this model, I argue that Brexit and Trump represent not so much failures of liberalism and democracy as failures of neoliberalism and post-democracy. Nevertheless, if left unaccounted for, such tendencies risk a long-term loss of faith in liberal and democratic institutions.