

Popular sovereignty from Machiavelli to modernity



**EDITED BY ROBERT G. INGRAM
AND CHRISTOPHER BARKER**

People power



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Robert G. Ingram and Christopher Barker

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Athens, Cairo
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Abbreviations

AHR	<i>American Historical Review</i>
APSR	<i>American Political Science Review</i>
CWJSM	J.M. Robson (ed.), <i>The Collected Works of John Stuart Mill</i> (Toronto, 1963–1991).
CWWB	St. John-Stevás (ed.), <i>Collected Works of Walter Bagehot</i> (Cambridge, MA, 1965–1986).
EJPT	<i>European Journal of Political Theory</i>
HEI	<i>History of European Ideas</i>
HJ	<i>Historical Journal</i>
HPT	<i>History of Political Thought</i>
JAR	<i>Journal of American History</i>
JEH	<i>Journal of Ecclesiastical History</i>
JHI	<i>Journal of the History of Ideas</i>
JMH	<i>Journal of Modern History</i>
Locke, TT	John Locke, <i>The Two Treatises of Government</i> , ed. P. Laslett (Cambridge, 1988).
Machiavelli, <i>Discourses</i>	N. Machiavelli, <i>Discourses on Livy</i> , eds and trans. H. Mansfield and N. Tarcov (Chicago, 1996).
MIH	<i>Modern Intellectual History</i>
Montesquieu, <i>Spirit</i>	Montesquieu, <i>The Spirit of the Laws</i> , trans. and eds A. Cohler <i>et al.</i> (Cambridge, 1989, 2015).
ODNB	C. Matthew and B. Harrison (eds.), <i>Oxford Dictionary of National Biography</i> (Oxford, 2004).
PBA	<i>Proceedings of the British Academy</i>
PhR	G.W.F. Hegel, <i>Outlines of the Philosophy of Right</i> , trans. T.M. Knox, rev. S. Houlgate (Oxford, 2008).
PMSW	P. Mazzei, <i>Selected Writings</i> , ed. M. Marchione (Prato, 1983).
PS	<i>Political Studies</i>
PT	<i>Political Theory</i>

PTJ	J. Boyd <i>et al.</i> (eds), <i>The Papers of Thomas Jefferson</i> (Princeton, NJ, 1950–).
RP	<i>Review of Politics</i>
SR	<i>Studies in the Renaissance</i>
Tocqueville, <i>Democracy</i>	A. de Tocqueville, <i>Democracy in America</i> , trans. and eds H. Mansfield and D. Winthrop (Chicago, 2000).
TR	<i>The Tocqueville Review/La revue Tocqueville</i>
TRHS	<i>Transactions of the Royal Historical Society</i>
WJCC	R. Crallé (ed.), <i>Works of John C. Calhoun</i> (New York, 1853–1855).
WMQ	<i>William and Mary Quarterly</i>

1

People power

Christopher Barker and Robert G. Ingram

This book is about the people's power. But who are *the people*? How did the people come into being? Should the people be sovereign? And what does it mean for the people to be sovereign? These are perennial questions in self-governing societies. They have, though, had greater urgency in the last few decades, during a long moment of unease about the people's power. For a relatively late-arriving phenomenon – something often called *populism* – has spawned new questions relating to popular sovereignty. What is populism? Is it a deformation of popular sovereignty? Or is populism merely popular sovereignty by another name? These are normative questions, since they ask how things *should* be. But they are also historical questions, since they ask how things *are*, which requires explaining how they got to be how they are. Indeed, the questions themselves have histories. And addressing them is of contemporary importance, since recent populist moments have troubled democracy – popular sovereignty's purest form – as the legitimate vehicle of the people's will. The result is a profoundly unsettled politics across the West and beyond.

In the West, populist moments are everywhere to be seen; all can point to moments in which the people's power has spilled over existing legal, political or constitutional levees. From Occupy Wall Street in 2011 to the reworking of the Hungarian Constitution in 2012 to the Brexit vote in 2016 to the *gilets jaunes* protests in 2018 to the storming of the U.S. Capitol in early 2021, the people – or some claiming to be or to be acting on behalf of the people – have behaved in ways that have unsettled many while simultaneously raising important political issues. Consider, for instance, the fracas on Capitol Hill in early January 2021. On that day, thousands of election protestors supporting President Donald Trump marched on the Capitol and hundreds of those broke past the security barriers and poured into the building. Five people died that day, including one police officer. The rioters broke the law and transgressed political and constitutional norms. But were they wrong? Put another way, does the sovereign people have the power to thrust itself into the workings of government, when that government is perceived

to be non-responsive or actively thwarting the ‘true will of the people’?¹ If ‘we the people’ claim to be able to authorise government to act on behalf of the people, do ‘we the people’ not also possess a power to de-constitute – or to *dissolve* government, to use a Lockean term – when government acts against the people’s interests? The claim of most modern democratic revolutions, after all, has been that some established government or another deserved to fall because it failed to represent the interests or to effect the will of *the people*.²

The gulf between the people as the ultimate source of legitimate power and the regular workings of government has become a truism of Western scholarship.³ ‘The erosion of the trust of citizens in their leaders and in democratic institutions has been one of the most heavily studied phenomena in political science over the last twenty years’, Pierre Rosanvallon noted a decade and a half ago.⁴ Populism is often diagnosed as a response to that erosion of trust. And yet, despite all the worries about the people’s power, few in the West call for abandoning the bedrock notion of popular sovereignty. Legitimacy is still conferred by *the people*, not by God, birth, might or fiat.⁵ We continue to live in a world, as Alexis de Tocqueville (1805–1859) observed, in which the people are the sole source of legitimate political power and one in which democracy seems inevitable, even providential. ‘Everywhere the various incidents in the lives of peoples are seen to turn to the profit of democracy; all men have aided it by their efforts’, Tocqueville reckoned. ‘[T]hose who had in view cooperating for its success and those who did not dream of serving it; those who fought for it and even those who declared themselves its enemies; all have been driven pell-mell on the same track, and all have worked in common, some despite themselves, others without knowing it, as blind instruments in the hand of God.’⁶ In the modern world, rule of the people, by the people, for the people might seem practically problematic, but it nonetheless seems morally unquestionable, so much so that the West is willing forcibly to export it to non-Western places.

Consider, for instance, the world’s fourth largest democracy – Japan. Within living memory, Japanese political legitimacy was conferred by birth. The Meiji Constitution (1889) located power in a hereditary imperial house: ‘The rights of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted’.⁷ However, the Potsdam Declaration (26 July 1945), which set out terms of Japan’s surrender, enjoined the Japanese government to ‘remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people’.⁸ And Japan’s 1947 Constitution grounds itself on popular sovereignty. ‘We, the Japanese People, acting through our duly elected representatives in the National

Diet ... do proclaim that sovereign power resides with the people and do firmly establish this Constitution', its preamble began. 'Government is a sacred trust of the people, the authority of which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the principle. This is a universal principle of mankind upon which this Constitution is founded.'⁹ And so we have the irony of a defeated and occupied people (though not enslaved or 'destroyed as a nation') involuntarily affirming the principle that only popular will rightfully determines a nation's political forms. This insistence that democratic national sovereignty must be the guiding principle continued to be made during the postwar period of decolonisation.

How did we get here, to the default Western position of popular sovereignty? Why is it that the first question about rule's legitimacy is whether its source is the sovereign people? And what does it mean for freedom and equality, past and present, that such a default setting exists? This book tries to answer these questions by examining how the switch of modern political legitimacy got toggled from *monarch* to *the people* so that the people became modernity's not-monarch.¹⁰ What becomes clear is that *popular sovereignty* was never a reified thing but, instead, remains an emergent doctrine, one whose contours continue to change.

The scholarly literature on popular sovereignty, its component parts, its cognates and its deformations is vast and grows exponentially. The overall impression is that there is widespread scholarly suspicion of – or at least unease with – the notion of popular sovereignty and much related to it. That begins with the very notion of *the people*, what Margaret Canovan describes as 'undoubtedly one of the least precise and most promiscuous of concepts'.¹¹ The notion of *the people* has a long history, which can be traced back to ancient Rome and the legendary *lex regia*. It took on its modern freight with the American and French Revolutions of the late eighteenth century. No consensus exists, though, about who constitutes *the people* or about why they have any particular authority. The difficulties of setting up boundaries to determine who is and is not *the people* have been around since the age of Athenian democracy. Should we think of the people as a corporate body?¹² Or are social contractarians right that being part of a *demos* is a choice?¹³ Or are republicans correct to think that self-rule is something done by *the public* as opposed to by *the people*?¹⁴ Or is *the people* really just another name for the citizens of a nation?¹⁵ Or are *the people* what Maximilien Robespierre (1758–1794) called *le peuple, les malheureux m'applaudissent*, the *menu* or *petit peuple*, those who fight for some aim or another against those above them on the societal totem pole?¹⁶ Or are *the people* the supra-national people, the unit of analysis of Marxian international revolution?¹⁷ Or is someone like Bruce Ackerman onto something when he argues that

the people is but a temporary form brought into being at specific moments for specific purposes only to dissolve afterwards into thin air?¹⁸ Are *the people*, as Claude Lefort contends, those who only step temporarily into the 'empty space' (*lieu vide*) at the centre of democracy, one which no one group can truly or lastingly occupy?¹⁹ And even if we could agree on who *the people* are, why should they or it have any authority?²⁰ Here again there is widespread disagreement, with Canovan contending that *the people* is just a legitimating myth for democratic regimes, something historians of the American Revolution have also claimed.²¹ And even that myth has its limits. 'The most potent (and misleading) myth of all', Canovan reckons, 'is surely the belief that somewhere, behind the mundane surface of everyday politics, there must be some ultimate source of authority that can save us from the responsibility of muddling through as best we can'.²²

If *the people* is a concept which has come in for increased scholarly scrutiny, so too has the concept of *sovereignty*. The story of *sovereignty* was long the story of modernity, one that seemed relatively straightforward.²³ In the pre-modern world, there was no conception of state sovereignty, or what William Blackstone (1723–1780) later defined as 'a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside'.²⁴ In the medieval period there existed, instead, a series of overlapping, not-always-contiguous and never-fully-independent *regna*. If anything bound together Europe it was the Church (*ecclesia*), and sometime around the ninth or tenth century there emerged the notion of *respublica Christiana* (the Christian Commonwealth). Thereafter kings were intermediate figures between the Church and various local authorities below; none claimed absolute authority, though the *ecclesia*'s claims carried increasing weight.²⁵ The Protestant Reformations of the sixteenth century, though, changed things, as Protestantism broke apart Christian unity. In the Reformation's wake came opportunistic rulers and clever authors – Jean Bodin (c. 1529–1596) and Thomas Hobbes (1588–1679), most notably – who created modern sovereignty in fact and theory.²⁶ The Peace of Westphalia (1648) ratified that work. Afterwards, territorial sovereignty in which secular rulers had sole, unquestioned *imperium* supplanted the confused patchwork of competing authorities of the Middle Ages. Sovereignty is now taken to be one of modernity's hallmarks, something which distinguishes it from the world we have lost.²⁷

And yet despite being 'the master concept of legal and political philosophy', *sovereignty*, no less than *the people*, has been put under the scholarly microscope.²⁸ In the early twentieth century, British pluralists – people like J.N. Figgis (1866–1919) and Harold Laski (1893–1950) – questioned whether unitary sovereignty actually accorded with the facts of social life.²⁹ Their ideas had only limited traction at the time, but pluralism gained new

interest during the late twentieth century.³⁰ Scholars of empire, for instance, have confronted the limits of sovereign claims beyond the metropole. Lauren Benton and Richard Ross note that '[a]t the heart of this history is a recognition of the importance of legal pluralism to empires, which invariably relied on layered legal arrangements within composite polities'.³¹ A particular kind of early modern imperial player – the 'company-state' – has further undermined scholarly confidence in older accounts of sovereignty's unity.³² 'Whether seen as a person or a parasite, the idea of the corporation and association confounds modern assumptions about the nation-state as the ultimate political and social community', contends Philip Stern.³³ This scepticism has a long and rich provenance: according to Edmund Burke (1729–1797), the East India Company 'more nearly resembled a delegation of the whole power and sovereignty of this kingdom, sent into the East'.³⁴ Seen in the light of sovereignty's long history of fragmentation and exportation, both the Westphalian system and Max Weber's notion of the state on which it builds 'have been more myth and argument than reality and inevitability', as Stern puts it.³⁵ For his part, Don Herzog reckons that sovereignty was less of a myth than 'an intelligible, intelligent response to the savage strife of the wars of religion' which followed on from the Reformation; but Herzog, like others, thinks that it is both useless and pernicious to invoke sovereignty as a meaningful concept in the contemporary world.³⁶

These recent salvos against sovereignty are not evidentially groundless, but they also serve contemporary uses. In the Brexit campaign, for instance, Remainers routinely pointed out that Westphalian sovereignty is an illusion and that all sovereignty is pooled as a justification for not giving up membership of the European Union. There was, they argued, no one from whom the British could 'take back control'.³⁷ While revived interest in Carl Schmitt (1888–1985) has other causes, his stark views on sovereignty – 'Sovereign is he who decides on the exception', Schmitt opened *Political Theology* (1922) – surely have appealed to those who believe that there must be some ultimate source of authority within each polity.³⁸ Certainly revived interest in Schmitt has focused concertedly on 'the exception'.³⁹

The exception addresses the older Lockean question 'who shall judge?', which is a question less about right than about power.⁴⁰ Popular power is a particular expression of political power, one which has been repeatedly reformulated in terms of competing political ideologies.⁴¹ Properly to appreciate popular power requires appreciating the various ideological takes on it, including those of democrats, liberals, republicans and populists. Popular power is also institutionalised in more specific forms such as *constituent power*, resulting in constitutionalised (constituted) power. This book analyses popular power as it has been used to legitimise and institutionalise governments, to dissolve existing governments, and – importantly

for conceptions of limited sovereignty – to share popular power across multiple sites and in different modes, both inside and outside of formal institutional politics.

The scholarly scepticism about *the people* and *sovereignty* has also been manifest in studies of the various forms of popular sovereignty, especially *democracy*. What Paul Cartledge calls a ‘portmanteau term’, *democracy* combines *demos* (‘people’) and *kratos* (‘power’ or ‘control’).⁴² It was and is a form of government quite literally about people power. But while democracy is taken to be the antithesis of rule by the one or the few, [t]he ontology of democracy is not easy to figure out’, Jeremy Waldron insists.⁴³ Winston Churchill (1874–1965) famously described democracy as ‘the worst form of government, except for all the rest that have been tried from time to time’.⁴⁴ Yet if democracy’s value seems evident, especially after the twentieth century’s experiments in varieties of totalitarianism, its institutional meanings are less clear.⁴⁵ Among contemporary scholars, John Dunn is one of democracy’s most persistent and trenchant critics. Democracy’s long history is ‘a story with a single collective hero, the *demos*, first of Athens and now, potentially, of anywhere in the world where a set of human beings cares to think of themselves as belonging together by right and responsibility, and through and because of who they are’.⁴⁶ But, he lamented over four decades ago, ‘[i]f we are all democrats today, it is not a very cheerful fate to share. Today, in politics, democracy is the *name* for what we cannot have – yet cannot cease to want’.⁴⁷ Dunn’s views have not mellowed since. By his lights, the twenty-first century’s second decade witnessed national votes which together have ‘shown beyond any possibility of doubt that democracy in any of its current institutional formats is not today a reliable way for any national population to take its major political decisions’.⁴⁸ And he does not think that modern democracy would be any more legitimate had these national votes gone differently. ‘The appeal of democracy is the appeal of and to equality. It is that appeal which renders it both potent and potentially universal’, he contends. ‘But in any contemporary political setting it is also what makes it hopelessly evanescent or blatantly insincere. Evanescence and insecurity are alike fatal to authorization’.⁴⁹ Democracy’s chief failure, on his reading, is that it fails even remotely to deliver what it promises. If other scholars have been less excoriating about democracy, many have shared Dunn’s unease with the recent record of lived democracy.⁵⁰ To fix democracy’s failings, scholars offer a variety of remedies, including ones focused on better accountability, deliberation, participation, representation, selection and the like.⁵¹

Most who fret about democracy come from the political left and fault modern democracies for being insufficiently democratic. A very different strand of democratic critique has recently emerged from the communitarian

wing of the political right. It focuses on a particular kind of democracy – *liberal democracy*. *Liberalism*, on this view, is not a form of government, but a governing ideology, if an ideology which has many flavours and which evades easy definition. All forms of liberalism have advocated limited government, wanting government's powers over individuals circumscribed.⁵² In general, liberalism has also prioritised the individual over the collective.⁵³ So, *liberal democracies* are ones which are committed to *liberalism*, a rights-based ideology which aims, in Patrick Deneen's words, at 'liberation of humans from established authority, emancipation from arbitrary culture and tradition, and the expansion of human power and dominion over nature through advancing scientific discovery and economic prosperity'.⁵⁴ Liberalism, Deneen argues, fills the world with 'increasingly separate, autonomous, nonrelational selves replete with rights and defined by our liberty, but insecure, powerless, afraid and alone'.⁵⁵ Others have joined the chorus, pillorying *liberalism* for having destroyed much in the process of liberation. In doing so they have built on the earlier work of those like Charles Taylor (1931–) and Alasdair MacIntyre (1929–), for whom 'liberalism promotes ... a kind of institutional order that is inimical to the construction and sustaining of the types of communal relationship required for the best kind of human life'.⁵⁶ As an alternative to liberalism, some have proposed 'post-liberal' alternatives, including 'common good constitutionalism', as an antidote to what they take to be liberal democracy's deformities.⁵⁷

Liberalism has also come under sustained assault from another group, those touting *republicanism* as the remedy to liberalism's failures. Republicanism, Rachel Hammersley notes, 'has always been a flexible and ambiguous concept, which could be applied to different ends and combined with a variety of other ideas'.⁵⁸ That said, neo-republicans hail almost exclusively from the political left and propose republicanism as an alternative to liberalism, socialism and anti-liberal communitarianism. Neo-republicanism's ranks include most prominently scholars like Philip Pettit and Quentin Skinner. Where that defender of liberalism, Isaiah Berlin (1909–1997), championed negative over positive liberty, neo-republicans like Pettit and Skinner promote a third form of liberty – non-domination.⁵⁹ Liberty is not, neo-republicans hold, merely the absence of interference in one's individual independence, but the absence of mastery by others.⁶⁰ Rather than focus on rights, then, neo-republicans stress 'a strong theory of civic duty'. As Skinner has explained it, '[w]hat is held to be indispensable to the maintenance of free government is that the whole body of the citizens should be imbued with such a powerful sense of civic virtue that they can neither be bribed nor coerced into allowing either external threats or factional ambitions to undermine the common good'.⁶¹ And yet, Cécile Laborde rightly observes, it is sometimes difficult to see much daylight between liberals and

neo-republicans: ‘the main normative desiderata associated with freedom as non-domination – the rule of law, constitutionalism, popular consent, civic virtue – align republicanism with liberal constitutionalist ideals’, she argues. ‘Disagreement here is more conceptual (about what liberty is) than normative (about how political institutions should be designed).’⁶² The squabble between neo-republicans and liberals is an intra-family tiff, not an inter-clan war.

Indeed, in general, critics of democracy and liberalism have done so in tones mostly of regret and gentle correction, not anger and condemnation. The same cannot be said for those who have criticised *populism*, a form of people power which many find especially noxious but which has also spawned a scholarly industry that shows no sign of contracting. As Nadia Urbinati mordantly observes, ‘[i]nterest in the study of populism is strongest among scholars who see it as a problem’.⁶³ The scholarly interest in and revulsion at populism notwithstanding, *populism* eludes easy definition. A quarter of a century ago, Christopher Lasch (1932–1994) argued that populism is ‘unambiguously committed to the principle of respect’, avoiding rhetorical extremes of deference and pity. He famously concluded that ‘[p]opulism is the authentic voice of democracy’, a claim with which most scholars of populism would now disagree.⁶⁴ Cas Mudde takes what he calls an ‘ideational approach’ and tries to identify populism’s core concepts. For him, populism is a ‘thin-centred ideology which considers society to be ultimately separated into two homogeneous and antagonistic camps, “the pure people” versus “the corrupt elite,” and which argues that politics should be an expression of the *volonté générale* (general will) of the people’.⁶⁵ Jan-Werner Müller, in contrast, reckons that populism is less an ideology than a mode of politics. On his reading, populists are ‘anti-pluralists’ who claim that they and they alone represent the ‘real people’. Populism, put another way, is a means to a political end for self-styled populists, not a reassertion of authentic popular sovereignty. Indeed, it is anti-democratic precisely because populism is anti-pluralist, whereas democracy is the means by which societies manage pluralism.⁶⁶ Urbinati similarly thinks about populism not as a coherent ideology but as ‘a *representative process*, through which a collective subject is constructed so that it can achieve power’.⁶⁷ For her, to study populism is to study the acquisition and wielding of political power. Despite the scholarly disagreements over *populism*’s definition, there is widespread scholarly agreement that populism promotes authoritarianism and other poisonous modes of anti-liberalism.⁶⁸ And there is similar agreement, *pace* proponents of a populist turn in global politics, that *popular sovereignty* and *populism*, if they are not ontologically different phenomena, at least end up in different places. As Urbinati writes, ‘populism challenges representative government from within before moving beyond denunciation and seeking to substantially reshape democracy as a new political regime’.⁶⁹

For their part, recent scholars who have specifically focused on *popular sovereignty* have bothered themselves less with worries about populism but have, instead, pursued the subject in two broad ways. The first is to think about popular sovereignty as a concept with a long history. This approach begins with the ancients and works its way to the present, really picking up steam in the sixteenth century when Jean Bodin first articulated the modern doctrine of unitary sovereignty. The aim is to trace a concept's history across time.⁷⁰ A second way which scholars have approached popular sovereignty is to reframe it as a history of the language of *constituent power* whose changing meaning has been determined over time at key inflection points. Lucia Rubinelli, for instance, distinguishes constituent power from popular sovereignty; she associates the former with direct democracy and referenda, that is, with the *institutionalisation* of popular power. Today we live with the scholarly tension between generalised people's power and its institutionalisation. By Rubinelli's reckoning, before the end of the nineteenth century, theories of constituent power 'offered a circumscribed understanding of popular power, opposed to the unlimited account of political authority entailed in contemporary theories of sovereignty'. By contrast, since the turn of the twentieth century, constituent power has been deployed as 'a conceptual tool to promote the people's direct involvement in politics against the rigid legal understandings of political power offered by theories of sovereignty'.⁷¹

Where Rubinelli's account of constituent power runs from Abbé Sieyès (1748–1836) to Hannah Arendt (1906–1975), Daniel Lee's account focuses its attention on the late medieval and early modern revival of the *lex regia* as a legal fiction incorporating ancient Greco-Roman popular sovereignty within the matrix of Roman imperial power. For Lee, the true story of popular sovereignty is not the emergence of a regulative limit on out-of-control power but the development of a constitutive theory to gather together the 'pluralistic, overlapping, and conflicting sites of authority' which had bedevilled medieval constitutional theory.⁷² From a different angle, Richard Tuck tracks sovereign power as it developed from Bodin to the American Revolution, arguing that the people were simultaneously the locus of legitimate power *and* often asleep, only awakening from their slumber occasionally to take the wheel. The sovereign people are, in Tuck's view, mostly a sleeping sovereign, with others normally wielding power in their name and on their behalf.⁷³ For his part, Paul Sagar locates modern sovereignty on the trajectory from Pufendorf through Hume onto Smith, who variously held that there is 'no final, philosophically identifiable, and stable foundation of "sovereign" authority', but only a 'contested changing swirl of opinion'.⁷⁴ Sagar presents this trajectory as an alternative to Hobbes, whom he takes to be a key interlocutor of – but not the fount of – political modernity. In challenging the Hobbesianism of much work

on modern representative republicanism, Sagar both absorbs and modifies István Hont (1947–2013), who held that Hume's defence of commerce provides a midpoint between Hobbesian a-sociability and overly optimistic views of human sociability and benevolence.⁷⁵ For Hont, Hobbes's principle of modern sovereignty combines with Smithian commercialism to explain the modern turn; for Sagar, the price is diverging from a Hobbesian conception of unitary sovereignty, upon which the commercial turn cannot be based. Significant recent work on popular sovereignty, then, has focused on the relationship between theory and practice.

That a gap yawns between the theory and practice of popular sovereignty has long been recognised. As Harold Laski put it a century ago, 'the history of popular sovereignty will teach its students that the announcement of its desirability in nowise coincides with the attainment of its substance'.⁷⁶ Seeking a 'political metaphysic ... grounded in historic experience', he judged self-government by the whole of the people to be an 'impossible fiction'.⁷⁷ And the widely acknowledged presence of this gap has shaped the way both theory and practice have developed in the modern world. Methodologically, then, it makes sense to offer a more epistemically modest engagement with theories and practices of popular sovereignty. First, a 'continuous and exhaustive account' of popular sovereignty is unlikely to emerge, even from a conscientious effort to provide just that.⁷⁸ Even more importantly, a continuous history conceals the degree of disagreement between varying conceptions of popular power. The primacy of the social, the doctrine of limited sovereignty, challenges to the legitimacy of popular will and the like all are considered in this volume as internal challenges and criticisms to the tradition of Bodinian and Rousseauan sovereignty as unified, perpetual, indivisible (and unerring). As the essays in this volume attest, popular sovereignty is always contingent and often chimerical. This book tries to show why that is the case.

Niccolò Machiavelli (1469–1527) provides our point of departure, in part because Machiavelli did not seek an Archimedean point outside of politics from which to curb misrule or to constitute legitimate political power. Instead, he was interested in the theory and practice of power politics. Leo Strauss (1899–1973) reckoned that 'it was Machiavelli, that greater Columbus, who had discovered the continent on which Hobbes could erect his structure'.⁷⁹ Catherine Zuckert, channelling Strauss, argues below that Machiavelli does not spell out a definition of sovereignty, much less one of popular sovereignty. But, she points out, he makes two claims related directly to popular power. First, *The Prince* (1513) advised rulers to found their power in the people, not least because the people are more pliant than the nobility.⁸⁰ *The Prince* is a book about raw power politics, whose arguments sometimes seem at odds with the *Discourses on Livy* (c. 1517), a

book which extols republicanism. On Zuckert's reading, though, there is no *Das Machiavelli Problem*, for she casts *The Prince* as a manual about the acquisition of power and the *Discourses* as a republican plan for maintaining power.⁸¹ And, indeed, she points out that Machiavelli advocates power being grounded in the people not simply for their pliability but because 'the voice of a people [may] be likened to that of God'.⁸² On Machiavelli's reading, then, there is a deeper claim made by popular power than simply the dictates of prudence.⁸³

Most who have examined the populist and democratic forms of contestation in Machiavelli overlook his *Florentine Histories* (1525). Not so Danielle Charette whose chapter focuses on the tax power as an institution of republican governance of laws, not of men.⁸⁴ The *Histories*, she shows, built on Giovanni Cavalcanti's *Istorie Fiorentine*. Both Cavalcanti (1381–c. 1451) and Machiavelli understood the attempted *catasto* tax reforms of 1427 as a way to protect the poor from arbitrary treatment and to force the rich to pay their fair share of taxes.⁸⁵ The reforms failed but, Charette shows, they should be understood as an attempt to place Florence's finances before the rule of law. Raising class-based conflicts of interest that are the subject of republican reflections in contemporary scholarship, Charette's essay spotlights an important question: who, exactly, spoke for the Florentine republic? Or, put another way, who had authority to speak for the Florentine republic or any other polity of the day? The late medieval Italian political struggles and the intellectual responses to them focused particularly on these questions.⁸⁶

Cavalcanti and Machiavelli both participated in political and intellectual debates over authority, but both did so in a pre-sovereign world.⁸⁷ By contrast, John Locke (1632–1704), whose work Nathan Pinkoski treats, lived in a world in which Bodinian sovereignty was already a thing, even if its foundations and scope remained hotly contested.⁸⁸ Between Machiavelli's death in 1527 and the *Two Treatises of Government*'s publication in 1689, the Reformation had rent asunder Christendom and England itself had been subject to two religio-political revolutions.⁸⁹ Both the religious reformations and the civil wars were disputes over authority, so that, not surprisingly, considerable ink was spilt during the early modern period both in England and abroad about the sources, nature and scope of authority.

