

JÜRGEN HABERMAS' DISCOURSE THEORY OF LAW AND POLITICS:
A RECONSTRUCTIVE APPROACH TO POLITICAL AUTHORITY AND
OBLIGATION

A Thesis

Presented to the

Graduate Faculty of the

Department of Philosophy and Religious Studies

College of Arts and Sciences

University of San Carlos

Cebu City, Philippines

In Partial Fulfillment

of the Requirements for the Degree

MASTER OF ARTS IN PHILOSOPHY

by

BENJIEMEN A. LABASTIN

March 2015

ACKNOWLEDGMENT

One of the most important realizations in one's life is to recognize that one's endeavor is not a result of a monadic labor. Like in a movie, the protagonist's victory may be attributed to his or her overcoming his or her nemesis, but he or she cannot do so without the countless individuals who toiled with him or her. This is also the point of Renato Constantino when he tried to reconstruct the Philippine history from the point of view of the Filipino people. He said, "[T]he individuals who made history colorful could not have made history without the people. Supermen may exist in the romantic minds or among those who persist in the primitive practice of deifying men; but no supermen exist, only leaders who became great because they were working with and for the people." It is with this spirit that I name these individuals and institutions, who without them, I cannot continue this journey.

To La Salle University, especially to Br. Jaime M. Dalumpines, who have given me the financial support to undertake my master's study. To the previous VC-Academics, Dr. Emma O. Suana, the present administration, Dr. Nancy Q. Cadosales, Dr. Wenny M. Caseros, Ms. Rose Aimee G. Mangao, and to the Dean of the College of Arts and Sciences, Dr. Elsie L. Dajao who believed in me and continuously encouraged me to continue this study despite its hurdles.

To all other individuals in the university, especially my colleagues in the Social Sciences Department, Ms. Pasok, Mr. Gapol, Mr. Quinco, Ms. Damasin, Ms. Genodepanon, Ms. Perez, Ms. Tizon, Ms. Tagaylo, and Dr. Bocar they all bear with me even I forgot some of my administrative tasks.

To the University of San Carlos, especially to the Department of Philosophy; my mentors, Br. Abulad, Dr. Urbano who have toiled with me, especially to their untiring effort to guide me in this study. To the panelists, Dr. Suazo, Dr. Mandane, and Ms. Maje, to their brilliant comments and criticisms which helped me a lot to clarify my arguments. Without their comments, I cannot make this study what it is today. You are really instruments of the Divine Word.

To my family, Diah and Ezekiel Chris, for the strength that moved and inspired me to go on. Their mere presence enlightens the darkness that engulfs my mind as I am fathoming the direction of the study. Their understanding is incomparable even when I spent my Saturdays and Sundays working.

Ultimately, to HIM, the source of the WORD. To HIM that we cannot come that comes to us.

ABSTRACT

This study was motivated by the philosophical anarchists' challenge that individuals do not have political obligation. The study shows that there is political obligation but political obligation cannot be understood as mere obedience to the law. This contention is based on Habermas' reconstructive approach to the legitimacy of the political authority which calls on individuals to participate in the process of lawmaking.

Habermas' reconstructive approach to the legitimacy of the political authority is juxtaposed to show the limitations of the philosophical anarchists' denial of the legitimacy of political authority. The empirical plausibility of Habermas' approach makes his theory relevant and sensitive to the contingency of the actual political conditions. The pure normative approach of the philosophical anarchists makes their theories blind to the historical conditions of the political communities.

By showing that a legitimate state is possible and plausible through people's participation in the lawmaking process, the paper argues, as stated above, that there is political obligation, but, this political obligation is understood as participation and obedience to the law is only derivative of the peoples' participation in lawmaking.

TABLE OF CONTENTS

1. INTRODUCTION	
Rationale of the Study	1
Theoretical Background.....	3
THE PROBLEM	
Statement of the Problem	8
Significance of the Study.....	8
Scope and Limitations.....	9
RESEARCH METHODOLOGY	9
DEFINITION OF TERMS	10
2. THE PHILOSOPHICAL ANARCHISTS' POSITIONS	11
2.1 Wolff and Simmons on Legitimacy and Political Obligation	11
2.2 Robert Paul Wolff on Legitimate State	13
2.2.1 The Antinomy Between Authority and Autonomy	13
2.2.2 Unanimous Direct Democracy, Representative and Majoritarian Democracy	16
2.3 Alan John Simmons on Legitimate State	21
2.3.1 Consent is the only Plausible Ground for the Legitimacy of the State ...	23
2.3.2 Tacit Consent Cannot Establish the Legitimacy of the State	25
2.3.3 The Principle of Fair Play, Natural Duty of Justice and Gratitude	27
2.3.4 Simmons' Philosophical Anarchism	30

2.4 Some Questions on Philosophical Anarchism	31
3. HABERMAS' RECONSTRUCTIVE APPROACH TO THE LEGITIMACY OF POLITICAL AUTHORITY	34
3.1 On Rational Reconstruction	34
3.2 Habermas on the Legitimacy of the State.....	37
3.3 Language, Law and Social Integration.....	40
3.3.1 The Ambivalence of the Philosophy and Sociology of Law	41
3.3.2 On the Ambivalent Relation Between the Rational and the Coercive Character of the Law.....	46
3.4 On the Conditions for the Emergence of the Common-will.....	47
3.4.1 The System of Rights as Norms and Values: A Reflection	50
3.5 Law and the Legitimacy of the Political Authority	51
3.5.1 On the Internal Differentiation of the Political Authority.....	54
3.6 Deliberative Politics: On the Empirical Plausibility of Legitimate Lawmaking.....	56
3.6.1 Deliberative Politics vis-à-vis the Liberal and Republican Paradigms.....	57
3.6.2 The Weak and the Strong Public: Their Roles in Deliberative Politics.....	59
3.6.3 Deliberative Politics and Popular Sovereignty	65
4. A RESPONSE TO PHILOSOPHICAL ANARCHISM	66
4.1 A Reconstructive Response to the Legitimacy of the State.....	66
4.2 On Unanimous Direct Democracy and Deliberative Politics.....	69

4.3 On Autonomy and the Coercive Character of the Law and Political Authority.....	71
4.4 On Consent and Legitimate Political Authority.....	73
4.5 Rethinking Political Obligation.....	75
5. SUMMARY, CONCLUSION, RECOMMENDATION.....	79
Summary	79
Conclusion	83
Recommendations	85
BIBLIOGRAPHY	86