One prominent strand of thinking about authority during the late medieval and early modern period was social contract theory.⁹⁰ While some claim ancient roots for contract theory in the Roman *lex regia* or in feudalism, with its seigneur-vassal ties, conciliarism seems the most important taproot of early modern social contractarianism. Late medieval conciliarists tried to hold popes accountable and to do so they built up a body of theory which held that there was some sort of contract between rulers and the ruled and

that authority originated in the ruled. Marsiglio of Padua (c. 1275/80–c. 1342), for instance, insisted that ‘the “legislator”, i.e., the primary and proper efficient cause of the law, is the people or the universal body of the citizens or else its prevailing part, when, by means of an election or will expressed in speech in a general assembly of the citizens, it commands or determines, subject to temporal penalty or punishment, that something should be done or omitted in respect to human civil acts’.⁹¹ Around the same time, William of Ockham (c. 1285/7–c. 1347) argued that ‘[a]ll mortals hold from God and from nature the right of freely giving themselves a head, for they are born free and not subjected to anyone by human law; whence every city and every people can establish law for itself’.⁹² While conciliarism’s original aim was to ringfence papal power, from it emerged the notion that political legitimacy was tied to the consent of the governed.⁹³ During the Reformation, Protestants pushed theories of consent further, developing resistance theories to justify opposing regimes they dubbed heretical (Catholic) and tyrannical. The pseudonymous author of the enormously influential *Vindiciae contra tyrannos* (1579), for instance, argued that ‘[t]he people asked, as a stipulation, whether the king would rule justly according to the laws? He pledged that he would do so. Finally, the people answered that it would obey faithfully so long as he commanded justly. Thus the king promised absolutely, and the people conditionally: if he were to fail to fulfil his part, the people would be considered to be absolved from all obligation by that very right’.⁹⁴ In Scotland, Calvinists like John Knox (c. 1514–1572) and George Buchanan (1506–1582) similarly made resistance arguments grounded on contract theory.⁹⁵ In response, Roman Catholics like Jean Boucher (1544–1644) and Francisco Suárez (1548–1617) developed their own contractarian resistance arguments, ones which justified resisting regimes they dubbed heretical (Protestant) and tyrannical.⁹⁶ By the mid-seventeenth century, contractualist arguments appeared regularly in England first to justify Parliament’s war with Charles I (1600–1649) and then to justify regicide.⁹⁷ Levellers were the most vocal contractarians arguing, as John Lilburne (1615?–1657) put it in 1646, that it was ‘unnatural, irrational, sinful, wicked, unjust, devilish, and tyrannical ... for any man whatsoever – spiritual or temporal, clergyman or layman – to appropriate and assume unto himself a power, authority and jurisdiction to rule, govern or reign over any sort of men in the world without their free consent’.⁹⁸

When Thomas Hobbes drafted *Leviathan* (1651), then, he wrote it in a world in which the idea of a contract theory of government had already been well-established. Hobbes, though, gave the theory an absolutist bent. From *Leviathan*’s outset, Hobbes argued that commonwealths exist because men introduced ‘restraint upon themselves’ in order for ‘their own preservation, and a more contented life thereby’.⁹⁹ They subjected themselves to

‘that great Leviathan, or rather (to speake more reverently) [to] that Mortall God, to which wee owe under the Immortal God, our peace and defence’.¹⁰⁰ To that ‘Mortall God’ subjects have an obligation ‘to last as long, and no longer, than the power lasteth, by which he is able to protect them’.¹⁰¹ There is, in other words, no right of resistance to Leviathan – an ‘Artificiall Man’ possessed of ‘Sovereignty ... an Artificiall Soul, as giving life and motion to the whole body’.¹⁰²

John Locke, by contrast, does spell out clearly a right to resistance. Though drafted during the Exclusion Crisis (1679–1681), Locke’s *Two Treatises of Government* first appeared in print during the Glorious Revolution (1688–1689), a moment in which a strand of English Protestants revolted against the Catholic king, James II (1633–1701).¹⁰³ After James’s flight to France and abdication from the throne, sovereignty in England transferred from the person of the monarch to the Parliament. Thereafter Parliament, not the Crown, embodied popular sovereignty. John Locke is often held up not only as the person who offered the most persuasive justifications for having resisted James II but also as the thinker who justified locating sovereignty within an elected representative body.¹⁰⁴

Nathan Pinkoski reads Locke not as a theorist of parliamentary sovereignty but as one of truly popular sovereignty. In his view, Locke worried about legislative overreach and argued for ramping up the powers of the executive as a bulwark against potential parliamentary tyranny. A people who are actively engaged in the reassessment of executive prerogative learn at the school of practical political judgement to decide when government oversteps its constitutional powers. Subcontracting political judgement to a branch of government, such as the legislature, without a public acting as empire, endangers the commonwealth and defeats the active interest of citizens. For that reason, Locke advocated strengthening the executive so that it functioned in counterpoise to an encroaching legislature as one way to *protect* popular sovereignty.¹⁰⁵ And yet, Pinkoski insists, for Locke both the executive and the legislature should be constrained not so much by popular will as by the dictates of natural law.¹⁰⁶ More so than Machiavelli, Pinkoski’s Locke believed that there was a supra-human warrant to popular sovereignty.

By the seventeenth century’s end, Britain had gone through at least two bloody irruptions of people power during the 1640s and 1680s.¹⁰⁷ And thinking about popular sovereignty had both shaped and been changed by those two moments. Afterwards England became something of an exemplar for others, including those living in absolutist France who opposed that nation’s absolutist regime. Chief among them was Charles-Louis de Secondat, Baron de la Brède et de Montesquieu (1689–1755), a nobleman, lawyer, Anglophile and author of *The Spirit of the Laws* (1748). As Will Selinger notes below, Montesquieu is not normally included in histories of sovereignty, not least

because many scholars have concluded that he either had no theory of sovereignty or, indeed, that he opposed the Bodinian notion of modern unitary sovereignty. On Selinger's accounting, though, Montesquieu thought quite concertedly about sovereignty, just not in a Bodinian vein. It was, then, a doctrine of *limited* sovereignty for which Montesquieu should be read, and the line of intellectual filiation that Selinger traces reaches back not to Bodin and Hugo Grotius (1583–1645), but to Samuel von Pufendorf (1632–1694), a figure in some ways anticipating the Humean/Smithian theory of sociability. For Montesquieu, what essentially limits sovereign power – or allows sovereign power to be limited without dissolving the state – is the adhesive and centripetal power of custom, which, to borrow a line from Blaise Pascal (1623–1662), is second nature, just as nature is 'first custom'. Thus, where the natural law served as the philosophical backstop against tyranny for Pinkoski's Locke, habit served that function for Selinger's Montesquieu. Bodin, Hobbes and Rousseau require a sovereign Archimedean point, outside of political contestation. For Machiavelli, the answer lies within conflict. For Montesquieu, it is outside *les grands coups d'autorité* of a Machiavelli and instead in the *mores* of a politically liberal society.¹⁰⁸

James Vaughn's chapter on the eighteenth-century Age of Revolution thinks about popular sovereignty in ways that would have been congenial to Selinger's Montesquieu. Vaughn sees the American Revolution not as a revolution driven by ideology or by some constitutionalist theory or another. Instead, the revolution was a 'bourgeois revolution', one in which British North Americans revolted against the metropole to defend 'social freedom', that is, the free exchange of goods, services, ideas and the like. The revolution was about self-determination, political and otherwise. Eighteenth-century British North American civil society, put another way, created the demand for popular sovereignty and the American Revolution was the attempt to achieve it. The post-revolutionary United States bore the stamp of its origins, for it prioritised social freedom – the supremacy of civil society over the state – over social unity. The Montesquieuan system of checks and balances which the American constitution's framers instituted, as Vaughn's essay reckons, reflected the imperatives of lived life in late eighteenth-century American civil society.¹⁰⁹

If James Vaughn sees the American Revolution as a revolution of civil society for popular sovereignty, Anna Vincenzi insists that most Europeans saw it as a one-off and certainly not the launch of a transatlantic revolutionary movement legitimising popular sovereignty. She views the scene through the eyes of Filippo Mazzei (1730–1816), an enlightened Florentine merchant and friend of Thomas Jefferson, who wrote on behalf of the American Revolutionary cause. But Mazzei did not even argue for universal natural rights – it was the Declaration of Independence's 'incontrovertible

facts', not its universally-applicable metaphysics, which earned his praise. Indeed, he opposed attempts to wipe clean the *Ancien Régime* slate so that new leaders can inscribe on it what they like. Mazzei, then, might have been a revolutionary, but he was one who rejected French terror and who admired a rose-tinted version of the American democratic revolution. On his reading, a constitutionally limited monarchy was enough for France.

Mazzei's scepticism about unbridled popular sovereignty was not unusual in Europe after the French Revolution had begun. Edmund Burke (1729–1797), Joseph de Maistre (1753–1821) and a host of other European authors inveighed against the French revolutionary experiment in radical popular sovereignty, and, in Maistre's case, on the origin and nature of sovereignty.¹¹⁰ What is sometimes overlooked is that the young United States also had its own critics of democracy, especially during the Jacksonian era.¹¹¹ In his contribution to this book, Joshua Lynn details a divide within the ranks of Jacksonian democracy's critics between what he calls 'illiberal conservatives' and 'liberal conservatives'. The former, he shows, fit within a broader Counter Enlightenment tradition which rejected universal natural rights, self-government and popular sovereignty. In its American guise, though, 'illiberal conservatism' often got deployed to support chattel slavery. Faced with that, 'liberal conservatives' reconciled themselves to democracy, a choice perhaps made easier in a rapidly democratising country. Their reconciliation notwithstanding, liberal conservatives retained their suspicions of popular sovereignty and tried to find ways to ringfence self-government and popular sovereignty so that *the people* did not tyrannise the nation or trample on individual or minority rights.

Joshua Lynn's early nineteenth-century American conservatives observed Jacksonian democracy from within as participants. Alexis de Tocqueville (1805–1859), by contrast, observed it as a nine-month visitor in 1831. His *Democracy in America* (1835–1840) is his enduring account of what he saw. In the book's shortest chapter – 'On the Principle of Sovereignty of the People in America' – Tocqueville argued that '[t]he people reign over the American political world as does God over the universe. They are the cause and the end of all things; everything comes out of them and everything is absorbed into them'.¹¹² This observation offers Heather Pangle Wilford occasion to revisit the theological dimensions of popular sovereignty. On her reading, Tocqueville tried to work through how it was that the people could be god-like while not thinking that they were God. The issue was acute in America since, as Tocqueville observed, there 'society exacts by itself and on itself. Power exists only within its bosom; almost no one is encountered who dares to conceive and above all to express the idea of seeking it elsewhere'.¹¹³ How, then, could there be popular sovereignty while also having some limits on that sovereignty? What Tocqueville thought he saw in

America was the limited sovereignty advocated by Selinger's Montesquieu. The French Revolution, by contrast, had deified the people, making them an unaccountable, total political authority. In America the most effective regulator of the engine of popular sovereignty was not just inherited rights but something above it in the 'moral world' where there was to be found 'humanity, justice, and reason'.¹¹⁴ For Pangle Wilford's Tocqueville, then, it would take something outside of a sovereign self to keep the people's power within acceptable confines. That meant, conversely, that there might also be times when nothing remained to restrain the people's power.

Shortly after Tocqueville's death, the American Civil War (1861–1865) erupted. That bloody war resulted at least in part from what Justice Anthony Kennedy later described as the successful American attempt to 'split the atom of sovereignty'.¹¹⁵ Thus, in one revealing characterisation, Abraham Lincoln (1809–1865) painted the issue of slavery as turning on a dispute over 'genuine popular sovereignty' versus 'that insidious Douglas popular-sovereignty'. Genuine popular sovereignty, Lincoln explained in 1859, means 'that each man shall do precisely as he pleases with himself, and with all those things which exclusively concern him'. If this principle were applied to governments, it would mean that 'a general government shall do all those things which pertain to it, and all the local governments shall do all those things which pertain to it, and all the local governments shall do precisely as they please in respect to those matters which exclusively concern them'.¹¹⁶ Stephen Douglas (1813–1861) spelt out a competing interpretation of popular sovereignty, one which defined it as a doctrine of territorial self-determination consistent (in his view) with the spirit of the American Revolutionaries.¹¹⁷ It was a debate which ultimately got settled not in the court of public opinion but on the battlefield.

A keen foreign observer of the Civil War was John Stuart Mill (1806–1873).¹¹⁸ Mill is a paragon of nineteenth-century liberalism. But in contrast with French liberals like François Guizot (1787–1874) and Benjamin Constant (1767–1830), who viewed constitutions as a way of life, Mill was a theorist of representative government who tried to balance mechanism, reform and creation against prescription, inheritance and organicism. Mill attempted to bring the strands of thought together. Constitutional orders are mostly made, not grown.¹¹⁹ Mill sometimes interprets nation narrowly, rejecting non-viable national claims to sovereign independence made by Bretons or Basques, Welsh or Scottish Highlanders.¹²⁰ The ongoing process of 'becoming a citizen' consists of the 'practical discipline' of participatory politics, akin to developing a sound political business sense, and developing a full citizen's feeling of inclusion in and responsibility to a viable political whole.¹²¹ An active citizenry needs expertise to craft appropriate laws for the people.¹²² Mill thus raised a variant of the same problem faced by

political thinkers from Plato to Rousseau, namely the trade-off between wisdom and participation.¹²³

Greg Conti's chapter explores one of Mill's more controversial proposals, plural voting. Mill intended plural voting to counterweight the power of numbers by enhancing parliamentary representation of minority intellectual opinion. The quick, natural death of plural voting owed most to its justification: in trying to counterbalance the mass of newly enfranchised uneducated workers, Mill, Conti reminds us, championed 'differential entitlements to political power that flowed from the moral-intellectual superiority of the educated over the uneducated'. Mill was engaged in social engineering of an intellectualist sort. Reflecting on the legacy of the attempt to represent wisdom in popular politics, Conti concludes that the present-day concern with democratic illiberalism has an interesting parallel in the possible authoritarianism that Victorian commentators, including Mill, identified in newly enfranchised rural, working-class voters.¹²⁴ Post-Brexit finger-pointing at the 'Sunderland' voter suggests that this question remains alive today.¹²⁵

This book's final two chapters come at the issue of popular sovereignty and people power by way of thinking about the current scholarly preoccupation regarding *representation*. In their chapter, Susan Shell and Paul Wilford lament the current fascination with Carl Schmitt. That fascination worries them, because they reckon it leads to 'a denial of rational norms' which has 'arguably paved the way for today's democratic authoritarianism'. Their essay treats the theory of representation from the seventeenth to the early twentieth century. Representation is important when thinking about popular sovereignty because it is the bridge between the individual (whose free consent forms the foundation of legitimate government) and the collective (the people). On Shell and Wilford's reading, Hobbes and Locke clearly articulated the problem in the seventeenth century but failed adequately to resolve it. Successively, Rousseau, Sieyès and then Kant took up the challenge and made cases for the *general will* as the problem's answer. Hegel's *Rechtsstaat* attempts to provide a concrete solution to the problem of modern freedom, or what Shell and Wilford characterise as the 'disjunction between the interior freedom of the individual moral agent and the concrete institutions in which such freedom is exercised and finds expression'. What Shell and Wilford find appealing about Hegel's solution to the problem of Kantian formalism is that it conceives of the self not as 'unencumbered' from social relations but as embedded in a particular society and in particular institutions.¹²⁶ This, they reckon, is a more realistic way to think about popular self-determination in the modern world. However, the failure to realise the Hegelian *Rechtsstaat* opened the space for an embrace of Schmittian authoritarianism during the 1920s and, they fear, again now.

Schmitt is also the ghost at the party in Robert Ingram's reconsideration of Quentin Skinner's influential take on the origins of the modern state and on the conceptions of popular sovereignty and representation which underpin it. Skinner's account, as he himself acknowledges, builds atop the work of the influential early twentieth-century British pluralist and historian of political thought, John Neville Figgis. Both Figgis and Skinner trace the notion of sovereignty back through Hobbes and Bodin to ancient Roman notions of *imperium* and popular sovereignty's roots back to late medieval conciliarism. And yet despite offering historical narratives which are broadly similar, Figgis and Skinner draw strikingly different normative lessons from their histories. Figgis praised the federal vision propounded by the conciliarists and thought that their theory of authorisation of the rulers by the ruled rang true to what he called the 'facts of life'. He also argued against thinking of individuals as atomised beings. Rather they are members of communities and it is in communities that they achieve their fullest individuality. Rightly to think about the state, then, is to conceive of it as a *communitas communitatum*, a community of communities, a society of social unions. For Figgis, among the most important social unions were Christian churches.

Skinner, by contrast, has valorised the Hobbesian modern unitary state and the understanding of sovereignty which underpins it. As he explained it, Hobbes located the seat of sovereignty neither in the head of state nor in the people. 'It is a completely separate entity and that's a revolutionary moment. That's Leviathan'.¹²⁷ This, Skinner reckons, is a good thing. As importantly, he believed that Hobbes's account of the state and of citizen's obligations to it were significant. Hobbes' 'central belief', as he saw it, 'is that the grounding of political obligations made between competing interests provides the only possible state for rational men'. Skinner finds this appealing because it undercuts 'Christian moralists' who think there is 'some moral basis in politics'.¹²⁸ Hobbes's Leviathan – that 'Mortall God' – is the only thing to which we should owe our allegiance, and its form, Skinner holds, should be republican. Skinner's divergence from the Anglo-Catholic Figgis on normative issues of politics is not historical, but theological.

Someone else, as it turns out, also offered an historical account of sovereignty which was explicitly indebted to Figgis's history but which departed from Figgis normatively – Carl Schmitt.¹²⁹ If Shell and Wilford caution against following Carl Schmitt too far down the road towards authoritarianism, Ingram raises the possibility that Schmitt might, after all, have been right that all politics is ultimately theology, and that includes the politics of people power. 'All significant concepts of the modern theory of the state are secularized theological concepts', Schmitt famously declared in *Political Theology* (1922), 'not only because of their historical development – in which

they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver – but also because of their systemic structure'.¹³⁰ One need not adopt Schmitt's normative political commitments to take seriously his insistence that we would do well to think about modern politics – including, and especially, liberal democracy and popular sovereignty – theologically rather than just instrumentally. Put another way, we need not just to consider what it means for the people to be sovereign but *why* we believe that they are the only legitimate sovereign. Early moderns, untroubled by God, had no qualms offering theological explanations for popular sovereignty. In the best-selling Whig pamphlet *Vox Populi, Vox Dei* (1709), for instance, the author combines religious and popular warrant unproblematically from the work's very outset. 'Government in General, as it derives its Ordination and Institution from God, so it is Circumscribed and Limited by him, to be Exercised according to the Laws of Nature, in the Subserviency to the Glory of the Creator, and the Benefit of Mankind', the anonymous author begins. But if God had instituted government, He had left it to the people to choose their rulers. 'The Magistrates Power, must owe its Original to some Grant of the People', the author explained. 'And what he cannot derive from some concession of the Society, must be acknowledged to remain still vested in the People, as their reserved Privilege and Right'.¹³¹

We end, then, where we began, with the observation that despite all of the reservations many have had with the functioning of popular sovereignty, political legitimacy is widely held only to derive from the people. Alexis de Tocqueville explained this sociologically. 'The principle of the sovereignty of the people, which is always more or less the foundation of all human institutions, ordinarily dwells there almost buried', he contended. 'One obeys it without recognizing it, or if sometimes it happens to be brought out in broad daylight for a moment, one soon hastens to plunge it back into the darkness of the sanctuary'.¹³² For Tocqueville there is, at bottom, no greater legitimate justification for people power than that it simply exists, as the product of the history that we are living. Likewise, the belief that popular sovereignty is a conceptual *k* variable in the equation of modern politics seems to stem from the conviction most scholars have that popular sovereignty is natural and, hence, legitimate. So, popular sovereignty's very existence has become its ultimate source of contemporary legitimacy. And its problems are held to be operational, not foundational.

Perhaps, though, the Tocquevillian embrace of popular sovereignty inhibits a willingness fully to confront its theological dimensions. For to do so is to countenance the possibility that there is some supra-human source of authority. While this is mostly unthinkable in the contemporary West, it is less so in other parts of the world. Consider, for example, the

Egyptian demonstrations which forced the resignation of Hosni Mubarak (1928–2020) in early 2011. For eighteen days in late January and early February, huge crowds occupied Tahrir Square in Cairo. Was that crowd *the people* (the Egyptian *sha'b*)? And how are we to interpret Mubarak's fall from power in the face of the Egyptian uprising? Some, like Noah Feldman, have interpreted this episode in the Arab Spring through a secular, Western lens, arguing that the Egyptian protestors aimed to achieve political liberty, freedom and a republic through Arendtian collective action. Here *the people* originated the conditions for political action by practising people power. On Feldman's reading the Tahrir Square protestors were making 'a *normatively correct argument* about the people's right to self-govern under the conditions of freedom'.¹³³ But the Egyptian revolution did not unfold in the ways that prototypical Western democratic revolutions had unfolded as first the Muslim Brotherhood and Abdel Fattah el-Sisi (1954–) have ruled Egypt in ways that have paid little heed to popular sovereignty. And, indeed, the ten-year anniversary of the Tahrir occupation has led some regional voices to bemoan this state of affairs, with some blaming the poor for lacking a conception of Western freedom. Others blame Islamists for maintaining an exclusionary, perfectionist definition of freedom and *the people*.¹³⁴ Some Muslims see the modern Western nation-state as an enemy of freedom and justice and see Islam as the only appropriate form of universalism. Moreover, some like Wael Hallaq contend that the Islamic conception of the people, sovereignty and the law out-performs Western competitors even on Western commitments, including democratic legitimacy. Hallaq also makes a Schmittian point that '[t]he law as reflecting sovereign will ... is little more than a replacement and substitution for the Christian conception of will. Like a great many modern concepts, pre-Enlightenment, Christian forms of authority are largely retained with a substituted set of sources that are of equal authoritative force'.¹³⁵ To be a citizen of a modern state grounded on popular sovereignty, Wallaq insists, 'means to live under a sovereign will that has its own metaphysics. It is to live with and under yet another god, one who can claim the believers' lives'. That alone, he concludes, makes 'the modern state an anathema to any form of Islamic governance'.¹³⁶

Whether or not one buys Hallaq's argument, it is now increasingly recognised not only that Western notions of popular sovereignty are not easily exportable but that there are non-Western conceptions of popular sovereignty and popular power.¹³⁷ Properly to appreciate those non-Western conceptions of people power and why Western notions do not always transplant easily in non-Western soils requires us to think afresh about the history and theory of people power in the West. It suggests that doubts about people power and the over-confident assertions of the normative legitimacy of the people are in mutual conversation. Perhaps most of all it

requires us to recognise that the problems which first gave rise to Western popular sovereignty remain simultaneously compelling, unresolved and worthy of further attention.

Notes

- 1 For example, this was posted to an online message board before the 6 Capitol Hill riot: 'if congress votes against the true will of the people, in the face of all the evidence of fraud and corruption, then yes, start marching INTO THE CHAMBERS'. M.D. Shear, *et al.*, 'Manhunt Intensifies as Authorities Warn Some Rioters May Face Sedition Charges', *New York Times*, 12 January 2021.
- 2 R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760–1800*, ed. D. Armitage (Princeton, [1959–1964], 2014) remains insightful. See also D. Armitage and S. Subrahmanyam, *The Age of Revolutions in Global Context, c. 1760–1840* (Cambridge, MA, 2009).
- 3 P. Rosanvallon, *Counter-Democracy: Politics in an Age of Distrust*, trans. A. Goldhammer (Cambridge, 2008); M. Hetherington and T. Rudolph, 'Political Trust and Polarization', in E. Uslaner (ed.), *Oxford Handbook of Social and Political Trust* (Oxford, 2018), 579–597.
- 4 P. Rosanvallon, *Democracy Past and Future*, ed. S. Moyn (New York, 2006), 235–252, 235.
- 5 W. Sadurski *et al.* (eds), *Legitimacy: The State and Beyond* (Oxford, 2019).
- 6 Tocqueville, *Democracy*, 6. This observation does not adequately represent the experience of peoples living under absolute monarchies or theocracies. It is a live question whether there is theoretical support for non-popular sources of political power or whether Rousseau was right that they are *de facto* illegitimate. As of 2014, 98 countries use mandatory or facultative referendums to judge amendments to their constitution; 95 others do not: D. Ankar, 'Constitutional Referendums in the Countries of the World', *Journal of Politics and Law* 7 (2014), 12–22.
- 7 W. de Bary *et al.* (eds), *Sources of Japanese Tradition. Volume Two: 1600–2000* (New York, 2005), 745–746. Cf. W. Beasley, 'Meiji Political Institutions', in M. Jansen (ed.), *Cambridge History of Japan: Volume 5: The Nineteenth Century* (Cambridge, 1989), 651–665.
- 8 *Ibid.*, 1022. Cf. H. Fukui, 'Postwar Politics, 1945–1973', in P. Duus (ed.), *Cambridge History of Japan. Volume 6: The Twentieth Century* (Cambridge, 1989), 155–169.
- 9 *Ibid.*, 1031.
- 10 M. Lane, *The Birth of Politics: Eight Greek and Roman Political Ideas and Why They Matter* (Princeton, 2014), 287–312.
- 11 M. Canovan, *The People* (Cambridge, 2005), 140. P. Espejo, 'Populism and the Idea of the People', in C. Kaltwasser *et al.* (eds), *Oxford Handbook of Populism* (Oxford, 2017), 607–628 surveys the literature.
- 12 J. Canning, *The Political Thought of Baldus de Ubaldis* (Cambridge, 1987), 185–208.

- 13 J. Sommerville, 'The Social Contract (Contract of Government)', in G. Klosko (ed.), *Oxford Handbook of Political Philosophy* (Oxford, 2006), 573–585.
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 - 41 While *power*, of course, is simultaneously important and difficult to define, it is best conceptualised in a broad and labile way. S. Lukes, *Power: A Radical View* (Basingstoke, 2005); M. Foucault, *Power: The Essential Works of Foucault, 1954–1984*, trans. R. Hurley *et al.* and ed. J. Faubion (New York, 2001); Arendt, *On Violence, in Crises of the Republic: Lying in Politics; Civil Disobedience; On Violence; Thoughts on Politics and Revolution* (San Diego; New York; London, 1972), 149–155; and R. Dahl, ‘The Concept of Power’, *Behavioral Science* 2.3 (1957), 201–215 have many useful insights. D. Held, *Models of Democracy* (Cambridge, 2006) provides an excellent overview of its subject.
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 - 43 J. Waldron, ‘Democracy’, in D. Estlund (ed.), *Oxford Handbook of Political Philosophy* (Oxford, 2012), 188.
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- 48 Dunn, *Setting the People Free*, 164.
- 49 Ibid., 170. See also, J. Dunn, *Breaking Democracy's Spell* (New Haven, 2014).
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- 58 Hammersley, *Republicanism*, 198.
- 59 Q. Skinner, 'A Third Concept of Liberty', *PBA* 117 (2002), 237–268 and F. Lovett, *A General Theory of Domination and Justice* (Oxford, 2010). I. Young, *Justice and the Politics of Difference* (Princeton, 1990), 39–65 makes a related criticism of oppression.
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- 61 Q. Skinner, 'On Justice, the Common Good and the Priority of Liberty', in C. Mouffe (ed.), *Dimensions of Radical Democracy: Pluralism, Citizenship, Community* (1992), 219.
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- 72 D. Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford, 2016), 10.
- 73 R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2016).
- 74 P. Sagar, *The Opinion of Mankind: Sociability and the Theory of the State from Hobbes to Smith* (Princeton, 2018), 10.
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- 78 R. Bourke, ‘Introduction’, in Bourke and Skinner (eds), *Popular Sovereignty*, 1.
- 79 L. Strauss, *Natural Right and History* (Chicago, 1953), 177.
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- 81 G. Browning, *A History of Modern Political Thought: The Question of Interpretation* (Oxford, 2016), 157–174.
- 82 Machiavelli, *Prince*, 115–119.
- 83 A notable scholarly tradition democratises, or at least popularises, Machiavelli. J. Rousseau, *The Social Contract and Other Later Political Writings*, ed. and trans. V. Gourevitch (Cambridge, 1997), 106–107, for instance, credits Machiavelli for insight into how Rome achieved a ‘true democracy’ when the

people were sovereign under the tribunate. More recently, J. McCormick, *Machiavellian Democracy* (Cambridge, 2011) defends Machiavelli's preference for a contestatory system of popular democracy and offers a version of tribunician democracy that excludes elites from offices designed to help the people (*popolo*) reassert their power to control policy and punish unpopular officeholders.

- 84 The source of this distinction between laws and men is Book II of Livy's *Early History of Rome*, where Livy (59–17 BC) describes the turn from monarchy to republic after the 509 BC revolution.
- 85 A. Field, *The Intellectual Struggle for Florence: Humanists and the Beginnings of the Medici Regime, 1420–1440* (Oxford, 2017), 26–72.
- 86 J. Hankins, *Virtue Politics: Soulcraft and Statecraft in Renaissance Italy* (Cambridge, MA, 2020).
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- 89 C. Eire, *Reformations: The Early Modern World, 1450–1650* (New Haven, 2016); M. Kishlansky, *A Monarchy Transformed, Britain, 1630–1714* (London, 1997).
- 90 W. Spellman, *European Political Thought, 1600–1700* (Basingstoke, 1998), 67–134; P. Riley, 'Social Contract and its Critics', in M. Goldie and R. Wokler (eds), *Cambridge History of Eighteenth-Century Political Thought* (Cambridge, 2006), 347–375.
- 91 M. Padua, *The Defender of the Peace*, ed. and trans. A. Brett (Cambridge, 2005), 66–67.
- 92 Quoted in A. Black, *Political Thought in Europe, 1250–1450* (Cambridge, 1992), 73.
- 93 F. Oakley, *The Watershed of Modern Politics: Law, Virtue, Kingship and Consent (1300–1650)* (New Haven, 2015), 172–239.
- 94 G. Garnett (ed.), *Vindiciae, Contra Tyrannos* (Cambridge, 2003), 130–131.
- 95 R. Kingdon, 'Calvinism and Resistance Theory, 1550–1580', in J. Burns and M. Goldie (eds), *Cambridge History of Political Thought, 1450–1700* (Cambridge, 1991), 193–218.

- 96 J. Salmon, 'Catholic Resistance Theory, Ultramontaniam and the Royalist Response, 1580–1620', in *ibid.*, 219–253.
- 97 T. Vallance, 'Political Thought', in M. Braddick (ed.), *Oxford Handbook of the English Revolution* (Oxford, 2015), 430–446.
- 98 J. Lilburne, 'The Freeman's Freedom Vindicated [1646]', in A. Sharp (ed.), *The English Levellers* (Cambridge, 2004), 31. See also, M. Braddick, *The Common Freedom of the People: John Lilburne and the English Revolution* (Oxford, 2018).
- 99 T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge, 1999), 117. Cf. Q. Skinner, *From Humanism to Hobbes: Studies in Rhetoric and Politics* (Cambridge, 2018), 190–221, 341–383.
- 100 Hobbes, *Leviathan*, 120.
- 101 *Ibid.*, 153. Some interpreters of Hobbes find a nascent understanding of publicity and communicative reason: S. Chambers, 'Who Shall Judge? Hobbes, Locke, and Kant on the Construction of Public Reason', *Ethics and Global Politics* 2 (2009), 349–368; J. Waldron, 'Hobbes and the Principle of Publicity', *Pacific Philosophical Quarterly* 82 (2001), 447–474.
- 102 Hobbes, *Leviathan*, 9. S. Sreedhar, *Hobbes on Resistance: Defying the Leviathan* (Cambridge, 2010) offers a revisionist reading.
- 103 P. Laslett, 'Introduction', in Locke, *TT*, 3–126 establishes the context of the *Two Treatises* composition. See also, M. Goldie, 'The Political Thought of the Anglican Revolution', in R. Beddard (ed.), *The Revolutions of 1688* (Oxford, 1991), 102–136. For the Glorious Revolution, see S. Pincus, *1688: The First Modern Revolution* (New Haven, 2009).
- 104 H.T. Dickinson, *Liberty and Property: Political Ideology in Eighteenth-Century Britain* (London, 1977), 57–90. Cf. M. Goldie, 'The English System of Liberty', in *Cambridge History of Eighteenth-Century Political Thought*, 47–50; J. Dunn, *Political Obligation in Historical Context* (Cambridge, 1980), 29–77.
- 105 P. Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA, 2010) and E. Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA, 2014) argue that many in the early modern English-speaking world looked to the executive as bulwark of liberty, not as a threat to it.
- 106 Cf. J. Locke, *Questions Concerning the Laws of Nature*, trans. and eds R. Horwitz *et al.* (Ithaca, 1990) and T. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago, 1990), 198–229 for the natural law's ambiguity.
- 107 Cf. J. Walter, 'Crowds and Popular Politics in the English Revolution', in *Oxford Handbook of the English Revolution*, 330–346; T. Harris, 'The Parties and the People: the Press, the Crowd and Politics "Out-of-doors" in Restoration England', in L. Glassey (ed.), *The Reigns of Charles II and James VII & II* (Basingstoke, 1997), 125–151.
- 108 Montesquieu, *Spirit*, 389. V. Sullivan, *Montesquieu and the Despotism of Europe: An Interpretation of the Spirit of the Laws* (Chicago, 2017), 26–32 analyses the anti-Machiavellian turn in the context of French anti-Protestant violence.

- 109 Cf. D. Lutz, 'The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought', *APSR* (1984), 189–197.
- 110 R. Bourke, *Empire and Revolution: The Political Life of Edmund Burke* (Princeton, 2015), 676–919; J. de Maistre, *Considerations on France*, trans. R. Lebrun (Cambridge, 1994); J. de Maistre, 'On the Sovereignty of the People', in *Against Rousseau: 'On the State of Nature' and 'On the Sovereignty of the People'*, trans. R. Lebrun (Montreal and Kingston, 1996), 45–194; D. McMahon, *Enemies of the Enlightenment: The French Counter-Enlightenment and the Making of Modernity* (Oxford, 2001). Cf. J. Israel, *Revolutionary Ideas: An Intellectual History of the French Revolution from The Rights of Man to Robespierre* (Princeton, 2014).
- 111 J. Lynn, *Preserving the White Man's Republic: Jacksonian Democracy, Race, and the Transformation of American Conservatism* (Charlottesville, 2019).
- 112 Tocqueville, *Democracy*, 55.
- 113 Ibid.
- 114 Ibid., 379–380. See also Arendt, *On Revolution*, 179–195 for the American Revolutionaries' recognition of the 'urgent need' of an Immortal Legislator.
- 115 A. Kennedy, Concurrence, *U.S. Term Limits, Inc. v. Thornton* (93–1456), 514 U.S. 779 (1995): 'Federalism was our Nation's own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other'.
- 116 A. Lincoln, 'Speech at Columbus, 16 September 1859', in L. Chittenden (ed.), *Abraham Lincoln's Speeches* (New York, 1896), 183, 184.
- 117 S. Douglas, 'The Dividing Line Between Federal and Local Authority: Popular Sovereignty in the Territories', *Harper's New Monthly Magazine* 112 (September 1859), 519–537.
- 118 See, for instance, T. Schneider, 'J.S. Mill and Fitzjames Stephen on the American Civil War', *HPT* 28 (2007), 290–304. More generally see R. Blackett, *Divided Hearts: Britain and the American Civil War* (Baton Rouge, 2001).
- 119 Constitutional orders are not the products of God and custom, many nineteenth-century conservatives argued. Earlier, Kant had insisted that practical reason brings us to agree that 'authority comes from god' because the actual origins of authority are not discoverable, and that questioning these origins 'menaces society': I. Kant, 'Metaphysics of Morals', in I. Kant, *Political Writings*, ed. H. Reiss (Cambridge, 1991), 143, 162.
- 120 J.S. Mill, 'Considerations on Representative Government', in *CWJSM*, XIX, 371–577; Hobsbawm, *Nations*, 32–34, 43–44.
- 121 Mill, 'Considerations', 376, 322.
- 122 D. Villa, *Public Freedom* (Princeton, 2008), 108–142 evaluates Mill in the context of other thinkers.
- 123 V. Gourevitch, 'Introduction', in Rousseau, *Social Contract*, xxi, xxiii–xxv, for the difficulty of reconciling popular sovereignty and wisdom and for the centrality of popular sovereignty to *The Social Contract*.

- 124 Mill breaks his own rule about restricting the vote to those competent in the 'three r's', arguing that newly enfranchised Black voters should have immediate and full voting rights: G. Varouxakis, *Liberty Abroad: J. S. Mill on International Relations* (Cambridge, 2013), 114–115, summarises this point.
- 125 H. Bromley-Davenport *et al.* 'Brexit in Sunderland: The Production of Difference and Division in the UK Referendum on European Union Membership', *Politics and Space* 37 (2019), 795–812.
- 126 M. Sandel, 'The Procedural Republic and the Unencumbered Self', *PT* 12 (1984), 81–96 helpfully relitigates this question.
- 127 J. Jennings, 'What Intellectual History Teaches Us'.
- 128 Q. Skinner, 'Hobbes on Sovereignty', *The Listener* (22 September 1966), 420. See also, Q. Skinner, 'Hobbes on Sovereignty: An Unknown Discussion', *PS* 13 (1965), 213–218.
- 129 See, for instance, C. Schmitt, 'The Value of the State and the Significance of the Individual' (1914), in C. Schmitt, *Early Legal and Theoretical Writings*, trans. and eds L. Vinx and S. Zeitlin (Cambridge, 2021); C. Schmitt, *Land and Sea: World-Historical Meditation*, trans. S. Zeitlin (Candor, NY, 2015), 65; C. Schmitt, *The Tyranny of Values and Other Texts*, trans. S. Zeitlin and eds R. Berman and S. Zeitlin (Candor, NY, 2018), 70 n. 70, 72 n. 78.
- 130 C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab (Chicago, 2005), 36.
- 131 *Vox Populi, Vox Dei: Being True Maxims of Government* (1709), 3, 4. Cf. R. Ashcraft and M. Goldsmith, 'Locke, Revolution Principles and the Formation of Whig Ideology', *HJ* 26 (1983), 773–800.
- 132 Tocqueville, *Democracy*, 53.
- 133 N. Feldman, *The Arab Winter: A Tragedy* (Princeton, 2020), 13. Emphasis added.
- 134 M. Aaek, 'Revolutions without a Revolutionary Promise', *Al-Jumhuriya*, 1 February 2021, describes the Egyptian people as conservative and immersed 'fully in traditions'.
- 135 W. Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicament* (New York, 2013), 28. Cf. N. Brown, 'Review Symposium: *The Impossible State*', *Perspectives on Politics* 12 (2014), 464–465.
- 136 Hallaq, *Impossible State*, 29.
- 137 See, for instance, P. Chatterjee, *I Am the People: Reflections on Popular Sovereignty Today* (New York, 2019); A. March, *The Caliphate of Man: Popular Sovereignty in Modern Islamic Thought* (Cambridge, MA, 2019); A. Kaicker, *The King and the People: Sovereignty and Popular Politics in Mughal Delhi* (New York, 2020); and chapters on African, Islamic and Latin American conceptions of sovereignty and popular power in L. Jenco *et al.* (eds) *Oxford Handbook of Comparative Political Theory* (Oxford, 2020).

Machiavelli's 'moments'

Catherine Zuckert

Niccolò Machiavelli (1469–1527) does not use the term ‘popular sovereignty’ (or *sovranità popolare*). Nor does he present a full-blown understanding or definition of such. What he does – or so I shall argue – is to take two important steps in the development of the notion that not a king or ‘prince’, but the people should rule. And I take that proposition – that the people should rule – or in Machiavelli’s terms, that the people should be ‘prince’ – to be the core of what comes to be called ‘popular sovereignty’.

Machiavelli makes two crucial moves towards the development of the concept and practice of popular sovereignty, I contend, in the two and only two places he states explicitly that he is disagreeing with all previous authors. These two crucial statements occur, moreover, in the two and only two of his works, *The Prince* (1513) and his *Discourses on Livy* (c. 1517), which he says contain everything he has learned from extensive readings of history and his own practical political experience.

As you are no doubt aware, I am by no means the first scholar to identify a ‘Machiavellian Moment’ in the development of modern political thought. That honour belongs to J.G.A. Pocock.¹ However, the ‘moment’ or ‘moments’ I describe here differ from his in some fundamental respects. In *The Machiavellian Moment* (1975), Pocock argues that writers in the Italian Renaissance attempted to revive a basically Aristotelian understanding of the active life of politics as the highest form of human existence, not on the basis of the cyclical understanding of nature and eternal intelligible order of the universe in terms of which it had originally been articulated, but in terms of a new understanding of time these ‘civic humanists’ and ‘republicans’ had acquired with their Christian faith. In examining not only the emergence of this new understanding in Italy, but also its adoption and adaptations in England and North America, Pocock reads Machiavelli very much in terms of his historical context. Asking about the origins and development of both the concept and practice of something called ‘popular sovereignty’, I am going to concentrate on the ‘moments’ in Machiavelli’s own texts where he announces very explicitly that he is doing something new. He is

breaking with previous writers – or we might say, more generally, with the Aristotelian understanding of politics that Pocock claims that Machiavelli was trying to revive on the basis of a new understanding of time. The first of these 'moments' or places at which Machiavelli clearly announces that he is breaking with the past occurs in Chapter 15 of *The Prince* where he explicitly states that he is 'departing from' what many others have written about the way in which a prince should treat his subjects and friends. The second place or 'moment' occurs in his *Discourses on Livy*, Book 1, Chapter 58, where Machiavelli states that he wishes 'to defend a thing that ... has been accused by all the writers' by arguing that 'the multitude is wiser and more constant than a prince'.² The reasons Machiavelli gives for disagreeing with his predecessors in these two places, I contend, constitute two huge, vastly important steps in the development of 'popular sovereignty'. They cannot and should not be understood in terms of a 'republican' tradition, because Machiavelli states explicitly that he is breaking with such.

Let me turn, then, to Machiavelli's first statement of his disagreement with previous authors. Because I propose to analyse it in some detail, it is worth quoting it in full. Since he intends 'to write something useful to whoever understands it', Machiavelli tells his readers that

it has appeared to [him] more fitting to go directly to the effectual truth of the thing than to the imagination of it. And many have imagined republics and principalities that have never been seen or known to exist in truth; for it is so far from how one lives to how one should live that he who lets go of what is done for what should be done learns his ruin rather than his preservation.³

This statement has often been taken to establish Machiavelli's credentials as a 'realist' as opposed to an 'idealist'. But, in fact, it tells us much more. Machiavelli objects to the attempts of previous writers to define and describe the best possible form of government and then to urge their readers to try to work towards the institution of that regime, because there is such a great gap between the way human beings live and how they ought to live that such imaginary republics and principalities never come into existence. Most readers immediately think about Plato's republic or Aristotle's 'regime to be prayed for', which their authors admitted had never existed in fact nor were apt to. Why then did these ancient authors urge their readers to regard their own lives and efforts in light of such unlikely schemes? These classical political philosophers thought that human beings desire what is best, so they asked what is or would be best. Observing that 'a man who wants to make a profession of good in all regards must come to ruin among so many who are not good', Machiavelli takes the characteristics or desires of the 'many' who are not good as opposed to the few best to be decisive in politics.⁴ He suggests that the characteristics and desires of most are the

measure of what is effective in politics and thus constitute a guide to what should be done. Machiavelli urging his readers to take their bearings by the many who are not good itself constitutes an enormous step in the direction of popular sovereignty. He suggests that those who govern should not be concerned about making their citizens as good or virtuous as possible; they should instead take account of the non-virtuous desires of most of their fellow citizens or subjects and act in light of those desires. However, we need to read further in order to unearth the reasons Machiavelli takes the desires of the many not good to be the standard of what is effective in politics and what that standard entails for the form and conduct of government.

Plato and Aristotle both understood that most human beings feel vulnerable and that, not knowing what the future will bring, most human beings desire to accumulate as much property as possible in order to meet unforeseeable future contingencies. Both these classical political philosophers nevertheless argued that the desire to accumulate goods should be limited to what is needed to support the best way of life. In Chapter 3 of *The Prince* Machiavelli observes, on the other hand, 'truly it is a very natural and ordinary thing to desire to acquire, and always, when men do it who can, they will be praised or not blamed'.⁵ Then, having observed that a man who wants to do and say only what is good will come to ruin among the many who are not good, Machiavelli concludes in Chapter 15 that 'it is necessary for a prince, if he wants to maintain himself, to learn to be able not to be good, and to use this [knowledge] and not use it, according to necessity'.⁶

In analysing this famous statement, we should note, first, that Machiavelli treats the 'state' or status of the 'prince' as something he has acquired and now wants to retain, that is, as his private property.⁷ He did not know and was not writing about the modern state.

Second, we should also observe that in urging a prince that he needs to learn to be able not to be good, Machiavelli is not addressing those who are bad so much as those who would like to be good. (It is true, of course, that those who are and thus have proved themselves able to be bad may not know how to use their knowledge according to necessity. Indeed, in *The Prince* Machiavelli provides his readers with many examples of pretty nasty fellows who did not. They, too, could learn something useful from him, even though his advice is not directly primarily at those who have become accustomed to being bad.)

Third, and most importantly, we see that the lessons Machiavelli provides his readers to enable them not to be good take the form of a re-examination of the characteristics that have been said to be virtuous and vicious, that is, qualities which have been praised or blamed. It is not always clear in the list of qualities and their opposites that Machiavelli gives which is the virtue and which is the vice; the order in which he puts the terms praised

and blamed is not consistent. He simply observes that it is not possible for a human being to possess all those qualities held to be good. And, since no prince will be able to do *any* good if he loses his state, Machiavelli suggests that a prince who is prudent 'will avoid the infamy of those vices that would take his state from him' but 'not care about incurring the fame of those vices without which it is difficult to save one's state'.⁸ In the chapters on liberality, mercy and keeping faith which follow, Machiavelli thus argues that a prince should avoid behaviour that will lead his people to think him weak and contemptible as well as behaviour that makes them hate him, because in both cases they will want to see him replaced. Insofar as virtue is a matter of praise and blame, he reminds his readers that it is a matter of public opinion. In the chapter on 'how a prince should keep faith', he again observes that a prince 'cannot observe all those things for which men are held good, since he is often under a necessity to maintain his state, of acting against faith, against charity, against humanity, against religion'. But, he cautions, a prince should take care that he appear to have all of these qualities. 'In the actions of men, and especially of princes', he then famously concludes, 'one looks to the end. So let a prince win and maintain his state: the means will always be judged honorable, and will be praised by everyone. For the vulgar are taken in by the appearance and the outcome of a thing, and in the world there is no one but the vulgar'.⁹

Why does Machiavelli think that the means by which a prince acquires and maintains his state will always be judged honourable and praised? It is difficult to see the motives of an actor, so people do not know why the prince acts as he does. They are, however, able to see the outcome or results. And, Machiavelli argues, maintaining a 'state' that governs by means of laws rather than by force is good for most ordinary people. The safety of their lives, families and properties depends upon the existence of a government that does not burden them with heavy taxes and punishes criminals rather than allowing them to murder, rape or steal with impunity.¹⁰ So when a 'prince' (a.k.a. a political leader) tells his people that he has seized control of the government, or annexed the territory of a neighbour, or promulgated new laws and established new institutions to enforce his laws, in order to serve God or country, Machiavelli suggests, people will believe him *if* he and his government do not take their lives or property, but make them feel more secure.

In *The Prince* – which Machiavelli tells us is a short book because it is addressed to a busy ruler – he does not explain why human beings form governments. But, in the *Discourses* – addressed to young aristocrats with the leisure to listen and learn – he does. Because human beings are weak and vulnerable as individuals, they gather together and seek a leader to organise and arm them so that they can defend themselves against aggressors, both

foreign and domestic.¹¹ Unlike Aristotle, Machiavelli does not think that human beings are inclined by nature to live in 'political communities'. Political associations do not grow spontaneously, naturally or organically out of families. Nor does Machiavelli think that 'political communities' aim at a common good. On the contrary, he argues in both *The Prince* and *Discourses*, once human beings form a political association, they become divided by two opposed 'humors' or appetites: the desire of 'the great' to command and oppress the people, and the desire of the people not to be commanded or oppressed.¹² All political associations are thus characterised by more or less open internal conflict that threatens to degenerate into a civil war, which results first in anarchy, because the government is destroyed, and is then apt to be followed by the imposition of the tyrannical rule of a despot in order to restore some order.

In *The Prince* Machiavelli observes that the conflict between the two humours has three possible outcomes: principality, licence or liberty. But in a book that purports to tell princes what they need to know in order to acquire and maintain their own rule, Machiavelli does not inform his readers about the either licence or liberty that can result from the conflict between the two humours.¹³ Instead he urges a 'prince' who has been elevated to a position of rule either with the support of the 'great' or of the 'people', once he has secured his position, to seek the support of the people. And the reasons Machiavelli gives are telling. First, he observes, a prince will never be able to satisfy the desire of the great to command. Because they believe that they are or ought to be his equals, a prince's 'great' supporters will demand ever more goods and influence as the price of their support, if they do not attempt to replace him entirely. Moreover, he cannot even try to satisfy the great without injuring others, so in attempting to satisfy them he will necessarily harm and thus make others his enemies. But he 'can satisfy the people' because 'the end of the people is more decent than that of the great, since the great want to oppress but the people [merely] want not to be oppressed'.¹⁴ However, Machiavelli does not urge princes to seek the support of their peoples primarily because their desire is more honest and decent. Instead, he appeals to the prince's own desire to retain command by observing that 'a prince can never secure himself against a hostile people, as they are too many; [but] against the great, he can secure himself, as they are few'. Machiavelli recognises that a prince needs subordinates to govern, but he suggests that a prince does not have to use the persons currently thought to be great, 'since he can make and unmake them every day'. Just as he makes some 'great' by giving them offices and goods, so he can 'unmake' those same 'great' individuals by taking away their offices, honours and goods along with their lives. To put it bluntly, according to Machiavelli, no one is 'great' or entitled to rule by nature. Whether one shares the 'humour'

of the great or that of the people depends upon one's position or situation. As he explicitly states in *Discourses* 1.58, to which I will soon turn, human nature is the same in all.

Although the prince is clearly one of the 'great' whose desire to command, if not to oppress, remains in opposition to the people's desire not to be commanded or ruled, Machiavelli suggests that there is a way in which the desires of both humours can be satisfied to the maximum extent possible. That is by establishing institutions like the French *parlement*, a court which protected the people from oppression by allowing the people to accuse and try nobles who violated the laws at the same time it secured the king and his laws from his 'great' competitors without his having to act directly against them.¹⁵

What Machiavelli does not make clear in *The Prince*, but states explicitly in his *Discourses*, is that a 'prince' who acts the way he recommends – that is, a political leader who obtains the support of his people by acting against the 'great' nobles who have oppressed them and enforcing laws that secure his people's lives, families and property – that 'popular prince' poses the greatest threat to the continued existence of a republican government that secures their liberty. In other words, Machiavelli shows in his *Discourses* that good, effective government does consist merely in satisfying the people's desire not to be oppressed or in protecting their lives, families and property. It must enable them to enjoy the benefits of a free way of life. These benefits are available only in a republic in which every citizen is eligible to serve in the highest offices;¹⁶ in which high officials are elected for short terms by the people; in which there is rotation in office;¹⁷ and in which individuals suspected of conspiring to overthrow the republic are accused and tried in front of large popular juries.¹⁸

Let me turn now to the second 'moment' at which Machiavelli declares that he is disagreeing with all previous writers: *Discourses* 1.58. It is difficult to determine exactly what Machiavelli is 'doing' or proposing in his *Discourses*. In the preface he first states that he has discovered 'new modes and orders' and taken a 'path as yet untrodden by anyone'.¹⁹ Yet at the beginning of the book he seems to be presenting the Roman republic as an example to be copied. However, as the discussion proceeds it becomes clearer and clearer that Machiavelli is not merely or simply arguing for the revival of a Roman form of republicanism. He is arguing for something we might call 'popular sovereignty'.

Machiavelli first traces the development of a mixed regime in Rome, including a monarchical power in the consuls, a senate and the tribunate. He does not explicitly criticise the man traditionally said to be the founder of the Roman republic, Lucius Junius Brutus, for imitating the Spartans by creating two consuls in place of one king (although he does emphasise the importance

of having one founder and, later, one leader).²⁰ He does point out the advantage republics have over principalities in their ability to elect different leaders with different characteristics to serve under changing circumstances.²¹ And he praises Brutus for having recognised that ‘someone who desires ... to reform a state in a city so that it is accepted and capable of being maintained to the satisfaction of everyone is under the necessity of retaining at least the shadow of its ancient modes so that it does not appear to the people to have changed its order even if in fact the new orders are altogether alien to the past ones’.²² Here we see why Machiavelli presents his own model of republican government as if it were a description of Rome.²³ Rather than criticise republics like Rome or Athens for the ingratitude they showed their leaders, Machiavelli suggests that people have reason to suspect them. He warns his readers that they should be especially concerned about the rise of a noble youth who demonstrates such extraordinary virtue that his fellow citizens honour him without hesitation. If he is ambitious (and he is apt to be), like Julius Caesar, such a youth can acquire so much power and influence that no one will be able to prevent him from overthrowing the republic.²⁴ The best ‘remedy’ for this problem, Machiavelli argues, is to have other ambitious politicians compete for popular favour.²⁵ Machiavelli does not, therefore, advocate the ‘elimination’ of the senatorial class or the wealthy as some recent advocates of a ‘democratic’ or ‘populist’ reading of his works have maintained.²⁶ He would make the *grandi* appeal to the people by promising to fulfil their desires in order to satisfy their political ambitions. In other words, government should not merely seek to satisfy popular desires. The people ought to have the ability to choose their own rulers.

Machiavelli recognises that elections can be manipulated, and that popular assemblies do not always make good choices.²⁷ So, he argues that it is also necessary to establish courts in which individuals accused of attempting to overthrow the republic can be tried and judged in front of large popular gatherings.²⁸

After arguing, in effect, that the people should be able not only to select the individuals who govern them but also to call those individuals to account if they do not serve the people as desired, in *Discourses* 1.58 Machiavelli justifies his granting the people the first and final voice about the way in which they should be governed by maintaining, contrary to all previous writers, that ‘the multitude is wiser and more stable than a prince’. ‘Against the common opinion that says that peoples, when they are princes, are varying, mutable, and ungrateful’, he declares that ‘a people is more prudent, more stable, and of better judgment than a prince. Not without cause’, he suggests, ‘may the voice of a people be likened to that of God’. Machiavelli does not explain how commonly held opinions appear able to predict future effects by some hidden virtue. He leaves his readers to infer

the reason. Human beings act on the basis of what they believe; commonly held opinions will, therefore, affect the way in which most people act. With regard to the adoption of specific policies or election of particular individuals, Machiavelli then claims that a people can judge if the speakers are of equal talent. And if a people can err, so a prince does also and more frequently, on the basis of his passions. The superiority of the people to prince as rulers does not lie in a difference of nature, which is the same in all. The difference between princely and popular rule lies in the outcomes or effects. First, he notes, a people will never be persuaded to select an infamous or corrupt individual to be a magistrate, but princes have often been seen to do so – presumably because princes make many decisions in private, whereas peoples can act only in the open (and are, therefore, more honest). Second, and more fundamental, peoples tend to respect the laws under which they live more than princes. People do not change their opinions or the laws as quickly or easily as an individual ruler, especially when those laws are seen to have good effects. And 'cities' in which the people rule quickly become more prosperous than those ruled by a prince. Assured by seeing that the law is enforced, Machiavelli explains later, people believe that they will keep what they have earned and strive to acquire more.²⁹ Believing they can support a wife and children, they have more progeny. The population grows, and where everyone is eligible to serve in the highest offices, all compete to serve the public as well as themselves. In a principality, by contrast, everything is done for the sake of the prince. Finally, Machiavelli points out, even when the people are not restrained by laws, the worst outcome to be feared is the rise of a tyrant in the midst of the disorder; but when a prince is not restrained by laws, one already has that tyrant.

Machiavelli does not claim that popular rule is simply good and effective; nor does he claim that what the people choose is always right.³⁰ Nevertheless, in *Discourses* 1.58 he concludes:

If all the disorders of peoples are reviewed, all the disorders of princes, all the glories of peoples, and all those of princes, the people will be seen to be by far superior in goodness and in glory. If princes are superior to peoples in ordering laws, forming civil lives, and ordering new statutes and orders, peoples are so much superior in maintaining things ordered that without doubt they attain the glory of those who order them.³¹

Machiavelli explicitly recognises that people need leaders in order to found and maintain decent government. He thus addresses both of his major works to 'princes', either actual or potential, with the aim of teaching them what they could and should do to found and maintain better regimes. Observing that all human beings are fundamentally self-interested, in both *The Prince* and his *Discourses on Livy*, Machiavelli attempts to persuade future leaders

that it is in their interest to serve the interests of the people. In fact, he insists, such leaders will not achieve their proximate goal of attaining power or satisfy their longer-range desire for everlasting fame and glory unless they convince their people that they have served them well.

Machiavelli certainly does not advocate mob rule or anything like direct democracy. Nevertheless, by arguing that the desire of the people not to be oppressed is more decent than the desire of ‘the great’ to oppress, and that the people are and ought to be the judges of the means of achieving their desire, Machiavelli makes two very important steps in the direction of what we might call ‘popular sovereignty’.

Notes

- 1 J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Tradition* (Princeton, 1975). For a fuller discussion of the difference between Aristotle and Machiavelli, see C. Zuckert, *Machiavelli's Politics* (Chicago, 2017), 463–465. Other critiques of Pocock's account of Aristotelian ‘republicanism’ can be found in V. Sullivan, ‘Machiavelli's Momentary “Machiavellian Moment”: A Reconsideration of Pocock's Treatment of the Discourses’, *PT* 20 (1992), 309–318; C. Nadon, ‘Aristotle and the Republican Paradigm: A Reconsideration of Pocock's *Machiavellian Moment*’, *RP* 58 (2009), 677–698; J. McCormick, *Machiavellian Democracy* (Cambridge, 2011), 8–11; J. McCormick, *Reading Machiavelli: Scandalous Books, Suspect Engagements and the Virtue of Populist Politics* (Princeton, 2018), 176–206.
- 2 Machiavelli, *Discourses*, 1.58. Citations to the *Discourses on Livy* refer to book and chapter.
- 3 N. Machiavelli, *The Prince*, trans. H. Mansfield (Chicago, 1998), 61.
- 4 Ibid.
- 5 Ibid., 14.
- 6 Ibid., 61.
- 7 H. Mansfield, *Machiavelli's Virtue* (Chicago, 1996), 288–294.
- 8 Machiavelli, *Prince*, 62.
- 9 Ibid., 71.
- 10 In Chapter 16 Machiavelli thus argues, somewhat ironically, that a prince will be truly liberal to the many people he does not tax in order to lavishly reward his few close associates. And in Chapter 17 he argues that a prince will prove himself more merciful to the vast majority by seeing that his laws are strictly enforced so that criminals fear to disobey, rather by than ‘mercifully’ pardoning a few offenders and thus giving others the idea that they can murder, rape and steal with impunity.
- 11 Machiavelli, *Discourses*, 1.1–2. In *Prince* 6 Machiavelli states that the four great ‘founders’ he mentions, who acquired dominion solely as a product of their own *virtù* – Theseus and Romulus, Cyrus and Moses – took the opportunity offered

by the oppression of their people under the existing government to liberate them by forming a new one.

- 12 Machiavelli, *Prince*, 9; Machiavelli, *Discourses*, 1.3.
- 13 Machiavelli's initial division of all dominions or empires into either principalities or republics points to one of his many differences with Aristotle. Whereas Aristotle proposes a categorisation of regimes according to the number of rulers (one, few or many) and whether they rule for the sake of their common good or their own (monarchies as opposed to tyrannies, aristocracies as opposed to oligarchies, and polities as opposed to democracies), Machiavelli asserts that there are only two basic types, which he distinguishes basically merely as the rule of one or more than one. Labelling the latter 'republics', he does not distinguish aristocracies or oligarchies from democracies.
- 14 Machiavelli, *Prince*, 39.
- 15 See *ibid.*
- 16 Machiavelli, *Discourses*, 1.60.
- 17 *Ibid.*, 1.36, 1.52.
- 18 *Ibid.*, 1.49, 3.1.
- 19 *Ibid.*, 1.1.
- 20 *Ibid.*, 1.9, 1.34, 3.15.
- 21 *Ibid.*, 1.20.
- 22 *Ibid.*, 1.25, 1.60.
- 23 Machiavelli purports to be writing 'discourses' on Livy's history, not a commentary or another history. L. Strauss, *Thoughts on Machiavelli* (Chicago, 1958) points out many occasions in which Machiavelli departs from his purported source in Livy.
- 24 Machiavelli, *Discourses*, 1.33, 46.
- 25 *Ibid.*, 1.32, 1.52.
- 26 See, for example, McCormick, *Reading Machiavelli*; Y. Winter, *Machiavelli and the Order of Violence* (Cambridge, 2018); C. Holman, *Machiavelli and the Politics of Democratic Innovation* (Toronto, 2018).
- 27 Machiavelli, *Discourses*, 1.40, 47–48, 53.
- 28 *Ibid.*, 1.49.
- 29 *Ibid.*, 2.2.
- 30 In *Discourses* 1.44 he observes that 'a multitude without a head is useless'. And in *Discourses* 1.53 he warns that 'many times the people desires its own ruin, deceived by a false appearance of good, and that great hopes and mighty promises easily move it'. But in *Discourses* 1.54 he then observes 'how much authority a grave man may have to check an excited multitude'. And in *Discourses* 1.57, he explains that 'there is nothing more formidable than an unshackled multitude without a head, and, on the other side, there is nothing weaker; for even though it has arms in hand, it is easy to put it down provided that you have a stronghold that enables you to escape the first thrust. For when the spirit of men are cooled a little and each sees he has to return to his home, they begin to doubt themselves and to think of their safety, either by taking flight or by coming to accord. Therefore a multitude so excited, wishing to escape these dangers, has at once

to make from among itself a head to correct it, to hold it united, and to think about its defense'. M. Vatter, *Between Form and Event: Machiavelli's Theory of Political Freedom* (Dordrecht, 2000) is thus mistaken in arguing that Machiavelli regards the people as a 'creative' force, because the periodic outbursts of popular fury in riots constitute 'events' that give rise to historical change by destroying old forms and orders.

31 Machiavelli, *Discourses*, 1.58.

Death and taxes in Machiavelli's Florentine state

Danielle Charette

A republic is not a state one person or people can possess. Niccolò Machiavelli (1469–1527) argues in the *Discourses on Livy* (c. 1517) that a republic, or *uno stato libero*, will structure its laws and orders in such a way that no princes or nobles can satisfy their desire to dominate the people.¹ In the *Florentine Histories* (1525) he then focuses on explaining why his native city is not a free state. Book 4 of the *Histories* – which contains the rise of the Medici – opens with a typology of a failed republic:

Cities, and especially those not well ordered that are administered under the name of republic, frequently change their governments and their states not between liberty and servitude, as many believe, but between servitude and license. For only the name of freedom is extolled by ministers of license who are the men of the people, and by the ministers of servitude, who are the nobles, neither of them desiring to be subject either to the laws or to men.²

Machiavelli had observed in *The Prince* (1513) that cities accustomed to living in liberty ‘by their own laws’ cannot be acquired, unless they are first destroyed. The absence of good laws and orders in Florence reveals that the city is not like the ‘ancient republics’ or ‘states with long lives’.³ Rather, Florence vacillates between states of tyranny and licence, vulnerable to private actors who wish to acquire the city for themselves.

This chapter is concerned with the battles for wealth and reputation that Machiavelli blames for undermining republican orders in Florence. I concentrate on Machiavelli’s treatment of the *catasto* tax of 1427 – a reform he says was enacted on the principle that ‘it was for the law and not men to apportion the tax’.⁴ The idea that the city would assess taxes uniformly – regardless of citizens’ wealth, rank or neighbourhood – represented a major innovation in modern fiscal policy, perhaps even in the development of the modern state.⁵ In the *Florentine Histories*, Machiavelli sets the passage of the *catasto* against the city’s larger conflict between personal reputation and political equality; the tax debate appears as a key episode in the years preceding Cosimo de’ Medici’s capture of power. In what follows, I argue

that Machiavelli's description of the *catasto* is suggestive of what he thinks modern republican sovereignty demands – and that the reform's failure is indicative of why Machiavelli thinks modern republics are particularly difficult to maintain.

Historians are accustomed to view a regime's dual capacity to fight war and to gather tax revenue as a measure of its modernisation. As war-making demanded ever-greater resources, the 'renaissance state' began monopolising the twin forces of taxation and the military, each of which necessitated forms of administrative bureaucracy that we now associate with the evolution of the impersonal state.⁶ Yet Machiavelli's Florence never achieves this anonymity. In the *Histories* he worries that the tight correlation between the city's territorial expansion and its spiralling public debt enhanced the status of individual wealthy lenders. These creditor-citizens in turn encouraged a highly *personalised* style of politics that corrupted the republican body politic.

Machiavelli scholars are generally careful not to conflate Machiavelli's use of *lo stato* with conceptions of the anonymous state.⁷ When Machiavelli speaks of *lo stato*, he typically refers to a specific territory or regime, held by a specific person or estate of people. Machiavelli's *stato* can pass through different hands: it is a prize to be won or lost. Different groups will resist sharing their state – and the *status* it confers – with their rivals. For instance, Machiavelli writes in the *Histories* that during Florence's final guild government (1378–1381), the 'popular nobles' resented 'having to share their state [*accomunato lo stato*] with the lesser guilds and lesser people'. The Guelf party and popular nobles took up arms and wrested offices away from the lower guilds, until they 'regained the state, and the plebs lost it'.⁸

Most commentary on Machiavelli and 'the state' has concentrated on *The Prince*, where *lo stato* appears most 'passive', as the private dominion of its ruler.⁹ However, historians of republicanism have looked to the 'free states' of the *Discourses* for signs of a clearer distinction between a regime's institutions and those responsible for governing them.¹⁰ Peter Stacey even contends that Machiavelli's view of freedom is 'fundamentally parasitic upon his theory of the state'. Stacey points to the mixed body politic of the *Discourses* as an instance of '[g]etting the state right'.¹¹ The *corpo misto* Machiavelli discovers in Rome is not identifiable with any one person; it instead emerges out of the irradicable difference in humours between the great and the people, which the structures of a healthy republic can discipline and redirect.¹² But if this mixture of humours is indeed integral to Machiavelli's understanding of freedom, where does that leave the modern state of Florence?

Readers of the *Histories* will notice that 'the people' have become a more fluid social category. Machiavelli relies on a variety of what Mark Jurdjevic calls 'hybrid compound terms' for charting the city's social classes.¹³

In addition to 'the greater people' and 'the lesser people', Florence is populated by 'powerful people', 'popular nobles', 'princes of the city', 'chiefs of the plebs' and 'first citizens'.¹⁴ Machiavelli's adaptable vocabulary reflects Florence's mercantile activity.¹⁵ As economic fortunes fluctuate, the status of *lo popolo* seems increasingly up for grabs.

Machiavelli remarks that the Florentine nobles were compelled 'to appear similar to men of the people in their conduct, spirit, and mode of living' to regain their eligibility for magistracies. Meanwhile, the people emulated the traditional nobles and 'fought to be alone in the government'.¹⁶ In his more exasperated moments, Machiavelli seems to concede that the city's guild economy complicates the doctrine of humours he put forth in *The Prince* and *Discourses*. Compared to their Roman predecessors, the Florentine people appear less 'reasonable' and less obedient. It now seems too simple to assert that 'the great' seek to dominate and that 'the people' want only not be dominated, not least because it is hard to demarcate who counts as the people.¹⁷

But although Machiavelli's picture of the Florentine people is less flattering than his description of the Roman plebs, it is in the *Histories*, I argue, that he comes closest to articulating a view of modern popular sovereignty. Machiavelli here acknowledges that the 'desire' to participate in political rule is universal. Florence appears as a state in which the nobles refashion themselves as the people and in which all people compete for an active role in the magistracies.¹⁸ The challenge for Florence is to channel this mutual desire for rule into a government of equals, without allowing the economics of war and debt to elevate charismatic leaders above the law.

The *catasto* tax is intriguing in this regard because, in theory, the law treated all people equally and targeted old and new money alike. Each household was to declare a detailed inventory of its real estate, livestock, coined money, credits and shares in the communal debt. Every time the government declared an assessment, households paid 0.5% on their taxable assets. Historically, the Florentines resisted direct taxes and instead relied on a combination of (1) indirect taxes on customs and staple goods (*gabelle*) and (2) forced loans (*prestanze*). The latter functioned as shares in the city's funded debt, known as the *Monte* because of its *mountainous* sum.¹⁹ The government paid interest on these loans, usually at 5% but sometimes higher, and promised to pay back the principal in peacetime. But as military expenses exploded, the city was left allocating as much as two-thirds of its total revenue towards managing the debt. When Florence re-entered war with Milan in the 1420s, net indebtedness reached 2.5 million florins, a nearly six-fold increase since the commune began funding a public debt in the 1340s.²⁰ The *catasto* was designed to alleviate this crisis. The law standardised assessments across different neighbourhoods and

different forms of property so that payment was based on household inventory, not the opinion of bribeable tax collectors.²¹

Machiavelli suggests that ‘the generality of people’ (*universale*) approved of the law because the threat of future tax assessments emboldened the people to be more assertive in the councils. Taxes were a potential tool for holding the *grandi* accountable for their unjust wars.²² Still, the *catasto* applied to all citizens equally. Machiavelli frames this short-lived reform as an example of what modern republican sovereignty requires: political accountability and legal equality, regardless of economic class.

The attention Machiavelli pays to the *catasto* also reveals his extensive reliance on the work of Giovanni Cavalcanti (c. 1381–1451), who centred his own *Istorie Fiorentine* around the socioeconomic factions that precipitated Cosimo de’ Medici’s exile and return.²³ Machiavelli famously criticised the humanist historians Leonardo Bruni (c. 1370–1444) and Poggio Bracciolini (1380–1459) for ignoring Florence’s ‘civil discords and internal enmities’. But unlike Bruni and Poggio, Cavalcanti focused on civic disunion. He opens his *Istorie* by decrying Florence’s ‘insatiable avarice’ and by vowing to write of ‘the divisions of our citizens’.²⁴

Cavalcanti hailed from a prominent magnate family, though he was technically declared a member of the *popolo* when the Medici reinstated the magnates in 1434.²⁵ As a sign of the times, Cavalcanti composed much of his *Istorie* from debtors’ prison due to unpaid taxes. He wrote from behind the bars of the ‘the infamous *Stinche* prison’, which, ironically, had been a Cavalcanti family castle before it was seized during the popular reforms of 1304.²⁶

Cavalcanti was no populist and railed against the ‘dishonest and shameless plebs’.²⁷ But he was preoccupied with Florence’s unequal tax policies and, echoing Livy (59 BC–17 AD), stressed that justice in assessments was impossible ‘so long as men, and not a law, imposes it’.²⁸ At the start of Book 4, Machiavelli reiterates that ‘a city based on good laws and good orders has no necessity, as have others, for the virtue of a single man to maintain it’.²⁹ Then, following Cavalcanti, he proceeds to explain how Florence’s costly wars against Visconti Milan allowed private wealth and reputation to supplant public modes and orders.

In the early 1420s, Filippo Maria’s troops continued pushing south into the Romagna, prompting Florence’s war *balia* to hire mercenary soldiers and to impose new taxes. Machiavelli notes that these taxes were regressive, ‘weigh[ing] more on the lesser citizens [*i minori*] than the greater [*i maggiori*]’. The *minori* ‘condemned the ambition and greed of the powerful’ and accused their superiors of ‘wishing to start an unnecessary war so as to indulge their appetites and to oppress the people so as to dominate them’.³⁰ As creditors to the city, Florence’s wealthiest citizens received

interest payments on their *prestanze* loans and could hope to be eventually reimbursed. However, citizens without the liquidity to afford the full *prestanze* assessments paid their taxes *ad perdendum* – that is, ‘to be lost’, without the possibility of reimbursement or interest. Those who paid nothing were stripped of their political rights altogether.³¹ No wonder, then, that Machiavelli says the people received news of Florentine troops’ defeat at Zagonara in 1424 by ‘complaining of the taxes they had borne, of a war begun without cause’.³² Cavalcanti similarly remarks that those ‘excluded from the honors and rule of the Republic’ accused their leaders of searching ‘for new wars, unnecessary reasons, and abominable injustices’.³³ Florence’s dual system of mercenary warfare and deficit finance insulated its most powerful families from the consequences of their foreign policy decisions.

Cavalcanti and Machiavelli each report that Rinaldo degli Albizzi (1370–1442), son of Maso Albizzi and a leader of the pre-Medici oligarchy, at first urged his fellow noblemen to absorb the costs of war. For Cavalcanti’s Rinaldo, it was a matter of ‘putting a hand into our pockets’, rather than taxing ‘the purses of the powerless’.³⁴ Yet Machiavelli notes that these new levies for funding mercenary salaries ‘hurt the great citizens very much’ and sparked violent disagreement.³⁵ When the greater citizens’ campaign for lighter taxes was ‘blocked in the councils’, they arranged to make collections so severe that the people would ‘feel by deeds the harshness of the tax’. If provoked, tax agents could assault and even kill recalcitrant debtors. Machiavelli writes that this policy almost brought the parties ‘to blood’. Many of the *grandi* ‘could not tolerate having hands laid on them’, while ‘others wanted everyone to be burdened equally’.³⁶ Taxes meant to pay for *condottieri* in the Romagna carried the violence into Florentine households.

As tensions boiled, the ruling classes decided it was time ‘to take back the state [*ripigliare lo stato*]’. Machiavelli reports that seventy leading citizens assembled at the Church of Santo Stefano, where Rinaldo Albizzi denounced ‘the power of the plebs’. Machiavelli borrows from the longest and most acerbic speech in Cavalcanti’s *Istorie*, in which Rinaldo blames artisans, shopkeepers and newcomers from the countryside for using war as an excuse to punish the leading citizens with heavy taxes and to win control of the electoral pouches.³⁷ According to Machiavelli, Rinaldo warned that the multitude was determined to ‘wreck the state’ that had ruled Florence since the fall of the guild republic in 1381. The ‘multitude had levied a tax to suit itself’ and, if left unchecked, would ‘create magistrates according to its own arbitrary will [*arbitrio*]’.³⁸

In response, Rinaldo advocated restricting the pool of candidate names in the electoral pouches (*squittini*) and reducing the number of lesser guilds represented in the councils, from fourteen to seven. He worried that unless the Guelf oligarchy reasserted control over the councils, his class would find

themselves subjected either to a multitude living ‘in license’, or else ‘under the empire of one who would make himself prince’. Rinaldo here identifies two of the three outcomes that Machiavelli says can arise from a city’s difference in appetites: (1) a princely state (i.e. servitude) or (2) a state of licence (i.e. anarchy).³⁹ The third outcome is the ‘liberty’ that Machiavelli associates with cities accustomed to living by their own laws. Yet Rinaldo’s call for his listeners to ‘restore the state to the great’ rules out a genuinely republican solution. Rinaldo perceives that the multitude harbours a ‘will’ to rule, but for this very reason he urges his elite audience to curtail the representation of the ‘plebs’.⁴⁰

Historians have questioned whether this gathering at Santo Stefano truly took place and whether the real Rinaldo Albizzi would have articulated himself quite so sharply.⁴¹ However, Cavalcanti and Machiavelli each use this episode to characterise Florence’s two main factions during the 1420s. On one end is Rinaldo Albizzi, spokesman for the Guelf oligarchs who had dominated the regime since 1381. On the other end stands Giovanni di Bicci de’ Medici (1360–1429), who positioned himself as ‘a defender’ of ‘the generality of people in the city [*lo universale della città*]’.⁴² Machiavelli notes that Giovanni was conspicuously absent from the Santo Stefano assembly. Borrowing from Cavalcanti, he then narrates a private conversation between the two men, in which Rinaldo attempted to win over Giovanni and to deprive the multitude of its ‘head’.⁴³

Machiavelli tells us that Giovanni refused to support Rinaldo’s plan to reduce the representation of minor guilds and instead informed Rinaldo that ‘he believed it the office of a wise and good citizen not to alter the accustomed orders of his city’. Giovanni further reminded Rinaldo that his own father, Maso Albizzi (1343–1417), had earned ‘universal good will’ by lowering the salt tax and keeping poorer citizens safe from creditors.⁴⁴ This meeting between the two rivals, staged immediately after the assembly at Santo Stefano, raises the issue of who, exactly, speaks for Florence. Does the commune’s authority rest on a small circle of aristocratic families? Or is it founded on a broader group of merchants and guildsmen, guided by popular nobles like Giovanni? As the city expanded into a territorial state, its financial burdens made it more dependent on specific personalities.

Machiavelli connects this tension between individuals and the law to the passage of the *catasto* in 1427. He remarks that, after five years of war against Visconti Milan (1422–1427), citizens of Florence had grown ‘weary of the taxes imposed up to then’ and set out to revise them:

And that the taxes might be equal according to wealth, it was provided that they be imposed on goods and that he who had a hundred florins in value would have a tax of half a florin ... And because to apportion the tax each man’s goods had to be listed, for which the Florentine’s say *accatastare*, the tax

was called *catasto*. This mode placed a partial restraint on the tyranny of the powerful because they could not strike at lesser persons and by threats make them keep silent in the councils as they were able to before. Consequently, this tax was approved by the generality [*dall'universale*] of the people but received with very great displeasure by the powerful.⁴⁵

The 'powerful' resisted the idea of taxing moveable goods and investments, for fear that the *catasto* would tighten access to credit and favour citizens who successfully hid their wealth.⁴⁶ However, Machiavelli dismisses this objection. Writing in the voice of the *catasto*'s supporters, he declares, 'if moveable goods vary, the taxes could also vary'. Citizens who attempted to conceal wealth would be unable to 'bear fruit' from their investments.⁴⁷ As soon as they spend their money, it will be discovered and taxed accordingly.

Machiavelli pauses to add that the *catasto*'s opponents were silent about their true objection – namely, that 'it pained them not to be able to carry on a war without loss to themselves, having to share in the expenses like others'. Florence's unequal tax policies reflect the uneven incentives of state expansion. Machiavelli even speculates that, had citizens adopted the *catasto* earlier, they would not have entered war against King Ladislas in Naples (1409–1414), nor would they be fighting Filippo Visconti of Milan. These wars were not made 'out of necessity' but rather 'to fill up citizens'.⁴⁸ In his preface to the *Histories*, Machiavelli dryly registers that these five years of mercenary war against Duke Filippo (1423–1428) cost the city an enormous 3,500,000 ducats, a figure he takes from Cavalcanti and which he repeats in Book 4. Just after introducing the *catasto* tax, Machiavelli observes that the outlay of 3,500,000 ducats bought Florence nothing but 'poverty and disunion'.⁴⁹ In his view, the *catasto* addressed a major structural problem in Florentine government: its leaders did not bear the costs of the wars they elected to wage.

Machiavelli portrays Giovanni de' Medici as the only powerful citizen who joined the *universale* and 'openly praised' the *catasto* – 'so much so that it passed'. Yet he suggests that Giovanni performed a moderating role in the debate by convincing the people not to demand retroactive payments on property sold before the *catasto* was enacted. Machiavelli observes that some of the people held a 'desire' not just for 'the equality in taxation that arose from the law' but also for using the *catasto* to target 'the powerful' for past underpayment. Predictably, this desire alarmed the *grandi*, and Giovanni persuaded the people against looking backward. For, he said, 'if the taxes had been unjust in the past, they should thank God that a mode had been found to make them just and should wish that this mode might serve to reunite, not divide, the city'.⁵⁰ Of course, as founder of the Medici bank, Giovanni would have had his own reasons to discourage the people from 'reasoning about equalization'.⁵¹ But Machiavelli makes a point of

presenting Giovanni as an institutionalist who mediated between the desires of the city's shifting social divisions.

As a matter of historical record, Giovanni was not a decisive voice for the *catasto*. The law passed the Council of the Popolo on 22 May 1427, and Giovanni was still speaking out *against* reform that March.⁵² Transcripts from debates in the Consulte reveal that Rinaldo Albizzi in fact backed the law much sooner, declaring in August 1425, 'The institution of the Catasto is just'.⁵³ But Machiavelli's misreporting is consistent with Cavalcanti, who claims that Giovanni happily championed the *catasto* on behalf of the lower ranks.⁵⁴ Since Cavalcanti was not himself present at the *pratiche* or council debates over the *catasto*, it is possible he was drawing on subsequent rumours that Giovanni was the only member of the elite to embrace the law – rumours which the Medici were happy to perpetuate.⁵⁵ In repeating this error, Machiavelli continues to cast Giovanni as a model the Medici might have emulated: a popular noble who operated within the city's laws and orders.

The premise of the *catasto* – that law and not individual men should govern – runs as a leitmotif throughout Book 4. On his deathbed, Giovanni tells his sons, Cosimo and Lorenzo, that 'in regard to the state [*dello stato*]', they can live securely so long as they accept 'as much as is given to you by laws and by men'.⁵⁶ Machiavelli adds that Giovanni was 'averse to public plunder' and 'never went into the palace unless he was called'. Cavalcanti similarly records that the dying Giovanni advised his heirs, 'Do not treat the Palace like a *bottega*; rather, wait until you are called from the Palace'.⁵⁷ Unfortunately, Florence's mercenary wars made it difficult to regulate the desire for rule and riches within the structures of republican government. By the end of 1429, Florence had launched its disastrous attack on Lucca, drawing Milan back into war and placing further strain on the fisc.

Machiavelli depicts Rinaldo Albizzi as a prime aggressor in the Lucchese campaign. As military commissioner, Rinaldo viewed Lucca as a source of 'plunder' (*preda*) and sought to acquire the city 'not for the profit of the Florentine people but for his own'.⁵⁸ Machiavelli repeats rumours that Rinaldo ransacked the countryside and bought booty off of the soldiers, 'so that from being a commissioner, he had become a merchant'.⁵⁹ Meanwhile, Cosimo de' Medici developed a different kind of spoils system inside the city. Defying his father's counsel, Cosimo relied on his 'liberality' to cultivate friends, turning 'many citizens into his partisans'.⁶⁰ Machiavelli's reference to 'partisans' alerts us to the fact that Florence's republican orders are unsound. He later says in Book 7 that while some 'divisions' are productive in a republic, those that generate 'sects and partisans' are 'always harmful'. Citizens of cities can acquire reputation 'either by public ways or private modes', and partisans are a product of the latter.⁶¹ Machiavelli reminds us that 'Cosimo's party' also favoured aggression in Lucca, but Cosimo saw

the advantage of sending 'men of much reputation in the state' to direct the actual campaign.⁶² In this way, Cosimo could shore up his own status among friends at home while damaging the reputation of rivals like Rinaldo.

As Cosimo's popularity rose, Albizzi loyalists began seriously considering a conspiracy. One of the most memorable scenes in the *Histories* unfolds in the private study of the elderly Niccolò Uzzano (1359–1431), 'head' of the old Guelph party. Machiavelli recounts that Niccolò Barbadori paid Uzzano a visit and urged him to support Rinaldo Albizzi in driving out Cosimo. Yet Uzzano, who was now nearing death and who had opposed the Lucchese campaign, refused to join the Albizzi plot. Uzzano tells Barbadori – whose name literally means 'beard of gold' – that his counsel would be wiser 'coming from a grey head full of experience'.⁶³ Uzzano answers that Florence is such a 'naturally partisan city' that any accusation Rinaldo might make against the Medici could easily apply to Rinaldo and his supporters as well. If their fellow aristocrats oust Cosimo because they suspect 'a prince may be established in this city', then Cosimo's allies could 'accuse us of what we accuse him'.⁶⁴ Uzzano rejects the idea of an elite uprising not by appealing to civic concord and freedom but rather by conceding that the city is so disunited that a Medici principate is indistinguishable from an Albizzi oligarchy.

But unlike the Albizzi, Cosimo possessed 'universal goodwill' (*benivolenzia universale*).⁶⁵ By moving against Cosimo, Uzzano feared, their party would publicly confirm their anxiety that Cosimo 'is merciful, helpful, liberal, and loved by everyone'. Popularity in itself is not illegal, and Uzzano asks, 'What law is it that forbids or that blames and condemns in men mercy, liberality, and love?'⁶⁶ His speech echoes Sallust's description of the 'benefactions and lavish generosity' that made Caesar famous for 'gentleness and compassion'.⁶⁷ In the *Discourses*, Machiavelli had twice compared Cosimo to Caesar, calling him 'prince of the republic'.⁶⁸ In a city increasingly dependent on individual largesse, it was difficult to distinguish between patriotic public works and private attempts to curry extralegal status.

Uzzano argues that if the Albizzi oligarchy still enjoyed special dignity, it arose out 'of the ancient reputation of this state' that they had governed for fifty years. But if Barbadori's plot brought this reputation to the test, the old elite would expose their weakness vis-à-vis Cosimo. In the end Uzzano despairs, 'all these citizens ... are prepared to sell this republic, and so much is fortune their friend that they have found a buyer'.⁶⁹ While Rinaldo was busy buying off soldiers outside Lucca, Cosimo used his liberality to turn citizens into partisans.

As predicted, Rinaldo's plot against Cosimo backfired, though at first 'fortune' seemed to favour the Albizzi. The priorate for September–October 1433 drew the names of anti-Medicis, and Rinaldo persuaded the incoming

Gonfalonier of Justice, Bernardo Guadagni (1367–1434), to call the people into the piazza ‘to take back the state’. Machiavelli adds the detail that Rinaldo knew in advance that Bernardo would likely be drawn as gonfalonier and paid off Bernardo’s taxes so that his ‘public debt’ would not disqualify him for office.⁷⁰ At Rinaldo’s urging, the Signoria summoned and arrested Cosimo. It then called a new *balìa* and announced Cosimo’s exile. Machiavelli writes that Cosimo accepted his sentence stoically, ‘offering himself and his property [*le sustanze sue*], in whatever place he might be, to the city, to the people, and to the Signori’.⁷¹ Just one year later, Cosimo and his property were back. The priorate for September–October 1424 drew a majority of Medici allies, prompting Cosimo’s return and Rinaldo’s own banishment.

Machiavelli gives Rinaldo a revealing farewell speech:

I shall always esteem it little to live in a city where the laws can do less than men. For that fatherland is desirable in which property and friends can be safely enjoyed, and not that in which property can easily be taken from you and friends, out of fear for their own, abandon you in your greatest necessities. And to wise and good men, it was always less grievous to hear about the evils of their fatherland than to see them, and they reputed it a more glorious thing to be an honorable rebel than a slave citizen.⁷²

This stated preference for a city of laws is hard to read as sincere, given Rinaldo’s repeated conspiracies and status as ‘prince’ of the Guelf party.⁷³ But his speech is suggestive of what Machiavelli thinks Florence must do to avoid either a state of licence or a princely state. A prince can earn esteem by allowing his people quietly to pursue their trades and property (and by thus relieving the people’s ‘fear of taxes’).⁷⁴ Yet only a free state privileges the law over men. Machiavelli follows Rinaldo’s speech at the end of Book 4 with news of Cosimo’s triumphant return as ‘father of the fatherland’ – further confirmation that Florence of 1433–1434 was not a free state.⁷⁵

Not long after Cosimo’s restoration, the city reverted to assessing tax levies through appointed committees, abandoning the *catasto*’s original design.⁷⁶ Cavalcanti believed the regime’s leadership must have reasoned, ‘if the Catasto is canceled, laws and men will obey us; and thus we will be lords where we are [now] vassals’. Despite his praise for Giovanni and Cosimo in the *Istorie Fiorentine*, Cavalcanti was openly critical of the Medici in his sequel volume, *La Nuova Opera* (1440–1447). To his view, Cosimo’s allies had ‘broken the laws which tied together the greatness of the republic’.⁷⁷ Cavalcanti ridiculed Cosimo’s expensive alliance with the mercenary captain Francesco Sforza and resented that Cosimo’s authority over *Monte* officials allowed him to act as ‘governor of all the riches of the Commune’.⁷⁸

Machiavelli also connects Cosimo’s authority to his ability to co-opt city finances. In the first two decades after the Medici restoration, the Florentine

government made extensive use of emergency *balía*, investing wide-ranging powers in plenipotentiary assemblies and allowing the Medici to tighten their control over election scrutinies and taxes.⁷⁹ This left the upper classes at a crossroads. The *grandi* could demand a return to 'public ways' and the selection of magistrates by lot. Or they could continue as aristocrats living in Cosimo's shadow, reduced, as John Najemy puts it, 'to the status of clients in a hegemonic patronage system' who were prepared to tolerate Medici dominance in return for financial favours.⁸⁰ Machiavelli recounts that by the 1450s, 'those to whom the state belonged' began to question the indefinite extension of the *balía*. Yet Cosimo's friends were wary of returning to normal election scrutinies and the republican decision-making those entailed.

Machiavelli remarks that 'what frightened the great more and gave Cosimo greater opportunity to make them recognize their mistake was the revival of the mode of the *catasto* of 1427, whereby the taxes were assessed not by men but by law'.⁸¹ Cosimo understood this fear and calculated that his allies would soon 'learn that they were taking state and reputation not from him but from themselves'. With the electoral purses full of his friends' names, Cosimo assumed he could 'retake *his state* [*suo stato*] at his ease'.⁸² Sure enough, when Cosimo's friends discovered that they 'had become the equals of those whom they were long accustomed to consider inferior', Machiavelli says they dropped their interest in reform. As soon as the *grandi* realised that 'not Cosimo but they themselves had lost the state', they begged Cosimo to restore their honours and to reassert control over the magistracies.⁸³ In 1458, Medici loyalists summoned a *parlamento* and 'with arms' forced the people to consent to a *balía* that kept offices in their hands. Machiavelli tersely summarises, '[t]hereupon the state was reassumed'.⁸⁴ He elaborates that, so far as Cosimo was concerned, 'civil discords always increased *his state* [*suo stato*] in Florence, and wars outside increased his power and reputation'.⁸⁵ Disagreement over war and taxes helped bring the state of Florence into Cosimo's private possession.

In his *Discursus on Florentine Matters after the Death of Lorenzo de' Medici the Younger* (1520), Machiavelli refers explicitly to *lo stato di Cosimo*. He informs his patron, Pope Leo X (Giovanni di Lorenzo de' Medici), that Cosimo's state 'inclined more toward a principate than a republic', and that the principate Leo has inherited is unstable.⁸⁶ However, Machiavelli tactfully assures His Holiness that he can achieve lasting glory by restoring Florence to a republic.⁸⁷ The Medici commissioned Machiavelli to submit this proposal for constitutional reform in 1520, the same year he began drafting the *Histories* as the city's official historiographer. Together, the *Histories* and *Discursus* should be read as complementary parts of Machiavelli's project to diagnose how Florence

had deteriorated into a private principate – and to show what republican alternative might be available.

The republic Machiavelli prescribes for Florence takes a modern rather than Roman form.⁸⁸ Whereas Rome split between two essential groups – the great and the people – a Florentine republic must incorporate three types of citizen: (1) the aristocratic elite, (2) the middle ranks, and (3) the people, or *universale*. To appease the first group, Machiavelli grants the executive councils to sixty-five men, elected for life. Bestowing ‘majesty and reputation’ on this new Signoria will bind the upper ranks to the regime and prevent them from ‘conferring on public matters with private men’. Second, Machiavelli creates a Select Council of two hundred life-time members, drawn from the broader group of ‘middle families’, who will assume the role of the senatorial councils.⁸⁹ Third, he recommends reopening the Great Council, to be comprised of at least 600 representatives of the people, tasked with distributing the lower magistrates. Machiavelli clarifies that the Great Council is essential because ‘[n]o stable republic can ever be established without satisfying the universality’.⁹⁰ In short, it is no longer enough to assume that the people are content not to be dominated. A stable republic must both recognise and satisfy all citizens’ desire to rule.

Machiavelli reassures Leo X (1475–1521) and his cousin, the cardinal Giulio de’ Medici (1478–1534) (later Pope Clement VII), that they may personally appoint members of the Signoria and Select Council, such that Florence effectively ‘remains a monarchy’ during their lifetimes.⁹¹ But the aim of the *Discursus* is to create a republic that outlives the Medici, and recent interpretations of Machiavelli’s proposal have highlighted ‘democratic’ elements of his constitutional design.⁹² In addition to ‘citizen scrutinizers’, who keep watch as names are drawn for the upper councils, Machiavelli calls for a rotation of four ‘provosts’ from the sixteen gonfaloniers of the Companies of the People. These provosts for the people must be in attendance before either the Signoria or Select Council can convene. Furthermore, provosts possess the power to delay the actions of the executive or senatorial councils and may appeal decisions to the Great Council instead. Machiavelli openly anticipates that, ‘little by little’, the Great Council’s share of power will increase.⁹³

It is important to notice that although Machiavelli organises the republic into class-specific institutions, nothing about his constitution presumes that the members of its three social divisions (*primi, mezzani e ultimi*) will stay constant across generations. On the contrary, he asserts that Florence is well-primed to become a republic because of its ‘great equality’. By this he means that Florence is not home to a feudal nobility; it lacks the landed ‘gentlemen’ who serve as ‘auxiliary’ to the king in monarchies like France.⁹⁴ A stable principality needs a supportive nobility, yet Machiavelli expects

Leo X will concur that forging a new class of nobles would be an 'arduous, inhumane, and unworthy' task. This is why Machiavelli elects to 'speak only of a republic' for Florence. His proposed republic reflects that fact that city has neither a natural nobility, nor an unchanging 'people'.⁹⁵ Florence's mercantile economy has instead created oscillating social classes, all of whom now expect to take part in their own rule. Miguel Vatter argues that Machiavelli sees the modern republic as a 'species of state' that successfully wrests power away from the traditional *estates* and confers *status* on the people.⁹⁶ In the *Discursus*, Machiavelli works to institute a healthy competition and rotation between the three classes such that citizens' universal ambition for reputation does not overwhelm their shared state.

As an aside, he mentions in the *Discursus* that Florentines previously 'paid heavy taxes' as a matter of course, but 'presently, through either incapacity or bad habits, they are no longer inclined to do so – and efforts to rehabilitate them in this respect prove to be odious and dangerous affairs'.⁹⁷ Once again Machiavelli implies that a resistance to equal tax payments helped create the personalised *stato di Cosimo*. Perhaps a stable republic, as a state that both recognises and satisfies the *universale*, will have more success putting Florence's fiscal house in order.

For Machiavelli, tax assessments reveal not just what people pay but which citizens rule. He focused on the *catasto* episode because the reform, at least in theory, treated citizen-taxpayers equally and acknowledged that Florence's existing fiscal state was unstable. Drawing on Cavalcanti, Machiavelli uses Florence's larger debate over war and taxes to characterise two different eras of Medici leadership. While Giovanni disavowed partisanship and (supposedly) embraced the *catasto*, his son Cosimo cultivated personal *amici* and used the threat of the *catasto* to keep Florence as 'his state'. But Machiavelli makes clear that the crisis the *catasto* was meant to address pre-dated the Medici. The Guelf oligarchy that retook the state in 1382 ran up massive deficits while restricting offices to a narrow elite.

Machiavelli's understanding of *lo stato* is never far from ideas of acquisition.⁹⁸ A prince will try to hold the state as his dominion, and 'popular nobles' or 'powerful people' will attempt the same in a republic if they are left unchallenged. However, Machiavelli stresses that no republic of laws can survive if it elevates the reputation of some citizens while impoverishing others. In the *Histories* and *Discursus*, he identifies how Florentine citizens might manage their political desires more equitably. One solution was to tax all household wealth according to a standardised method, put down in law. Another was a constitution in which all people – *primi*, *mezzani* e *ultimi* – can acquire the status of partaking in their own rule. Machiavelli urges his Medici patrons to leave behind 'a perfect republic'. Such a state would not be for sale.

Notes

- 1 Machiavelli, *Discourses*, 1.18; 1.3–5. Citations to the *Discourses on Livy* refer to book and chapter.
- 2 Machiavelli, *Florentine Histories*, trans. L. Banfield and H. Mansfield (Princeton, 1998), 4.1. Citations to the *Florentine Histories* are to book and chapter. All Italian references correspond with Machiavelli, *Opere*, ed. C. Vivanti, 3 vols. (Turin, 1997–2005), 3: 305–1002.
- 3 Machiavelli, *The Prince*, trans. H. Mansfield (Chicago, 1998), chap. 5; *Histories*, 4.1.
- 4 Machiavelli, *Histories*, 4.14.
- 5 D. Herlihy and C. Klapisch-Zuber, *Tuscans and their Families: A Study of the Florentine Catasto of 1427* (New Haven, 1985), 6; A. Molho, *Florentine Public Finances in the Early Renaissance, 1400–1433* (Cambridge, MA, 1971), 112. M. Becker, ‘Economic Change and the Emerging Florentine Territorial State’, *SR* 13 (1966), 7–39. Becker even refers to Florence’s system of public debt as ‘the proverbial economic Leviathan’ (p. 38).
- 6 For an overview of this literature since Max Weber, see A. Molho, ‘The State and Public Finance: A Hypothesis Based on the History of Late Medieval Florence’, *JMH* 67 (1995), 97–135; and J. Barthas, ‘Machiavelli, Public Debt, and the Origins of Political Economy: An Introduction’, in F. Del Lucchese *et al.* (eds), *The Radical Machiavelli: Politics, Philosophy, and Language* (Leiden, 2015), 273–305. Molho and Barthas are both sceptical that this literature applies to Machiavelli. Each underscores Machiavelli’s famous attack on the ‘common opinion’ that ‘money is the sinews of war’ in *Discourses*, 2.10.
- 7 See especially F. Chabod, *Scritti sul Rinascimento* (Torin, 1967), 593–623, 627–661; J.H. Hexter, ‘*Il prince and lo stato*’, *SR* 4 (1957), 113–138; Q. Skinner, ‘The State’, in T. Ball *et al.* (eds), *Political Innovation and Conceptual Change* (Cambridge, 1989), 90–131; H. Mansfield, ‘On the Impersonality of the Modern State: A Comment on Machiavelli’s Use of *Stato*’, *APSR* 77 (1983), 849–857.
- 8 Machiavelli, *Histories*, 3.21.
- 9 Hexter, ‘*Il prince and lo stato*’, 119–122, 124, 137. On this emphasis in the literature see, P. Stacey, ‘Free and Unfree States in Machiavelli’s Political Philosophy’, in Q. Skinner and M. van Gelderen (eds), *Freedom and the Construction of Europe* (Cambridge, 2013), I, 177–178.
- 10 Machiavelli, *Discourses*, 1.18. Q. Skinner, *Visions of Politics II: Renaissance Virtues* (Cambridge, 2002), 384–385; Stacey, ‘Free and Unfree States’, 176–194. But cf. Mansfield, ‘On the Impersonality’, 853.
- 11 Stacey, ‘Free and Unfree States’, 176, 184.
- 12 *Ibid.*, 184, 190–192.
- 13 M. Jurdjevic, *A Great and Wretched City: Promise and Failure in Machiavelli’s Political Thought* (Cambridge, 2014), 114–115.
- 14 E.g. Machiavelli, *Histories*, 3.4 (*popolani potenti*); 3.9 (*nobili popolani*); 3.18 (*principi della città*); 3.22 (*capi plebei*); 4.8 (*primi cittadini*). Translations slightly altered.

- 15 F. Raimondi, *Constituting Freedom: Machiavelli and Florence*, trans. Matthew Armistead (Oxford, 2018), 59–62.
- 16 Machiavelli, *Histories*, 3.1.
- 17 Ibid., *Discourses*, 1.4–5; *Prince*, 9. See Jurdjevic, *Great and Wretched City*, 103–131; Cf. J. McCormick, 'On the Myth of a Conservative Turn in Machiavelli's *Florentine Histories*', in D. Johnston *et al.* (eds), *Machiavelli on Liberty and Conflict* (Chicago, 2017), 330–351.
- 18 Machiavelli, *Histories*, 3.1. Jurdjevic, *Great and Wretched City*, 76 writes, 'In Machiavelli's later thinking, the people have become irreducibly political'.
- 19 On these forms of taxation, see Molho, *Florentine Public Finances*, 22–112; Herlihy and Klapisch-Zuber, *Tuscans*, 1–27.
- 20 Molho, *Florentine Public Finances*, 20.
- 21 Herlihy and Klapisch-Zuber, *Tuscans*, 5.
- 22 Machiavelli, *Histories*, 4.14.
- 23 On Cavalcanti's politics, see especially D. Kent, 'The Importance of Being Eccentric: Giovanni Cavalcanti's View of Cosimo de' Medici's Florence', *Journal of Medieval and Renaissance Studies* 9 (1979), 101–132; G.M. Anselmi, 'Contese politiche e sociali nelle «Prime Storie» del Cavalcanti: il ruolo di Giovanni de' Medici', *Archivio Storico Italiano* 134 (1976), 119–135; C. Varese, *Storia e politica nella prosa del quattrocento* (Turin, 1961), 93–131. For biography, see M. Grendler, *The 'Trattato Politico-Morale' of Giovanni Cavalcanti (1381–c. 1451): A Critical Edition and Interpretation* (Geneva, 1973), 13–90.
- 24 Compare the preface to Machiavelli's *Histories* (p. 6) with Cavalcanti, *Istorie Fiorentine*, ed. G. di Pino (Milan, 1944), 3–5. On their similarities, see Varese, *Storia e politica*, 104–105; and G. di Pino, 'Le *Istorie Fiorentine* di Giovanni Cavalcanti e quelle di Machiavelli', in G. Bartouil (ed.), *Machiavelli attuale/ Machiavel actuel* (Ravenna, 1982), 35–49. I owe special thanks to Sal Salamanca for her translation advice.
- 25 Cavalcanti, *Istorie*, 324.
- 26 Ibid., 71. Machiavelli refers to the people's seizure of the *le Stinche* 'from the family of the Cavalcanti' in *Histories*, 2.22.
- 27 Cavalcanti, *Istorie*, 319.
- 28 Ibid., 108. Compare with Livy, *History of Rome: Books I–II*, trans. B. Foster (Cambridge, MA, 1919), 2.1.
- 29 Machiavelli, *Histories*, 4.1.
- 30 Ibid., 4.4. Cf. Machiavelli, *Discourses* 1.51–2.
- 31 Molho, *Florentine Public Finances*, 69.
- 32 Machiavelli, *Histories*, 4.7.
- 33 Ibid., 4.7; Cavalcanti, *Istorie*, 39.
- 34 Cavalcanti, *Istorie*, 41; Machiavelli, *Histories*, 4.7.
- 35 Machiavelli, *Histories*, 4.8.
- 36 Ibid.
- 37 Ibid., 4.8, 4.9; Cavalcanti, *Istorie*, 46–54.
- 38 Machiavelli, *Histories*, 4.9.
- 39 Ibid.; *Prince*, 9.

- 40 Cf. Machiavelli, *Prince*, 5, 9; Machiavelli, *Histories* 4.9.
- 41 Cf. G. Brucker, *The Civic World of the Early Italian Renaissance* (Princeton, 1977), 472–478; C. Bayley, *War and Society in Renaissance Florence: The De Militia of Leonardo Bruni* (Toronto, 1961), 111–112; D. Kent, *The Rise of the Medici: Faction in Florence 1426–1434* (Oxford, 1978), 7, 215–223, 240; A. Field, *The Intellectual Struggle for Florence: Humanists and the Beginnings of the Medici Regime, 1420–1440* (Oxford, 2017), 36–54.
- 42 Machiavelli, *Histories*, 4.3. Machiavelli repeatedly associates Giovanni de' Medici with the *universale* of the Florentine people. See *Histories* 4.14, 4.16.
- 43 Machiavelli, *Histories*, 4.9–10; Cavalcanti, *Istorie*, 54.
- 44 Machiavelli, *Histories*, 4.10; Cavalcanti, *Istorie*, 56.
- 45 Machiavelli, *Histories*, 4.14; Cavalcanti, *Istorie*, 116–118.
- 46 J. Najemy, *A History of Florence, 1200–1575* (Oxford, 2006), 257.
- 47 Machiavelli, *Histories*, 4.14. For similar reasoning, see Cavalcanti, *Istorie*, 107–108.
- 48 Machiavelli, *Histories*, 4.14. He also attributes this argument to the people at 4.7. See Cavalcanti, *Istorie*, 117.
- 49 Machiavelli, *Histories*, 'Preface' (p. 6), 4.15; Cavalcanti, *Istorie*, 4.19.
- 50 Machiavelli, *Histories*, 4.14; Cf. *ibid.*, 3.3 and Machiavelli, *Discourses* 1.37.
- 51 Machiavelli, *Histories*, 4.14.
- 52 Elio Conti, *L'imposta diretta a Firenze nel quattrocento (1427–1494)* (Rome, 1984), 134–135; Kent, 'The Importance of Being Eccentric', 113–114.
- 53 Quoted in Conti, *L'imposta*, 127.
- 54 Cavalcanti, *Istorie*, 108–109.
- 55 Najemy, *History of Florence*, 258. Kent raises the possibility that Cavalcanti composed his *Istorie* with the hope of future Medici patronage, in 'The Importance of Being Eccentric', 113–114, 117–119.
- 56 Machiavelli, *Histories*, 4.16. See also 4.1, 4.14; cf. 4.33.
- 57 Machiavelli, *Histories*, 4.16; Cavalcanti, *Istorie*, 142. On Cavalcanti's idealisation of Giovanni, see Anselmi, 'Contese politiche'. For Machiavelli's praise for Giovanni, especially as a foil to his son Cosimo, see J. Najemy, 'Machiavelli and the Medici: The Lessons of Florentine History', *Renaissance Quarterly* 35 (1982), 565–569.
- 58 Machiavelli, *Histories*, 4.19, 4.22.
- 59 *Ibid.*, 4.22. Cavalcanti also records accusations that Rinaldo had become a *mercante di prede*, *Istorie*, 173. Cf. Machiavelli, *Discourses*, 2.10.
- 60 Machiavelli, *Histories*, 4.26.
- 61 *Ibid.*, 7.1. Cf. Machiavelli, *Discourses* 1.16; Machiavelli, *Histories*, 4.11, 4.27.
- 62 Machiavelli, *Histories*, 4.26. For Medici support of the war, see also 4.18. On Rinaldo's wounded reputation, see Bayley, *War and Society*, 114–116.
- 63 Machiavelli, *Histories*, 4.27. He borrows this play on words from Cavalcanti's account of the meeting. Cavalcanti, *Istorie*, 205. Uzzano's private office was a reasonable place to suggest circumventing normal modes and orders. Cavalcanti recalls watching Uzzano sleep through a *pratiche* debate, only to see Uzzano wake up knowing exactly how the meeting would end. Cavalcanti realises that

the results were hatched beforehand 'in a private and secret place' and concludes, 'many are elected to offices, few govern'. Cavalcanti, *Istorie*, 20.

- 64 Machiavelli, *Histories*, 4.27.
- 65 Ibid.
- 66 Ibid.
- 67 Ibid.; Sallust, *The War with Cataline*, trans. J. Rolfe and J. Ramsey (Cambridge, MA, 2013), 130–131. Marina Marietti, *Machiavelli, l'eccezione fiorentina* (Florence, 2005), 139–140.
- 68 Machiavelli, *Discourses*, 1.33, 1.52. Machiavelli faults Uzzano for underestimating the dangers of Cosimo 'reputation'.
- 69 Machiavelli, *Histories*, 4.27.
- 70 Ibid., 4.28. The detail comes from Cavalcanti, *Istorie*, 205. Machiavelli elsewhere mentions that the Albizzi regime – 'a republic governed by aristocrats' – held scrutinies for office far in advance, allowing for 'rampant fraud', in N. Machiavelli, *Discursus on Florentine Matters After the Death of Lorenzo de' Medici the Younger*, trans. J. McCormick in M. Jurdjuvic et al. (eds), *Florentine Political Writings from Petrarch to Machiavelli* (Philadelphia, 2019), 213.
- 71 Machiavelli, *Histories*, 4.29. See Cavalcanti, *Istorie*, 285–286.
- 72 Machiavelli, *Histories*, 4.33.
- 73 Cf. *ibid.*, 4.28.
- 74 See *Prince*, 21.
- 75 *Histories*, 4.33.
- 76 Conti, *L'imposta*, 181–183, 323; Najemy, *History of Florence*, 259.
- 77 Cavalcanti, *Nuova Opera: Édition critique*, ed. A. Monti (Paris, 1989), 107.
- 78 Ibid., 120, 208.
- 79 N. Rubenstein, *The Government of Florence under the Medici (1434 to 1494)* (Oxford, 1966), 68–87; Najemy, *History of Florence*, 280–286.
- 80 Najemy, *History of Florence*, 292.
- 81 Machiavelli, *Histories*, 7.2
- 82 Ibid.
- 83 Ibid., 7.2–3.
- 84 Ibid., 7.3.
- 85 Ibid., 7.5. Emphasis added.
- 86 Machiavelli, *Discursus on Florentine Matters After the Death of Lorenzo de' Medici the Younger*, 214. Italian references correspond to *Opere*, ed. Vivanti, 1: 733–745.
- 87 Ibid., 216–217.
- 88 See Jurdjuvic, *Great and Wretched City*, 53–80.
- 89 Machiavelli, *Discursus*, 217–219.
- 90 Ibid., 220.
- 91 Ibid., 219, 22.
- 92 Ibid., 220–221. J. McCormick, *Machiavellian Democracy* (Cambridge, 2012), 103–107; Raimondi, *Constituting Freedom*, 114–121; Marietti, *Machiavelli*, 184–185; J. Barthas, 'Il pensiero costituzionale di Machiavelli e la funzione tribunizia nella Firenze del Rinascimento', in L. Tanzini (ed.), *Il Laboratorio del Rinascimento: Studi di storia e cultura per Riccardo Fubini* (Florence, 2015): 239–256.

- 93 Machiavelli, *Discursus*, 220, 222.
- 94 Ibid., 217. Cf. Machiavelli, *Discourses*, 1.55. In his *Portrait of the Affairs of France*, Machiavelli observes that there is no middle power in France because wealth is restricted to *gentili uomini* and does not circulate. He also notes that the French monarch has full discretion over taxes. *Opere* 1:59, 62–65.
- 95 Machiavelli, *Discursus*, 217. See Raimondi, *Constituting Freedom*, 101–102, 114–115.
- 96 M. Vatter, ‘Republics are a Species of State: Machiavelli and the Genealogy of the Modern State’, *Social Research* 81 (2014), 217–241.
- 97 Machiavelli, *Discursus*, 215. For Machiavelli’s efforts to mitigate the tax crisis during the Republic of the Great Council before the Medici return in 1512, see J. Barthas, ‘Machiavelli, the Republic, and the Financial Crisis’, in Johnston *et al.* (eds), *Machiavelli on Liberty and Conflict*, 257–279.
- 98 As stressed in Hexter, ‘*Il prince* and *lo stato*’ and Mansfield, ‘On the Impersonality’.

Taming the Parliament: John Locke on legislative limits, prerogative and popular sovereignty

Nathan Pinkoski

An unexpected beneficiary of post-2016 populism has been legislative supremacy. In both the United States and the United Kingdom, a series of legal and political arguments have purported to defend legislative supremacy against executive prerogatives. Court decisions have generally put executives on the defensive.¹ If we understand populism as movements challenging traditional constitutional principles and democratic governing institutions, then we could celebrate these decisions for safeguarding constitutional principles and representative institutions – namely, legislative assemblies – from populist executives.² Yet critics of these decisions argue that in the name of defending traditional constitutional principles from populism, legislators and judges have endorsed actions that in fact challenge traditional constitutional principles.³

In light of these debates, it is worth examining John Locke's position on legislative supremacy and legislative sovereignty, because the United States and United Kingdom are regarded as modified Lockean commonwealths. In his *Second Treatise of Government* (1689), Locke (1632–1704) defends a robust account of legislative responsibility. But he rejects legislative supremacy and legislative sovereignty in favour of popular sovereignty. Moreover, Locke ties his teaching on popular sovereignty to an expansive account of the powers that the executive can legitimately wield, notably the power of prerogative.

The first section outlines Locke's account of legislative power. To achieve the ends of government, the people must subordinate themselves to the legislature. This position seems to imply legislative sovereignty. Yet the second section shows that on the grounds of the text of the *Second Treatise* and the historical context preceding the work, Locke rejects legislative sovereignty, because the legislative power is held in trust, exercised on behalf of the people. Only the people have the power to undertake the act of constitution that changes the form of government. In making this argument, Locke bestows a non-absolutist conception of sovereignty upon the people, which becomes the basis for popular sovereignty.

The second section details how Locke further diminishes the case for legislative sovereignty. The third section details another reason why Locke rejects legislative sovereignty. He argues that law itself is limited in its capacity to achieve the ends of government. Achieving the ends of government requires an expansive account of prerogative. Locke uses this account of prerogative to develop the idea that the people, and not another branch of government, serve as the ‘proper Umpire’ or judge of the Law’s silence, doubts or of high politics.⁴ Locke’s account of prerogative demands a spirited populace ready to interpret and defend natural rights. In the Lockean commonwealth, popular sovereignty means that only the people have the power to make the constitution, change the form of government and judge whether the government they have constituted achieves its proper ends. The fourth section demonstrates Locke’s concern with the dangers an irresponsible, imperial legislature presents to the proper exercise of executive and popular responsibilities. The fifth section concludes that misconceived endorsements of the legislature’s supremacy threaten modified Lockean commonwealths by eroding popular sovereignty.

The task of the legislative power

In the Lockean commonwealth, the foundation for legislative power is the law of nature that binds every human being to follow it. For Locke, obedience to law is a goal-oriented activity. To follow the natural law, persons exercise their reasoning to discover their ‘general Good’ – as ‘Law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper Interest’.⁵ Natural law reasoning ‘obliges every one’ to act for ‘the preservation of the life, the liberty, health, limb, or goods’ of himself and of one another.⁶ Life and property, broadly understood, constitute the natural rights of man.⁷

But in the state of nature, the application of natural law is irregular and uncertain.⁸ To make natural law regular and certain, natural law reasoning instructs those in the state of nature to constitute the political association.⁹ As Locke defines it, this primordial legislative act, antecedent to all positive laws, is the ‘constitution’: the people’s act of creating a particular form of government,¹⁰ or creating the legislative power as the supreme power.¹¹ This supreme, legislative power ‘is the soul that gives form, life, and unity to the commonwealth’, because the legislative’s authoritative deliberation about what law is makes the community into one body.¹²

The legislative power is tasked with following the natural law, exercising moral or natural law reasoning.¹³ Because the natural law is unwritten, it is inadequate on its own. It needs positive law to provide written specification.¹⁴

In making positive law, the legislative power exercises natural law reasoning on behalf of the people. To represent the people and specify the natural law, the institution exercising the legislative power, the legislature, must articulate the natural rights of the subject to ensure that ‘every one may know what is his’ – that is to say, that everyone may know what their rights are, as well as what the public powers (the ‘united strength of the whole society’) may legitimately undertake to ‘secure and defend’ these rights.¹⁵ The authority of the legislature turns on its capacity to do what the people in the state of nature cannot consistently do: secure these rights and secure the public (or common) good. Duly specified by legislation, rights constitute the public good.¹⁶ The legislature’s responsibility is to promulgate fixed and uniform public commitments about natural rights and public powers to predict future challenges.¹⁷ The legislative assembly exercising power for ends other than securing natural rights acts arbitrarily.¹⁸ Enacting ‘extemporary arbitrary decrees’, governing without ‘settled standing laws’, or equating the law with any act of public will creates the conditions for tyranny.¹⁹

Locke’s account of the legislative power also establishes an important difference between the legislative power as the supreme power, and the people. The people do not make law for themselves but transfer that power to the legislative. As Locke stresses the importance of popular obedience to that which the legislative promulgates, the people are not the same as the legislative power.²⁰ The act of constitution aims to make a legitimate government that consistently realises the law of nature; natural law reasoning teaches that to make this legitimate government, the people must be subordinate to the legislative power. Locke conceives of rule of law as the subordination of the people to the legislative power. For this reason, ‘rule of law’ is not an aspect of the constitution, nor is it identical with particular institutional arrangements: it is concomitant with the constitution’s aim of applying natural law consistently and securing natural rights.²¹

The legislative power’s limits: popular sovereignty

Locke stresses the importance of the legislative power, its significant responsibilities and the subordination of the people to the law to the extent that his conclusion seems to be for ‘an almost sovereign legislature’.²² Yet this is far from Locke’s last word. Locke provides important limitations to legislative power, such that his conclusion is to *negate* a sovereign legislature. This negation hands sovereignty to the people, establishing the contours of popular sovereignty in the Lockean commonwealth.

The people’s subordination to the legislative power is not natural but arises through the act of constitution.²³ Through the act of constitution, the

people establish a particular form of government with a legislature, which they believe best secures their natural rights. The legislature has no authority in itself. The title of, for example, 'Parliament', grants no authority; it is what the people bestow on Parliament that grants it its authority.²⁴ The people confer on the legislature a power it would not otherwise have. Legislative power is 'essentially vicarious'.²⁵ If the constituted legislature does not serve the ends for which the people enacted it – the ends of securing natural rights – then the people are justified in replacing one constitution with another. The people's subordination is then not permanent.²⁶

These conceptual limitations on the legislative power clarify that in the Lockean commonwealth, the legislature is not sovereign. In an important difference from Hobbes, Locke refuses to declare that the legislature is a sovereign power.²⁷ The legislative power is a 'fiduciary power to act for certain ends'.²⁸ If the ones who wield this power overstep the proper bounds, they are not exercising legislative power but arbitrary rule. People retain supreme power to remove or alter the legislature when it acts contrary to the trust placed in it. In that respect the community is 'always the Supream Power', though this power cannot be exercised unless the form of government is dissolved.²⁹

The limitation Locke places on the legislative power, and his refusal to refer to the legislature as a 'sovereign', indicate that sovereignty lies with the people who empower the legislature. Yet it is important to specify how we can understand Locke's conception of popular sovereignty, since he avoids using the term 'sovereign' in the *Second Treatise*. Locke's aversion to the term follows from his critique of the absolutist account of sovereignty in the *First Treatise*. Filmer's understanding of sovereignty is that of an 'unbounded Will', and Locke denounces this absolutist account of political power.³⁰ Yet the people are not sovereign in the sense that Filmer understood sovereignty, in which the 'unbounded Will' of the people would be 'their law'.³¹ This is because in the argument of the *Second Treatise*, the people are bound to follow the laws that the duly constituted legislature promulgates, even if it goes against the will or opinion of the majority of the people.³²

Nevertheless, we obscure Locke's aim if we conclude that the whole conception of sovereignty is anathema to government by consent.³³ It is the absolutist conception of sovereignty that is anathema. Locke quietly favours a different conception of sovereignty, which he inherits from Hugo Grotius (1583–1645): 'That is called Supreme, whose acts are not subject to another's Power, so that they cannot be made void by any other human will'.³⁴

The people are a sovereign entity in this sense. The *act* of constitution that the people exercise is an act that is not subject to another power or voided by another human will. In exercising this act, the people are a sovereign entity. Yet once the act is exercised and the form of government so constituted, the people no longer act. So like Grotius, Locke thinks that as

long as the form of government exists, the people do not actually exercise sovereign power.³⁵

Locke's natural law reasoning, however, leads him to depart from Grotius and give more power to the people. For Grotius, once the form of government is so constituted, no power resides with the people. Grotius does not accept that the supreme power can reside in the people, 'that they may restrain or punish their Kings, as often as they abuse their Power'.³⁶ Locke, in contrast, insists that the community is 'always the Supreme Power'.³⁷ Because the form of government exists to specify and secure natural rights, its responsibility is to achieve these ends. If the government fails to act according to these limitations, it ceases to exist. While both Grotius and Locke argue that the people can exercise sovereign power when the form of government ceases to exist, Locke goes further: the form of government ceases to exist when it no longer acts for the ends to which it was constituted.³⁸ Government is in the last analysis 'subject to another's Power', the power of the people.³⁹ This is why Locke speaks of the power that the government has not as a sovereign power, but as a 'fiduciary power to act for certain ends', a supreme power held in trust. Correspondingly, because the act of the people that replaces the governors and constitutes the form of government cannot be 'made void by any other human will', the people are a sovereign entity.

Not only is the legislative power not sovereign in the Lockean commonwealth, legislative power also does not encompass the power to decide what the constitution is. Because the act of constitution is not the same as an act of legislation, the constitution is not what the legislature says it is.⁴⁰ The historical context preceding Locke helps clarify why it was important for him to reject any theory that gave the legislature the power to make the constitution. The 'monarchomach' theories that prevailed during the English Civil War rejected royalist absolutist conceptions of sovereign power, where all power flowed from the unbounded will of a monarch. Like Locke, they granted a right of resistance to arbitrary power and a right to depose a bad ruler. However, these theories equated the people with a particular political body or legislature – whether that of the Estates Assembly, or Parliament, or the House of Commons. Monarchomach publicists thus confined the right of resistance to the representative body.⁴¹ They bound the people to the particular form of government in which the representative bodies were already constituted. The people had no power to choose the form of government and were bound to the constituted government.⁴² These theorists were essentially advocates for legislative sovereignty, in the sense of sovereignty favoured by continental absolutists.⁴³ Publicists for these theories came to regard the representative body as possessed of an unbounded will, to the point that the monarch was juridically dependent on the representative

body. The representative body could, whenever it needed to do so, assume the powers of government that the monarch up to then exercised.⁴⁴

These publicists, however, did not wish to follow their account through to its logical conclusion. They were not covert republicans. In the context of the early 1640s, even when they were taking control of the monarch's powers, they could not and would not break officially with the doctrine of monarchical independence.⁴⁵ In spite of the monarch's arbitrary use of power, they refused to declare that the monarchical form of government was dissolved. In so doing, they conceded that the monarch was in some way independent from the representative body. So in spite of the logic of their argument, they ended up conceding that the representative body lacked real supremacy. Others were more consistent. After 1649, Oliver Cromwell (1599–1658) and his supporters claimed that the House of Commons (the 'Rump Parliament' purged of moderate Presbyterians) possessed the supreme power to change and dissolve the form of government, abolishing the House of Lords and the monarchy. But that left a dubious legal and political legacy. If one favoured legislative supremacy or legislative sovereignty, the choice was to remain inconsistent or accept Cromwell's actions as licit.⁴⁶

In the *Second Treatise*, Locke resolves this problem by weakening the claims for legislative supremacy and legislative sovereignty altogether, thereby avoiding the inconsistency and avoiding Cromwell's solution. Unlike the earlier monarchomach publicists, and unlike his contemporary Whigs (who, when confronted with the abuses of James II, also refused to declare the monarchical government of James II dissolved), Locke argues that arbitrary use of power dissolves the form of government. In this situation, the power to constitute a new form of government does not rest with the legislative or any representative body but with the people.⁴⁷ Reconstructing the theory of sovereignty, Locke places ultimate authority not with the legislative but with the people. To make his theory consistent, Locke grants the people the capacity to replace not only the governors, but also the form of government.⁴⁸

To summarise, then, Locke's predecessors and contemporaries who wished to counter absolutism argued for legislative supremacy to such a degree that their logic favoured legislative sovereignty, in the sense of an unbounded will. Yet they were reluctant to accept the full implications of that theory. Locke starts afresh by rejecting legislative sovereignty and making legislative supremacy conditional on the will of the people. For Locke, the people enact a constitution that confers power upon the legislative. While the legislative subordinates the people to the law, making it supreme in this way, this subordination is not natural but is one exercised in trust. It depends upon its capacity to achieve the public good. If the form of government exercises arbitrary power, the government is dissolved. No representative body that is part of the government has the power to enact a new

constitution. That power reverts to the people. They alone have the capacity to constitute a new form of government. In exercising this power, the people are sovereign: their act cannot be ‘made void by any other human will’.

Law’s limits: prerogative power

Locke provides a further challenge to legislative supremacy and legislative sovereignty. His discussion of the power of prerogative teaches that legislative power is often inadequate to achieving the public good and is thereby inadequate to achieving the ends of government. This legislative limitation provides the contours for a second characteristic of popular sovereignty in the Lockean commonwealth: to make the people responsible for watching over the exercise of prerogative, thus encouraging the people to exercise a spirited defence of their natural rights.

Locke’s account of the legislative as the supreme power, as well as his account of rule of law as the subordination of people to the legislative power, suggests that the executive power is conceptually dependent and subordinate to the legislative power. Its task is exclusively to enforce the laws that the community makes; if it attempts to make its own laws, it exercises arbitrary power.⁴⁹ Yet while enforcing the laws is executive power and an important function of the one who holds the executive power (in Locke’s language, the prince), Locke writes that there are some spheres of human affairs that legislation cannot address. This expands the account of what powers the prince may legitimately exercise.

Legislation’s responsibility is to look to the future to predict its challenges. However, Locke argues that legislation cannot perform this predictive task completely. Legislators cannot foresee ‘all Accidents and Necessities’ that may concern the public.⁵⁰ In a wide range of human affairs, legislators lack the epistemic capacity to predict what will take place.⁵¹ Moreover, even if they could make such predictions, there are cases where ‘the uncertainty, and variableness of humane affairs could not bear a steady fixed rule’.⁵² The essence of law – a fixed, unchanging, general rule – cannot always correspond to the ‘variableness’ of human affairs, which again covers a wide range of human affairs. Vagueness in law cannot be eliminated.⁵³ In some cases the inflexibility of a fixed rule may treat some persons unjustly.⁵⁴ For Locke, these particulars cannot be subsumed under a general rule (which the legislature promulgates). For these reasons, legislation is inherently fallible.⁵⁵

There are aspects of government that escape the law, so the executive function is not reducible to a machine applying law. The executive or prince’s responsibility is therefore distinct and independent from legislative responsibility.⁵⁶ The executive’s responsibility is to exercise prudence to

achieve the public good when the positive law cannot. Locke discusses the executive's responsibility by drawing attention first to the federative power, then the prerogative power. While the federative and prerogative power are conceptually distinct, Locke argues that the one holding the executive power should also exercise the federative power and prerogative power. In the case of the federative power, it is better to place it in the same hands as the executive power, for placing it in separate persons would 'be apt sometime or other to cause disorder and ruine'.⁵⁷ In the case of prerogative power, it 'should be left to the discretion of him that has the executive power'.⁵⁸ Locke's argument that prerogative goes to the executive is not inevitable; faced with Stuart absolutism, several tracts of the period preferred to give prerogative to the legislative.⁵⁹ Locke disagrees, continuing his break with legislative supremacy.⁶⁰ He expands the powers that the executive should exercise.

Locke defines the federative power as the power that pertains to foreign affairs, including the treatment of foreigners within the commonwealth. Foreign affairs disclose the essential limitation of law. It 'is much less capable to be directed by antecedent, standing, positive Laws', so it 'must be left to the Prudence and Wisdom [of the ruler], to be managed for the publick good'.⁶¹ Importantly here, Locke contrasts prudence with law, telling us to what the exercise of prudence pertains.⁶² Since the federative power is a natural power, not a political (i.e. artificial) or legal power, we can understand that prudential action for the sake of achieving the public good pertains to the successful application of the law of nature and securing natural rights.⁶³

Locke's two most important definitions of prerogative identify the same end as the federative power. The end of the prerogative power is achieving the public good. But unlike the federative power, it pertains to law's limitations in affairs internal to the members of the commonwealth:

Prerogative being nothing, but a Power in the hands of the Prince to provide for the publick good, in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable Laws could not safely direct, whatsoever shall be done manifestly for the good of the People, and the establishing the Government upon its true Foundations, is, and always will be just Prerogative.⁶⁴

Moreover:

This Power to act according to discretion, for the publick good, without the prescription of Law, and sometimes even against it, is that which is called *Prerogative*.⁶⁵

Prerogative is not just action in the absence of law; it is sometimes action against the law.⁶⁶ With this stance, Locke appears to contradict the importance he places on rule of law.⁶⁷ Yet we have already seen that rule of law arises as an instruction from natural law, to achieve the consistency not

found in the state of nature. Rule of law is conditional on realising natural law. Natural law reasoning instructs rational creatures to form government for the purpose of securing natural rights. If government were inadequate to these purposes, no rational creature would consent to it.⁶⁸ Granting that rule of law, or legislative power, is sometimes inadequate to the ends of government, Locke contends that achieving these ends requires an expansive account of prerogative.⁶⁹

The basis for the prerogative power is the priority of the fundamental law of nature, that ‘as much as may be, all the Members of the Society are to be preserved’. ‘Strict and rigid observation of the Laws may do harm’ to members of the commonwealth.⁷⁰ For this reason the executive must have the power ‘to mitigate the severity of the Law, and pardon some Offenders’; and moreover, the executive is justified to tear down an innocent man’s house in order to stop a fire spreading to an entire neighbourhood.⁷¹ Although the latter action compels the unlawful taking of property from an innocent man, it is necessary to break the law and destroy a person’s property for the sake of the more fundamental law of nature: acting to save lives. In these cases, Locke permits sacrificing individual rights specified in positive law. Since one cannot rely on the legislative to promulgate a general rule for these hard cases, it is left to the prudence of the prince to judge these cases. To summarise: the prudential judgement of prerogative pertains to the types of actions in which a uniform law is, first, incapable of providing the precision necessary to apply the law of nature successfully and realise the public good; and second, when application of the uniform law would breach the law of nature and harm the public good.⁷²

In pointing out instances where the ‘inflexible’ application of positive law would violate rather than fulfil the natural law, Locke shows that according to natural law reasoning, there must be ‘a latitude left to the Executive power, to do many things of choice, which the Laws do not prescribe’.⁷³ The latitude left to the executive becomes a requirement of government. Prerogative is not an erratic measure; it is ordinary, nestled within the ‘rhythms of normal governance’.⁷⁴ Moreover, since prerogative is the application of the fundamental law of nature, it is a natural power that pre-exists the legislative.⁷⁵ The one who holds executive power exercises his capacities as a rational creature. In exercising prudence, the prince exercises his own natural law reasoning, determining what secures the public good. He is not dependent on another body to grant or invest him with prerogative power.⁷⁶

Both federative power and prerogative power are natural powers that elevate prudence over law, but prerogative is closer to the law of nature. Federative power is the right of a society to protect its members; it is exercised by the whole on behalf of the parts. Federative power answers to the legislature; it is a ministerial power at the service of legislature, and

the legislature has power to punish misuse of it.⁷⁷ Prerogative, however, is the direct application of the law of nature in civil society. It ‘answers’ to the law of nature.⁷⁸

The importance Locke places on prerogative, then, clarifies the proper place of natural law over positive law. Without prerogative, the people of the Lockean commonwealth could be legal positivists, in the sense that to find out what the law is, they would merely look to what the legislature does, and obey this law. Appeals to natural law would appear illegitimate. Prerogative draws attention to circumstances where positive law is inadequate, drawing attention to what the law is supposed to secure. Since law is ‘the direction of a free and intelligent Agent to his Proper Interest’, prerogative bids the people of the Lockean commonwealth to consider what their proper interests are: namely, their natural rights. To achieve these natural rights that the law cannot, the people learn the importance of prudence and expect a prince to exercise it. The people learn that prudence has political primacy, because it achieves the required ends of the natural law when the positive law cannot. Assessing political actions requires the people to consider the natural law.⁷⁹ Natural law reappears as the authority antecedent to all positive law.

It falls to the people to be the ultimate interpreters and arbiters of that authority. For Locke, the legislative cannot be the proper interpreter and arbiter of the use of prerogative, since many instances of prerogative fall outside the domain of legislation. Whenever Locke discusses the ratification of prerogative, he makes the people, rather than the people’s representatives, the proper judge.⁸⁰ No body of government can adjudicate the use of executive prerogative, except the people.

There are important conceptual limitations on prerogative. Locke does not advocate for the prince exercising an unbounded sovereign decisionism. The prince’s exercise of prerogative is not arbitrary power: although positive law does not bind it, natural law binds it. As natural law limits prerogative, abuses of prerogative that violate natural law are not actually prerogative in the first place.⁸¹ Second, Locke is not claiming that the reason of the prince may supersede government by consent to the extent that the prince may do whatever he wishes, provided that the people eventually agree with the prince. The justification for prerogative is not that the ruler is inherently more rational than the people. Such a claim runs against Locke’s natural law because the people are also rational creatures. They exercise their own reasoning to serve as the ultimate arbiters of the prince’s actions.⁸²

Third, prerogative is not an irresistible power. Exercising their reasoning and evaluating prerogative, the people can consent to it or exercise their right to resist improper uses of it.⁸³ Locke’s presentation of prerogative clarifies the people’s rights of resistance and revolution, as his presentation

precedes the discussion on conquest, usurpation, tyranny and the dissolution of government. Prerogative prepares Locke's discussion of the 'appeal to heaven': it provides the specific instance that supports the theoretical foundation of the right to resist and to the right of revolution, of overthrowing one form of government and replacing it with another.⁸⁴

As prerogative is a natural power defined in terms of achieving the public good, it pre-exists the constitution and pre-exists legislation. Certainly, to ward off arbitrary rule, the constitution or law can enumerate what prerogatives the executive may legally exercise.⁸⁵ Enumerations define the extent of the prince's legal authority and inherently arbitrary acts, getting 'that to be declared not to be Prerogative, which truly was never so'.⁸⁶ Although enumerations can make abuses of prerogative visible to the people, these do not define prerogative per se, nor do they overwhelm the right of the executive to use prerogative power.⁸⁷ Paradoxically, a written constitution with enumerated powers might make appeals to prerogative more frequent and could increase arbitrariness.⁸⁸ In the last analysis prerogative remains an expansive power. It cannot be reduced to or subordinated to specific legal or constitutional enumerations without conceptually ruling out the authority of natural law, the limitations of fundamental and positive law to secure natural rights, and the executive's responsibility for securing natural rights when the law or constitution does not.⁸⁹

Locke seeks a conceptual justification for prerogative, not a juridical justification based on precedent, and not an ideal set of constitutional or institutional enumerations limiting prerogative.⁹⁰ Prerogative is justifiable in terms of its function. Locke's history of prerogative argues that good princes, using it to achieve 'the Foundation and End of all Laws, the public good', justifiably receive large latitude in exercising prerogative.⁹¹ It is 'reasonable, that the People should not go about to set any Bounds to the *Prerogative* of those Kings or Rulers'.⁹² Locke's standard is the prince's capacity to achieve the public good, not historical precedent. If the standard is what previous holders of the office have done, we make the mistake of thinking that on account of certain historical precedents, the executive has certain powers.⁹³ It is for this reason that Locke believes that 'the reigns of good princes have been always most dangerous to the liberties of their people', because the past precedent becomes a reason for a bad ruler to claim 'a prerogative belonging to him by right of his office'.⁹⁴

Here, Locke demonstrates that the discussion of historical precedent, whether in English law or elsewhere, cannot replace the conceptual discussion about what the functions of powers are. This helps explain why he does not praise or discuss historical precedents or customary law.⁹⁵ Certainly, if prerogative does not realise its function – if it is misused or abused to act contrary to the public good – then the people can set bounds to it. Yet limiting

power *per se* is not Locke's objective. Rather than stress the need for 'precise bounds' upon the executive, Locke prefers to stress the need for men of good character to hold the executive.⁹⁶ Locke's overriding goal is to ensure that the government has the energy and capacity to do what is good for the community.⁹⁷ As Clement Fatovic observes, Locke's insight is that 'it is just as dangerous to trust an executive of questionable character as it is to question a trustworthy executive, because the result is often the same: the actions required to promote the welfare of the community go unperformed'.⁹⁸

The overriding purpose of the Lockean commonwealth is not the institutional prevention of the exercise of arbitrary power. The purpose is to apply the laws of nature and secure natural rights, achieving the public good. In agreeing to the original compact, the political association helps us learn what natural rights are. Recognising law's limits teaches us how to apply that learning not just in legislation, but also in the executive's prudential actions. Duly specified by legislation and in the exercise of prerogative, rights constitute the public or common good. *Every* branch of government has natural rights as its object of interpretation and determination.⁹⁹

By discussing the function of prerogative, Locke clarifies the responsibilities of the people in the Lockean commonwealth. Because prerogative is directly accountable not to the legislative but to the people, prerogative demands much from them. The people learn that it rests on them to assess the legitimacy of prerogative and that neither a legislative nor another institutional check can be relied on. The people's responsibility is to assess the good or bad character of the prince and whether the exercise of prerogative violates their natural rights. Prerogative becomes the school of civic virtue; it is 'the very genesis of freedom', because by making the people responsible for judging whether its use violates their natural rights, it leads them away from 'dumb submission' to the government.¹⁰⁰ Prerogative can be turned into a safe doctrine because the people learn how to keep it a safe doctrine. Facing a spirited populace armed with their Lockean education, any prince inclined to disregard positive law must think carefully. For while he may disregard positive law, if in so doing he violates natural law, that spirited populace shall resist his arbitrary exercise of power.¹⁰¹ The safeguard of Lockean commonwealth is this spirited people.

It was precisely this spirited populace that Locke found wanting. In the 1680s, the British people were too complacent about their liberties. Despite justification, popular uprisings against James II never materialised. The Glorious Revolution of 1688, which toppled James II, was more a foreign invasion than a popular uprising. The *Second Treatise* addresses this problem and aims to build a commonwealth with a more spirited populace. It encourages a complacent populace to be better guardians of their liberty and natural rights. Through discussing prerogative, it teaches the people the

civic virtues necessary to know and secure their natural rights, adding resistance and revolution to their natural rights.¹⁰²

The imperial legislature as a threat to the Lockean commonwealth

In the Lockean commonwealth, both the legislative and executive branches of government have natural rights as their object of interpretation and determination. In light of prerogative, the legislative responsibility includes acknowledging law's limits, as well as allowing the executive to exercise the decisions that the legislature is not in a position to anticipate. Responsible legislation may enumerate restraints on executive prerogative, but cannot rule out prerogative. Otherwise one risks obstructing actions that achieve the public good, thwarting the ends of government.

The Lockean treatment of prerogative also emphasises that the people have natural rights as their object of interpretation and ultimate arbitration. Their responsibility is to evaluate the form of government, including the exercise of prerogative, as to whether it secures natural rights. They have the right to resist or change the form of government that violates natural rights. No political institution or body can claim that it, rather than the people, guards the constitution. Locke does not argue for the principle of constitutional supremacy; he argues for the supremacy of the principles of natural law reasoning that establish popular sovereignty, which in turn establishes a constitution.¹⁰³

The legislative, executive or the people can defy their responsibilities and damage the Lockean commonwealth. While legalism can undermine the intelligibility of prudence, a 'constitutional frame' can be important to warn a complacent people about executive abuses.¹⁰⁴ Setting popular or executive abuses aside, I focus on how the legislature can act irresponsibly, obstructing the executive, and ultimately the people, in their task of securing natural rights. A domineering, imperial, legislature endangers the proper exercise of the executive power and compromises the balance of power and natural rights.¹⁰⁵ Not just one man, but many, can be a tyrant.¹⁰⁶

Locke's introduction of the power of dismissing the legislative assembly, or prorogation, shows his concern with legislative irresponsibility. Locke had experienced abuse of royal power in the Exclusion Crisis, when Charles II (1630–1685) repeatedly dissolved Parliament to prevent his brother being denied succession. Disgusted, Locke had participated in plans for armed resistance. Yet in the *Second Treatise*, this does not lead him to support the legislative over the executive. After alluding to the Stuarts and observing that an executive could abuse its authority to call elections, putting it in a state of war with the people, Locke sets this problem aside. He states that

the executive has the power to prorogue, permitting a widespread exercise of prerogative as part of the normal function of executive power.¹⁰⁷ Contending that the ‘first Framers of Government’ could not in their act of constitution foresee what would be ‘just periods of return and duration’ for the legislature, Locke entrusts the power of prorogue ‘to the prudence of some’ ‘for the public good’ – namely, the one who was entrusted ‘with the Execution of the Laws’.¹⁰⁸ There is more to be feared from ‘Constant frequent meetings of the Legislative, and long Continuations of their Assemblies’ than from executive discretion. In granting prorogation, Locke expands the executive’s functions to counter a potentially irresponsible legislature.¹⁰⁹

Locke does not elaborate on what is to be feared from the legislature, but does implicitly distance himself from the views of monarchomach publicists described in the second section, who held that the executive has no independent power and governed only in conformity with the laws the representatives pass. A legislature that eschews ‘long Continuations of their Assemblies’ necessarily permits the executive its due discretion in applying the laws and exercising prudence. This makes it clear that the executive is neither juridically nor conceptually dependent on the legislative for its proper exercise of power. By contrast, a legislature that meets frequently and continuously is far more likely to collide with the executive. If it were hostile to the executive, the legislature could pass laws that restrict the exercise of prerogative or the federative power. It could attempt to force the executive to surrender some or all its independence, thereby challenging the constitutional or conceptual independence of the executive and preventing the executive from performing the actions required to promote public good. Prorogation wards off that possibility. It safeguards the executive’s responsibility, independent and distinct from the legislature, to secure natural rights.¹¹⁰

Prorogation can certainly be misused, yet the legislature or another body acting on its behalf cannot be the judge of prorogation – otherwise prorogation would be impotent. Instead, Locke’s prior mention of resistance makes explicit that executive authority is restrained not by the legislature but by the people. The power of prorogue is a ‘Fiduciary Trust’ exercised ‘for the safety of the people’.¹¹¹ The power and the threat that the people have make the executive’s broad authority acceptable.¹¹² The exercise of prorogation is a matter of ‘great Consequence’ or of high politics, about which the people serve as the supreme judge.¹¹³

Locke also shows his concern with legislative irresponsibility in allowing for the executive to control the franchise over and above the legislature – another departure from the Whigs.¹¹⁴ In cases when legislators are no longer representative of the people and act against popular will, the executive bears the responsibility for electoral reform, eliminating rotten boroughs

and reapportioning electoral boundaries.¹¹⁵ This is permissible even when it breaks with legal and non-legal custom, as long as it conforms to the public good.¹¹⁶ Again, Locke calls attention to the limits of legislative supremacy.¹¹⁷ Facing electoral reform, it is unreasonable to make the ultimate authority for electoral reform either the old, 'corrupt' legislature (which would have an interest in disapproving) or on the new, 'reformed' legislature (which would have an interest in approving). A direct appeal to the authority of the representative body itself cannot adjudicate between the old, 'corrupt' body and the new, 'reformed' body. Newer is not necessarily better, as the case of the Rump Parliament shows.¹¹⁸ As fixed and manageable laws or standards elude electoral reform debates, it remains a matter of prudence.¹¹⁹ To avoid these quandaries that come with attempting to make the representative or legislative body supreme, Locke allows the executive to exercise prudence. He teaches 'receptive executives' to undertake the electoral reforms that defeat oligarchy and establish a more representative legislature.¹²⁰

The Lockean commonwealth can only achieve its ends if the legislature dominates neither the executive nor the people. The legislature is not and should not be the seat of sovereignty.¹²¹ For Locke, the legislative may not be the most dangerous branch, but it is certainly a dangerous branch that can threaten the people.¹²² Even when Locke considers English Parliament's most important power, the power of the purse, he reminds his readers of the need to protect the natural rights of people from Parliament, not to protect Parliament from the King.¹²³ Against this danger Locke takes measures to strengthen the executive, with the goal of ensuring that the ends of government are properly achieved.¹²⁴ As the case of electoral reform shows, in the Lockean commonwealth the people look to the executive for help against the legislature.¹²⁵ The expansive account of prerogative serves to remind the legislature that it is dependent on the people, preserving popular sovereignty.¹²⁶

Conclusion

Understanding Locke's criticisms of an imperial legislature helps us grasp the dangers that strengthening the legislative at the expense of the executive can pose to the order of the Lockean commonwealth. These efforts run the risk of endorsing legislative supremacy by misconceiving *legislative* supreme power as the *legislature's* supreme power. In the latter instance, the legislature does not just argue for the subordination of the executive to the laws it enacts. The legislature embraces a far-reaching account of its own supremacy that attributes sovereignty to a variety of its functions or proceedings; these are asserted to be unbounded by any will other than the legislature's. This account of the legislature's supremacy or sovereignty

is often combined with an account of executive prerogative as a constitutional anachronism or ‘stubborn stain’.¹²⁷ According to this misconception of executive prerogative, any executive exercise of prudential power that affects proceedings in the legislature, such as using the power to prorogue to bring the proceedings of the legislature to an end, is a scandal. However, when the legislature or another body acting on behalf of the legislature denies executive prerogative, or attempts to exercise prerogative or federative powers itself,¹²⁸ it transforms the executive into an ineffective body dependent on the legislature. By failing to grasp the inherent limitations of legislative power, this account frustrates the executive’s distinct and independent responsibility to secure natural rights. It thereby frustrates the ends of government and is incompatible with the Lockean commonwealth.¹²⁹

Most alarmingly for the order of the Lockean commonwealth, however, is that in obstructing prerogative, this misconception also obstructs the people as the ultimate interpreters and defenders of natural rights. It is precisely at the point of prerogative where the people learn their responsibility to become spirited interpreters and defenders of their natural rights. If another body serves as the ultimate arbiter, then the responsibility of the people is thwarted. There is no school for civic virtue. Popular sovereignty becomes a doctrine that exists only in theory, without a practice to put it into reality. The people grow complacent about their rights. They look to a particular body of government to tell them what rights mean and to bear the sole responsibility of defending them. Sovereignty of the people dissolves into sovereignty of government or a body of government. Ultimately, this misconception imitates the theories endorsed by monarchomach publicists and by supporters of Cromwell – the very theories the Lockean commonwealth aims to overcome. While many are preoccupied with the threat populist executives pose to modified Lockean commonwealths, we should recall that the survival of modified Lockean commonwealths depends on preventing the legislature from dominating the executive.

Notes

- 1 In the British context, see especially *R (Miller) v The Secretary of State for Exiting the European Union* [2017] UKSC 5 (Miller No. 1); *R (on the application of Miller) v The Prime Minister; Cherry and others v Advocate General for Scotland* [2019] UKSC 41 (Miller No. 2), and the debate surrounding the Benn Act of September 2019. We should distinguish between the expansive conceptual notion of legislative supremacy or sovereignty used in this chapter, and the narrower account of parliamentary sovereignty affirmed in the modified Lockean commonwealth of the United Kingdom. As we shall see, this article

defines legislative supremacy or sovereignty as the commitment to a particular definition of sovereignty, as an unbounded will. The British system does not affirm the legislature's unbounded will in this sense, because the UK Parliament is not just a legislature, but the fusion of executive and legislative powers in the same institution. Both their wills must be bound together to enact law. British parliamentary sovereignty does not mean that whatever the legislature enacts is law, but what the Crown (the executive) enacts in Parliament (with the legislature) is law.

- 2 I define *populism* narrowly, as political movements that challenge traditional constitutional government and democratic governing institutions.
- 3 In criticising Miller No. 2, Richard Ekins sees himself as providing 'a defense of a venerable, respectable understanding of and appreciation for the Westminster forms of parliamentary democracy, rather than a collapse into populism'. See R. Ekins, 'Constitutional Government, Parliamentary Democracy, and Judicial Power', Policy Exchange, 5 April 2019. <https://policyexchange.org.uk/constitutional-government-parliamentary-democracy-and-judicial-power/>. Accessed 9 November 2019. For a critical assessment of recent challenges toward traditional exercises of executive power in the American context, see J. Yoo, *Defender in Chief: Donald Trump's Fight for Presidential Power* (New York, 2020).
- 4 'Where the Law is silent, or doubtful, and the thing be of great Consequence, I should think the proper *Umpire* in such a Case should be the Body of the *People*.' Locke, *TT*, II, §242. Hereafter cited in text by standard section numbering.
- 5 Locke, *TT*, II, §7.
- 6 *Ibid.*, §6.
- 7 *Ibid.*, §7. I shall follow the presentation of the text of the *Second Treatise* in speaking of natural law reasoning, but set aside the deeper philosophical issue as to whether natural law is prior to natural right. Irrespective of that issue, however, rights and obligations are two sides of the same coin. See also M. Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence, 2002), 4–5, 16, 169–197.
- 8 Locke, *TT*, II, §13, 19, 127.
- 9 H. Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power* (New York, 1989), 194.
- 10 Locke, *TT*, II, § 157, 214.
- 11 *Ibid.*, § 132; R. Corbett, *The Lockean Commonwealth* (Albany, NY, 2009), 57.
- 12 *Ibid.*, §212.
- 13 *Ibid.*, §134.
- 14 *Ibid.*, §91, 136; G. Webber *et al.*, *Legislated Rights: Securing Human Rights through Legislation* (Cambridge, 2018), 99.
- 15 Mansfield, *Taming*, 186. See also Webber *et al.*, *Legislated Rights*, 109–110, 114.
- 16 In the Lockean commonwealth, rights and laws do not oppose each other: positive law's responsibility is to realise rights. See also Webber *et al.*, *Legislated Rights*, 16, 28, 92, 95–96, 101–102.

- 17 Locke, *TT*, II, §142; W. Scheuerman, 'Liberal Democracy and the Empire of Speed', *Polity* 34 (2001), 51. See also J. Finnis, *Judicial Power and the Balance of Our Constitution* (London, 2018), 30.
- 18 Locke, *TT*, II, §131.
- 19 Ibid., §136, 137, 199; Zuckert, *Launching*, 305–306.
- 20 Mansfield, *Taming*, 186.
- 21 Corbett, *Lockean Commonwealth*, 56.
- 22 Zuckert, *Launching*, 306.
- 23 Mansfield, *Taming*, 198.
- 24 Corbett, *Lockean Commonwealth*, 58; J. Scott, 'The Sovereignless State and Locke's Language of Obligation', *APSR* 94 (2000), 555.
- 25 Webber *et al.*, *Legislated Rights*, 81.
- 26 Mansfield, *Taming*, 186–187.
- 27 R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2015), 119; Scott, 'Sovereignless State', 549.
- 28 Locke, *TT*, II, §149.
- 29 Ibid., §149; cf. *ibid.*, §243.
- 30 Ibid., I. §9; II, §2–3.
- 31 Ibid., I. §9.
- 32 Corbett, *Lockean Commonwealth*, 49–50.
- 33 Ibid., 48. Scott, 'Sovereignless State', 548–550 correctly argues that Locke rejects the absolutist understanding of sovereignty; but Scott does not consider other conceptions of sovereignty.
- 34 H. Grotius, *The Rights of War and Peace*, ed. R. Tuck (Indianapolis, 2005), I. 3.7. Tuck, *Sleeping Sovereign*, 72.
- 35 Tuck, *Sleeping Sovereign*, 84–85.
- 36 Grotius, *Rights*, I. 3.8.
- 37 Locke, *TT*, II, §149
- 38 Cf. Grotius, *Rights*, I.3.8.1–2.
- 39 Cf. *ibid.*, I.3.7.
- 40 L. Ward, 'Locke on Executive Power and Liberal Constitutionalism', *Canadian Journal of Political Science* 38 (2005), 720.
- 41 J. Franklin, *John Locke and the Theory of Sovereignty* (Cambridge, 1978), 1–2, 30.
- 42 Ibid., 30–31, 44–45.
- 43 Scott, 'Sovereignless State', 549.
- 44 Franklin, *John Locke*, 4–6.
- 45 Ibid., 33.
- 46 Ibid., 7, 16–17, 21, 25–26, 49–51.
- 47 Scott, 'Sovereignless State', 552.
- 48 Franklin, *John Locke*, 1–2, 7, 99.
- 49 Locke, *TT*, II, §144, 151.
- 50 Ibid., §160.
- 51 Ibid., §157; Corbett, *Lockean Commonwealth*, 66.
- 52 Ibid., §156.

- 53 Ibid., §157. See also T. Endicott, 'The Impossibility of the Rule of Law', *Oxford Journal of Legal Studies* 19 (1999), 5–6; P. Yowell, 'Legislation, Common Law, and the Virtue of Clarity', in R. Ekins (ed.), *Modern Challenges to the Rule of Law* (Wellington, NZ, 2011), esp. 105, 118–121.
- 54 Locke, *TT*, §160.
- 55 Ibid. See also Aristotle, *Nicomachean Ethics*, trans. R. Bartlett and S. Collins (Chicago, 2011), V. 10, 1137b11–19; T. Aquinas, *Summa Theologiae I–II*, trans. Fathers of the English Dominican Province (Cambridge, 2006), qu. 96 ar. 6.
- 56 P. Pasquino, 'Locke on King's Prerogative', *PT* 26 (1998), 198, 202.
- 57 Locke, *TT*, II, §148.
- 58 Ibid., §159.
- 59 Corbett, *Lockean Commonwealth*, 87–88.
- 60 Ibid., 88.
- 61 Locke, *TT*, II, §147.
- 62 Pasquino, 'Locke on King's Prerogative', 201.
- 63 Locke, *TT*, II, §9, 145.
- 64 Ibid., §158.
- 65 Ibid., §160. Emphasis in the original.
- 66 Corbett, *Lockean Commonwealth*, 71.
- 67 See C. Fatovic, 'Constitutionalism and Contingency: Locke's Theory of Prerogative', *HPT* 25 (2004), 277–278.
- 68 Locke, *TT*, II, §98.
- 69 Corbett, *Lockean Commonwealth*, 82; Fatovic, 'Constitutionalism and Contingency', 279.
- 70 Locke, *TT*, II, § 159
- 71 Ibid.
- 72 Corbett, *Lockean Commonwealth*, 75–77.
- 73 Locke, *TT*, II, §160.
- 74 L. Feldman, 'Lockean Prerogative: Productive Tensions', in C. Fatovic and B. Kleinerman (eds), *Extra Legal Power and Legitimacy: Perspectives on Prerogative* (Oxford, 2013), 79; see also Fatovic, 'Constitutionalism and Contingency', 282; Aristotle, *Politics*, trans. C. Lord (Chicago, 1984), III. 16 1287a25–30.
- 75 Corbett, *Lockean Commonwealth*, 65.
- 76 Ibid. Here Locke departs from ancient Roman and modern English republicanism. See Fatovic, 'Constitutionalism and Contingency', 292–295; Mansfield, *Taming*, 183–186; Pasquino, 'Locke on King's Prerogative', 202. Ward, 'Locke on Executive Power', 741, thinks that the fact that the legislative body cannot transfer its legislative power results in a restrictive account of prerogative. But this misses the point of prerogative power; the expansive character of prerogative follows from the limitations on legislative power.
- 77 Locke, *TT*, II, §153.
- 78 Ibid., §145; Corbett, *Lockean Commonwealth*, 81.
- 79 Corbett, *Lockean Commonwealth*, 87–88.

- 80 Ibid., 74; see also J. Dunn, *The Political Thought of John Locke* (Cambridge, 1969), 151. This judgement upon the executive can be exercised in a non-violent, non-revolutionary way. Arguably, the British system evolved in that direction. The Prime Minister, not the Monarch, now effectively exercises prerogative power. An important institutional difference is that while a Monarch facing hostile popular judgement is not easily removed – it has generally involved bloodshed – the Prime Minister is easily removed. This is one way to institutionalise non-violent, non-revolutionary change of the executive based on popular judgement. See W. Bagehot, *The English Constitution* (Cambridge, 2001), esp. 3–33. Referenda and plebiscites can also express popular judgement.
- 81 Locke, *TT*, II, §156, 166; Corbett, *Lockean Commonwealth*, 71.
- 82 P. Josephson, *The Great Art of Government: Locke's Use of Consent* (Lawrence, 2002), 233. Cf. Corbett, *Lockean Commonwealth*, 196.
- 83 Dunn, *Political Thought of John Locke*, 155.
- 84 Locke, *TT*, II, § 168; Pasquino, 'Locke on King's Prerogative', 205.
- 85 Locke, *TT*, II, §163–166.
- 86 Ibid., §166.
- 87 Corbett, *Lockean Commonwealth*, 78–79; B. Kleinerman, 'Can the Prince Really be Tamed? Executive Prerogative, Popular Apathy, and the Constitutional Frame in Locke's *Second Treatise*', *APSR* 101 (2007), 218–221.
- 88 Ibid., 219n; Endicott, 'Impossibility of the Rule of Law', 7–8.
- 89 Cf. Ward, 'Locke on Executive Power', esp. 734–735, 737. Ward mistakenly takes the legislative's stipulation to act in accordance with natural law at §140 not as an argument for the authority of natural law, but for the mediation of the constitutional authority – which implies that all government action must be mediated by the institution possessing the exclusive authority to interpret the constitution. By contrast for Locke, such exclusive authority can never exist. The authority of natural law means no legislative or judicial institution possesses an exclusive, unbounded will. See also Webber *et al.*, *Legislated Rights*, 15.
- 90 Fatovic, 'Constitutionalism and Contingency', 290.
- 91 Locke, *TT*, II, §165.
- 92 Ibid., §166. Emphasis in the original.
- 93 Fatovic, 'Constitutionalism and Contingency', 288.
- 94 Locke, *TT*, II, 166, 164.
- 95 Ibid., 283n, 285; Zuckert, *Launching*, 253.
- 96 Locke, *TT*, II, §164; Fatovic, 'Constitutionalism and Contingency', 289. On the importance of character and rightness of will for good government, see J. Locke, 'Justitia', in Locke, *Political Essays*, ed. M. Goldie (Cambridge, 1997), 273.
- 97 Corbett, *Lockean Commonwealth*, 66.
- 98 Locke, *TT*, II, §131; Fatovic, 'Constitutionalism and Contingency', 297.
- 99 Webber *et al.*, *Legislated Rights*, 16, 121–122.
- 100 Corbett, *Lockean Commonwealth*, 132–133.
- 101 Ibid., 133.

- 102 Ibid., 137.
- 103 R. Faulkner, 'The First Liberal Democrat: Locke's Popular Government', *The Review of Politics* 63 (2001), 12. Cf. Ward, 'Locke on Executive Power', 728.
- 104 Corbett, *Lockean Commonwealth*, 37–39; Kleinerman, 'Can the Prince Really be Tamed?', esp. 219–221. For one account of executive abuses against legislative institutions, see Anna Vincenzi's contribution to this volume.
- 105 See also Mansfield, *Taming*, xvi.
- 106 Locke, *TT*, II, §201.
- 107 Ibid., §155, 156.
- 108 Ibid., §156.
- 109 Ibid.; Fatovic, 'Constitutionalism and Contingency', 281.
- 110 Cf. Franklin, *John Locke*, 5–6, 8; Montesquieu, *Spirit*, XI. 6, 162. For an account of legitimate uses of prorogation in a Westminster system, see A. Twomey, *Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge, 2018), 584–615.
- 111 Locke, *TT*, II, §156.
- 112 Corbett, *Lockean Commonwealth*, 72.
- 113 Locke, *TT*, II, §242.
- 114 Tuck, *Sleeping Sovereign*, 199.
- 115 Josephson, *The Great Art of Government: Locke's Use of Consent*, 233. Cf. Corbett, *Lockean Commonwealth*, 196.
- 116 Fatovic, 'Constitutionalism and Contingency', 281.
- 117 Locke, *TT*, II, §158.
- 118 Corbett, *Lockean Commonwealth*, 74; Franklin, *John Locke*, 49–51.
- 119 Corbett, *Lockean Commonwealth*, 69–70. Cf. Plurality opinion in *Vieth v. Jubelirer*, 541 U.S. 267 (2004) and majority opinion in *Rucho v. Common Cause*, No. 18–422, 588 U.S. ____ (2019).
- 120 Faulkner, 'First Liberal Democrat', 13.
- 121 Pasquino, 'Locke on King's Prerogative', 203.
- 122 Cf. Montesquieu, *Spirit*, XI. 6, 162, 166; A. Hamilton *et al.*, *The Federalist with Letters of 'Brutus'*, ed. T. Ball (Cambridge, 2003), 240–244 (No. 48).
- 123 Locke, *TT*, II, §138–140, 142; Corbett, *Lockean Commonwealth*, 92. Cf. Ward, 'Locke on Executive Power', 737. As observed above, the issue for Locke is not about historical precedent but about the application of the law of nature.
- 124 Cf. J. Marini, *Unmasking the Administrative State*, ed. K. Masugi (New York, 2019), 216. To ward off the 'inconveniency' of the legislative dominating the executive, James Madison advised strengthening the executive. See Hamilton *et al.*, *The Federalist*, 251–255 (No. 51).
- 125 To defend against a domineering Parliament, the English radicals borrowed from Locke to argue that Parliament's powers were not absolute, as the community contained residual rights. Revolutionary-era Americans, such as James Burgh in 1775, endorsed Locke's argument for executive control of the franchise, so that the Crown would intervene against the domineering Parliament on behalf of the Americans. See Tuck, *Sleeping Sovereign*, 198–202.
- 126 Mansfield, *Taming*, 189.

- 127 Cf. Miller No. 1, [41]: ‘over the centuries, those prerogative powers, collectively known as the Royal prerogative, were progressively reduced as Parliamentary democracy and the rule of law developed’. See also T. Endicott, *The Stubborn Stain Theory of Executive Power: From Magna Carta to Miller* (London, 2017), 14.
- 128 In the British context, the Government initiates the policies that pertain to foreign affairs (the federative power). It is accountable to Parliament for the exercise of this power. But a House of Commons that initiates its own policy proposals, either through indicative votes or through law, without withdrawing confidence, usurps the federative power to itself. Cf. S. Laws and R. Ekins, *Endangering Constitutional Government: The Risks of the House of Commons Taking Control* (London, 2019), 4–5, 9, 12.
- 129 See R. Ekins, *Parliamentary Sovereignty and the Politics of Prorogation* (London, 2017), esp. 17–18. Cf. Miller No. 2 [68] with J. Finnis, *The Unconstitutionality of the Supreme Court’s Prorogation Judgement* (London, 2019), 7–9.

Montesquieu and the theory of limited sovereignty

William Selinger

Few issues have preoccupied historians of political thought more than the rise of sovereignty. How did the idea emerge in early modern Europe that there ought to be a single authority that commands all the others, thus claiming a monopoly over the legitimate exercise of coercion within a given territory?¹ And how was this claim to ultimate political authority eventually captured by *the people*?² These questions have defined the research programme of several generations of scholars.

In analysing the emergence of the modern theory of sovereignty, scholars have tended to emphasise Jean Bodin, Thomas Hobbes and Samuel von Pufendorf, the three great theorists who argued that every state must have a single sovereign, or *summa potestas*. In analysing the triumph of popular sovereignty, scholars have tended to emphasise Rousseau and the French and American Revolutions.³ Charles de Secondat, Baron de Montesquieu (1689–1755), by contrast, is usually passed over in narratives about the rise of sovereignty. Indeed, there is no agreement among scholars about whether Montesquieu even articulated a theory of sovereignty. On the one hand, he seems to have clearly rejected the idea that every state *needs* a single *summa potestas*. In Montesquieu's depiction of England, no power is decidedly sovereign, and the functions of legislation, administration and judgment are successfully divided between separate powers – a state of affairs that Pufendorf, Hobbes and Bodin all viewed as impossible. Many scholars have thus argued that Montesquieu was decisively opposed to the modern theory of sovereignty.⁴ On the other hand, Montesquieu's depiction of England is notoriously strange and ambiguous, and in his account of most other regimes, including his native France, there does seem to nearly always be a unitary sovereign. This has led other scholars to question the interpretation of Montesquieu as a critic of sovereignty.⁵

In this chapter, I aim to settle the debate over Montesquieu and sovereignty. I will argue, first, that Montesquieu articulated a coherent theory of sovereignty, and, second, that it was a theory of profound historical significance. Montesquieu should be a far more important figure in narratives

about the rise of sovereignty than he currently is. Montesquieu's contribution, I will argue, was to articulate a theory of *limited sovereignty* – a theory in which the sovereign, even though the highest power in state, is not above the law. This may sound contradictory. If being sovereign means anything, does it not mean having the absolute power to do what one wants? Isn't that what we mean when we say, for instance, that the people is sovereign?

It is the presumption that sovereignty is equivalent to absolute power, and that this is what the seventeenth-century jurists argued, which has led to the widespread notion that Montesquieu must have rejected sovereignty. Yet in addition to the theory of absolute sovereignty that was developed by Hobbes and Bodin, the early modern period also saw the emergence of ideas about limited sovereignty. The key theorist during the century before Montesquieu who argued that sovereignty does not necessarily signify absolute power was Samuel von Pufendorf in his *De jure naturae et gentium* (1672), a book that we know Montesquieu read and admired.⁶ Against Hobbes and Bodin, Pufendorf argued that it was possible to have a state in which the sovereign was limited by fundamental law.

I will contend that Montesquieu took this argument from Pufendorf and radically expanded it. For Montesquieu, it was not only possible for a sovereign to be limited by fundamental laws, as was the case for Pufendorf. It was morally required. It was also tremendously advantageous, for limited sovereignty leads to a significantly more durable state than does absolute sovereignty. Regimes of limited sovereignty rest on passions (virtue in a republic, honour in a monarchy) that more effectively motivate citizens to lend their strength and energy to the state than does the fear stimulated by an absolute sovereign. We will see how this latter argument also made possible Montesquieu's most important divergence from Pufendorf: his claim that sovereignty can be not only limited but also potentially divided.

In most contemporary democracies, popular sovereignty is not absolute. The power of the people is limited by exactly the sort of fundamental laws and procedures that Montesquieu emphasised. Yet we do not have a good language for describing this state of affairs. Many political theorists continue to follow Hobbes in presuming that the concept of sovereignty implies a power that is absolute. This leads to a radical choice: either we embrace an absolute concept of sovereignty or we reject sovereignty altogether.⁷ Montesquieu helps us see that these are not the only options.

The theory of sovereignty that developed in the sixteenth century came out of the recovery of the Roman law, which had held that the Roman emperor possessed the complete power to both make and interpret law.⁸ In his *Six livres de la République* (1576), Jean Bodin (c. 1529–1596) contended that *every* state must have a single-such power as the foundation of political authority.⁹ In a democracy this power is the people; in an aristocracy it is a

small group; in a monarchy it is a single person.¹⁰ Bodin denied that it was possible for sovereign power to be shared between two such actors.¹¹ But as Richard Tuck and Daniel Lee have recently emphasised, Bodin's theory was not necessarily a justification for one-man rule. Although he defended a unitary conception of sovereignty, Bodin sharply distinguished sovereignty from government. He presumed that any sovereign, whether popular or monarchical, would delegate much of the responsibility for governing to subordinates that possessed a degree of autonomy.¹² This was how Bodin justified the intermediate powers of the French monarchy, most notably the *parlements*.¹³ Yet ultimate sovereign authority must be held by a single person or assembly that possessed, in Bodin's famous phrase, 'absolute and perpetual power'.¹⁴

Bodin's account of sovereignty would be taken up, in large part, first by Thomas Hobbes and subsequently by Samuel von Pufendorf.¹⁵ Unlike Grotius, who believed that sovereign power could be divided, Hobbes and Pufendorf reiterated Bodin's resistance to any division of sovereignty.¹⁶ To place 'the power to declare war and peace in the hands of a prince, the legislative power and the judicial power in the hands of a senate, and the power to establish taxes in the hands of a popular assembly', Pufendorf argued, would be like separating a person's mind from their will.¹⁷ The result would be an 'irregular body' that was entirely incapable of acting unless the different actors were in complete agreement about 'the public good'.¹⁸ Thus, 'as soon as there arose any dissension among them, they would invariably need to have recourse to some arbitrator or else go to war'.¹⁹

Montesquieu profoundly disagreed with this argument. In Book 11 of *The Spirit of the Laws*, he famously described a political order, the constitution of England, which was founded on exactly the principle of divided sovereignty that Pufendorf claimed was inconceivable. Yet it is striking that if somebody were to read only the first ten books of *The Spirit of the Laws* (1748), they might very well come away thinking that Montesquieu was a theorist of unitary sovereignty, just like Pufendorf or Bodin. Over the first part of *The Spirit of the Laws*, Montesquieu distinguished and analysed three types of political regimes: monarchies, despotisms and republics. In monarchies and despotisms, Montesquieu argued, a single individual rules. In republics, either the few rule (i.e. aristocracy) or the many rule (i.e. democracy). Therefore, in all three forms of government, one power stands decisively above the rest.

Nor is this contradicted by Montesquieu's virulent condemnation of despotism, for Montesquieu differentiated republics and monarchies from despotisms without thereby denying that they also contain a *summa potestas*. What distinguishes the two moderate regimes from a despotism is that in them, the *summa potestas* is constituted by law. In a republic, the law that

achieves this is the electoral law: the law determining who is allowed to vote, how the voting will take place, how the electorate is divided into different sections.²⁰ Absent such a law, a republic simply does not have a sovereign, for there is no clearly defined and constituted people. In monarchies, a parallel function is served by the law of monarchical succession,²¹ which had been the subject of historical and theoretical speculation in France for nearly a millennium. During the eighteenth century, when Montesquieu was writing, it was generally agreed that the Crown must pass to the next male French Catholic heir. As sovereign as the king was, he could not make his daughter or friend the next monarch.²²

In contrast with these regimes, under despotism there is no legal structure that determines who holds the highest power: sovereignty is acquired simply through force. Nor, under despotism, is this power exercised through any legal structure. There is no careful assignment of different prerogatives to different offices. 'In despotic government', Montesquieu wrote, 'power passes entirely into the hands of the one to whom it is entrusted. The vizir is the despot himself, and each individual officer is the vizir'.²³ By contrast, republics and monarchies carefully distribute power, assigning different prerogative to different ministers.²⁴ They distinguish the powers of military office from civilian office, and sovereignty from government. They also create complex judicial procedures and legal protections so that the sovereign cannot deprive individuals of their property or liberty at will.²⁵

Yet these attributes of moderate government are compatible with the argument that a state must contain a single unitary sovereign. Indeed, in the *De jure naturae et gentium*, written a half century before *The Spirit of the Laws*, Pufendorf had explicitly argued that in certain republics and monarchies, sovereignty was shaped and constrained by 'fundamental laws'.²⁶ He insisted, moreover, that this in no way counted as a negation of sovereignty. 'From a prince not being able to do everything according to his fancy, it does not follow that he is not sovereign', Pufendorf wrote.²⁷ To support this argument, he drew a clear distinction between 'sovereign power' and 'absolute power', which, he emphasised, 'are not one and the same thing. The first marks that one has no superior or equal within a single order ... the other implies a complete liberty to use one's rights without consulting anything but one's own judgment'.²⁸

Put simply, a legal structure could limit the way in which sovereignty was exercised. But so long as within that legal order, no other agent was equal to the sovereign, this did not count as an affront to its sovereignty. We can easily illustrate Pufendorf's line of reasoning with contemporary examples. The people of the United States, for instance, do not lose their sovereignty just because they can only act at certain moments and according to certain procedures that are defined by the Constitution. Nor can they change this

Constitution except according to other defined procedures. For Pufendorf, sovereignty limited by fundamental law is still sovereignty.

It is obvious why Montesquieu would have been attracted to this argument. The conception of the French monarchy that he defended in *The Spirit of the Laws* was precisely one in which the monarch was 'superior' to all other powers in France – yet still limited from doing 'everything according to his fancy'. The fundamental laws of the realm, a landed nobility with significant wealth and resources, and, above all, an independent judiciary exemplified by the *parlements* forced the king to compromise, negotiate and take a good deal of advice in order to achieve his will.²⁹

It might seem that Montesquieu's defence of judicial independence in France would run afoul of Pufendorf's rejection of divided sovereignty. Montesquieu identified 'three sorts of powers: the legislative power, executive power over the things depending on the right of nations, and executive power over the things depending on civil right' [i.e. the power of judging].³⁰ He argued that 'in most kingdoms in Europe, the government is moderate because the prince, who has the two first powers, leaves the exercise of the third to his subjects'.³¹ The French *parlements* were the shining example of an independent judicial power.³² Yet although Pufendorf agreed with Hobbes that the division of sovereignty led to anarchy, he in fact left some room for the judicial power to be separated in the way it was in France. So long as a monarch held the power to 'absolve and pardon' anyone convicted of crimes, Pufendorf argued that the creation of a body of independent judges did not count as a true division of sovereignty.³³ This was his decisive example of how the sovereign could delegate the activity of governing to subordinates while still retaining ultimate authority.³⁴

Pufendorf's argument that sovereignty could be limited by fundamental laws was expressly aimed at Hobbes. For Hobbes, there was no intelligible distinction between 'sovereign power' and 'absolute power'. A sovereign king, according to Hobbes, could not be limited in his choice of successor. *Pace* the established French tradition, a king could choose his daughter or friend to be the next monarch since it was simply nonsensical to suppose that such a limitation could be placed on the sovereign's will.³⁵ Hobbes likewise denied that there could be any limitation on the sovereign's ability to seize or regulate his subject's property. 'A citizen has nothing which is properly *his own*', Hobbes wrote, 'against the will of the *commonwealth* or of the holder of sovereign power'.³⁶ The citizen only possessed property as a result of law, and law, in turn, was simply the will of the sovereign, which the sovereign could change at any time.³⁷ Hobbes of course denied that sovereigns would go about disrupting their subjects' lives at will. But this was only because prudence and moral virtue counselled against doing so.

The idea of sovereignty being exercised within legal limits was anathema to the Hobbesian conception of sovereignty.

One can get surprisingly far by reading Montesquieu as Pufendorf's fellow opponent of Hobbes. Like Pufendorf, Montesquieu stridently opposed Hobbes's claim that human beings are not naturally sociable.³⁸ And, both Montesquieu and Pufendorf rejected Hobbes' argument that 'sovereign power' was equivalent to 'absolute power'. Yet, it is also clear that Montesquieu went significantly farther in this anti-Hobbesian direction than Pufendorf. He not only claimed, with Pufendorf, that sovereignty could be limited within a legal-constitutional regime, he also allowed that sovereignty could be divided. To understand how he broke with Pufendorf on this matter, we must further interrogate what was at stake in the early modern theory of sovereignty.

Although Pufendorf believed that it was possible to have a state in which sovereignty was limited by fundamental law, he was fully in agreement with Hobbes when it came to the basic nature of sovereignty. Like Hobbes, Pufendorf contended that upon forming a state, individuals agree to unite together and become a single collective agent or 'moral person'.³⁹ To act as a single agent, however, they must have a common will. It is necessary to 'unite forever the wills of each member of society, in a manner that henceforth, they all together would have only a single same will in the matter of things which relate to the end of society'.⁴⁰ Pufendorf agreed with Hobbes that the only way for a multitude of individuals to have a common will is for them to choose a sovereign and subsequently take its will as authoritative, while the sovereign, in turn, makes use of their common strength to punish anyone who disobeys. According to Pufendorf, 'it is from this union of wills and forces that the body politic results'.⁴¹

Montesquieu's engagement with this account of the nature of sovereignty is found in Book 1, Chapter 3 of *The Spirit of the Laws*. Earlier in Book 1, Montesquieu had examined the general laws through which God ordered the universe and the laws of human nature. In Chapter 3, Montesquieu turned to 'positive law' – law instituted by human beings – which he distinguished into three kinds: civil law, political law and the law of nations.⁴² According to Montesquieu, the law of nations governed the relations between different societies. Those societies, in turn, 'have laws concerning the relation that those who govern have with those who are governed; and this is POLITICAL RIGHT. Further, they have laws concerning the relation that all citizens have with one another, and this is CIVIL RIGHT'.⁴³

By 'political right', or political law, Montesquieu means something like what we today call 'constitutional law'. Political laws determine who governs and the manner in which they govern. Civil laws, by contrast, set the rules concerning how individuals within a society relate to each other – they

encompass the laws of property, trade, marriage, crime and inheritance. Montesquieu further distinguished the domains of political and civil law in the following passage:

No society can subsist without a form of government. The union of all individual strengths, as Gravina well observes, ‘constitutes what we call the POLITICAL STATE’. The strength of the whole society may be in the hands of a single person, or of many. Some think that, nature having established paternal authority, the most natural government was that of a single person. But the example of paternal authority proves nothing ...

Better is it to say, that the government most conformable to nature is that which best agrees with the humour and disposition of the people in whose favour it is established.

Individual strengths cannot be united absent all wills being united. ‘The union of those wills’, as Gravina again aptly says, ‘is what is called the CIVIL STATE’.⁴⁴

At first glance, Montesquieu looks like he is simply reiterating Pufendorf’s account of sovereignty, though he attributes it to the Neapolitan writer Gravina rather than to Pufendorf himself. Montesquieu suggests, or so it seems, that a state is formed when ‘the strength of the whole society’ is placed in the hands ‘of a single person or many’, and that this unity of strengths requires a unity of wills. Yet the distinction that Montesquieu draws between the ‘civil state’ and ‘political state’ is nowhere to be found in Pufendorf. Indeed, in the famous Barbeyrac edition of *De jure naturae et gentium* that Montesquieu read and used, ‘l’etat civil’ appears in the index immediately followed by the following clarification: ‘appellé simplement Etat’.⁴⁵ Why does Montesquieu formulate this distinction between the civil state and the political state?

To answer this question, it is essential to recall that Montesquieu’s distinction between the civil state and the political state parallels his earlier distinction between civil law and political law. Political laws (what we today would call constitutional laws) set up a government, whether a monarchy or a republic, and it is this government that constitutes the *political state*. Civil laws, by contrast, create a set of rules regarding how citizens are to treat each other. Insofar as citizens all obey the same rules, engaging in the same required actions and refraining from the same prohibited actions, their wills are united, and this constitutes the *civil state*.

Pufendorf and Hobbes would have entirely agreed with Montesquieu that a ‘union of wills’ meant, in the last analysis, nothing other than a group of individuals following the same civil laws. However, they would have also contended that the actor which created the civil laws was necessarily the same as the actor which enforced those laws – the union of wills must

therefore be coexistent with the union of forces. Montesquieu, by contrast, has rendered the relationship between civil law and government exceedingly ambiguous. Nowhere in the remainder of Book 1 does he clearly explain how they relate; how, that is, the ‘political state’ and the ‘civil state’ come together into a single state where laws are made, recognised and enforced. Instead, he delineates all the other various relations into which civil and political law enter. Both civil and political law, he argues, are applications of human reason to a particular society with its unique climate, religion, economy and cultural disposition. Civil and political law must therefore be created in light of their particular context. They must also be created in light of human reason, which earlier in Book 1 Montesquieu had associated with the basic principles of equity and reciprocity that exist prior to any particular legal order.⁴⁶ Finally, Montesquieu tells us that both forms of law must ‘relate to the nature and principle of the government ... whether those laws form it as do political laws, or maintain it, as do civil laws’.⁴⁷

Insofar as Montesquieu has a substitute for Pufendorf’s ‘union of wills and forces’, it is what he here calls the ‘nature and principle of a government’. The nature of a government means its structure of authority – what Montesquieu had earlier called the ‘political state’. The principle of a government is ‘the human passions that set it [i.e. the government] in motion’ and ‘which makes it act’.⁴⁸ As we will see, this principle is the mechanism that impels a set of individuals living together under civil law to obey the sovereign authority and give their forces to it.

The principle of a republic is *virtue*, or a passionate devotion to the common good. This is what motivates individuals to act on behalf of the republic and assent to its decisions. In a monarchy, this same function is fulfilled by *honour*. It is ‘the prejudice of each person and condition’ that moves individuals to loyally obey their sovereign and stimulates their ambition so that they will act properly in the roles defined for them.⁴⁹ It is through these ‘human passions’ that a sovereign – whether popular or monarchical – obtains the obedience and participation of its subjects, and that something like a ‘union of wills and forces’ comes into being.

What is crucial, however, is that this ‘union of wills and forces’ is never total. Even as the passions of honour and virtue motivate an individual to obey the sovereign, the individual’s will never fully and permanently coincides with the sovereign’s will. This is especially clear in the case of honour, a passion that generally moves subjects to obey their king, but sometimes moves them to *disobey* him. Montesquieu writes, ‘there is nothing in monarchy that laws, religion, and honor prescribe so much as submission to the wills of the prince, but this honor dictates to us that the prince should never prescribe an action that dishonors us because it would make us incapable of serving him’.⁵⁰ The monarch thus never completely commands the will

of his subjects. Their assent arises as a result of a passion that only partially transfers the subject's will to the sovereign.

The principle of monarchy reveals quite clearly what is, for Montesquieu, a feature of all non-despotic states. This is that the passions that move individuals to participate in government and to follow the will of the sovereign do not lead to complete obedience. If under monarchy, the defining instance of this is a king commanding a dishonourable action and the subject refusing to obey; in a republic the paradigmatic example is *corruption*. A state can have a republican structure even though its citizens are no longer motivated by virtue. Such a state, however, will be unable to effectively marshal its citizens to endure sacrifices for the common good and will consequently be prone to conquest or usurpation.⁵¹ Only under despotism is there necessarily a perfect coincidence between the sovereign's will and the subject's. There, 'the prince's will, once known, should produce its effect as infallibly as does one ball thrown against another'.⁵² The passion that motivates allegiance in a despotism is fear, an elemental passion that is a direct result of the ruler's power. Fear alone makes possible a complete union of wills and forces. Yet this is only conceivable under a despotic regime.

In contrast to fear, virtue and honour create a far more contingent connection between the subject and the sovereign. The reason for this is that they are ultimately the result not of the sovereign's power (as fear is in a despotism) but of the *civil state* – the relations that exist between individuals living together under law. This is especially evident in a republic, where Montesquieu argues explicitly that virtue is the result of a love of equality and frugality that is conditioned by the relative equality of property.⁵³ Virtue can also be the result of dispositions fostered by commerce. This is the source of virtue in a commercial republic like Athens.⁵⁴ Either way, virtue comes about through citizens relating to each other, and only subsequently lends its authority to the state. Something similar occurs under monarchy, where a sense of honour is instigated through the 'education' that individuals receive in worldly things after they leave their parents' home.⁵⁵ It is true that military service can also help foster both honour and virtue.⁵⁶ By this and other means, a government can contribute to sustaining either principle. But it is clear that both honour and virtue are highly dependent upon relations that form not between sovereign and subject but rather between individuals who are living together under civil law.

Pufendorf had argued that it was possible for sovereignty to be limited by law. It should be clear, by now, that Montesquieu radically extended that argument in two different ways. In the first place, he offered something like a political and social psychology that could profoundly complement the notion of limited sovereignty. With his analysis of honour and virtue, Montesquieu showed how an individual could coherently live under

a regime of limited sovereignty, and how there existed forms of genuine yet limited obedience that went with such regimes.

In addition to this, Montesquieu made the difference between a regime of absolute sovereignty and a regime of limited sovereignty far starker than Pufendorf had rendered it. While Pufendorf perhaps displays some preference for limited sovereignty, for Montesquieu, a regime without limited sovereignty is an absolute despotism. The distinction between the ‘civil state’ and the ‘political state’, which I analysed earlier in this chapter, simply does not exist in a regime where sovereignty is absolute and civil law is nothing other than the despot’s will. Only under a regime of limited sovereignty, where fundamental laws prevent the sovereign from changing every law at will, can rules of civil life persist over time – rules that are just and rational, and that reflect the circumstances of a particular society. In following such laws, an individual does not merely obey the will of the sovereign but also the dictates of reason. ‘The penalty does not ensue from the legislator’s capriciousness but from the nature of the thing, and man does not do violence to man.’⁵⁷ Of course, this ideal is never fully achieved. But it is far better approximated in a regime of limited sovereignty, and the experience of living in such a regime is qualitatively different from the experience of living in one where law is nothing more than the expression of the sovereign’s will. Montesquieu’s definition of political liberty as the feeling of security that an individual experiences in following the law, knowing that no power can engage in arbitrary coercion, relies on a radical distinction between regimes in which sovereignty is limited and regimes in which sovereignty is absolute.⁵⁸ In the latter sort of regime, law *is* arbitrary coercion.

Montesquieu’s contention that limited sovereignty alone leads to liberty is linked to his analysis of the political psychology of limited sovereignty. I have argued that the liberty that exists in a regime of limited sovereignty comes from the fact that there is a genuine civil state. People live together and relate to each other under relatively durable and rational relations of civil law; they do not merely obey the arbitrary and capricious will of a despot. However, this same civil state is also where the passions of virtue and honour are born. These passions do not arise directly from human nature; they are the result of individuals internalising the legal relations that join them together in society. In a monarchy, where legal relations are unequal, individuals come to identify with their particular status within the legal hierarchy. Honour is the passion that moves individuals to defend their status and live up to the obligations that come with it. In a republic, where legal relations make everybody equal, citizens come to be motivated by a love of equality and by a feeling of equal obligation towards the community. Honour and virtue are thus passions that are possible only when civil law has rendered individuals artificially equal or unequal. Monarchs

and republican orators can then subsequently make use of these passions to motivate political action and allegiance – in this manner, I argued earlier, ‘a union of wills and a union of forces’ comes into being under regimes of limited sovereignty, though never permanently.

By emphasising how the common passions of a society can be used to create a union of wills and forces, even where sovereignty is limited, Montesquieu prepared the way for his most decisive break with the theory of sovereignty that was articulated in the sixteenth and seventeenth centuries. If the grandeur of the monarch or the rhetoric of the republican orator can draw upon common passions to motivate collective action, then the need for sovereignty to be *unified* becomes significantly less demanding. In a state where individuals feel a shared attachment to the common good, or to their particular roles and positions within a hierarchical social order, it seems unlikely that anarchy will immediately result if the powers of execution, legislation and judgment are separated. Why couldn’t such a society retain its unity amid the jostling between different political actors?

Here, I would contend, is the fundamental thrust of Montesquieu’s analysis of England. In the English constitution, at least as Montesquieu depicted it, sovereignty is genuinely divided. In flagrant disregard of Hobbes and Pufendorf’s strictures, the executive power is held by the Crown while the power to raise revenue is concentrated in the House of Commons. The legislative power is divided between the House of Commons, the House of Lords and the Crown. The judicial power is divided between the body of the people, permanent judges appointed by the monarch, and the House of Lords.

Overall, sovereign power in England is suspended between the Crown and the people – England represents an unprecedented attempt to combine together a republic and a monarchy. Yet even as sovereignty is thus divided, England remains surprisingly unified as a nation. The English are passionately committed to their civil state, in which they are not ruled by any single power, and in which, consequently, there are abundant commercial opportunities. This passionate love of liberty is manipulated by orators, and the result is that two parties arise, one supporting Parliament, one supporting the Crown. Neither party can permanently triumph, for ‘if one party gained too much, the effect of liberty would be to lower it while the citizens would come and raise the other party’.⁵⁹ But through this party struggle, the nation can come together behind one side of the constitution or the other, pushing the other parts to align with it.

This same passionate commitment to liberty is what enables England to remain unified in war and revolution. Montesquieu writes, ‘this nation would love its liberty, because this liberty would be true ... in order to defend that liberty, the nation might sacrifice its goods, its ease, its interests, and might burden itself with harsher imposts than even such the

most absolute prince would dare make his subjects bear'.⁶⁰ During war, the English government can draw upon an enormous debt, knowing that its subjects will always lend more money, and it can 'assert against its enemies an immense fictional wealth that the trust and the nature of its government would make real'.⁶¹ The nation can equally unite against any domestic threat to its liberty. In any such circumstance, 'one would soon see an awful calm, during which everything would unite together against that power that had violated the laws'.⁶²

In England, common passions sustain political unity even though sovereignty is divided. Of course, as recent scholars have insisted, Montesquieu was uncertain how long this regime could be sustained.⁶³ He feared that liberty in England would eventually descend into licence; that individuals would become so absorbed in attaining wealth they would forget the common interest altogether; that Parliament consequentially would be corrupted by the Crown's offices.⁶⁴ The political model of limited sovereignty that existed in France and most republics was possibly more durable than the English model of divided sovereignty – even if it did not provide quite the same degree of liberty. What is clear, however, is that by more fully elucidating Pufendorf's conception of limited sovereignty, and by emphasising how limited sovereignty rested upon common passions that arise in the civil state, Montesquieu was also able to show how these passions could even sustain a regime where sovereignty was not only limited but also divided.

This chapter has argued that far from being an insubstantial figure in the history of sovereignty, Montesquieu was one of sovereignty's key theorists. This is because Montesquieu offered the eighteenth century's most important and influential defence of limited sovereignty. In making this argument, Montesquieu broadly followed Pufendorf who had earlier contended that sovereign power was not equivalent to absolute power. However, Montesquieu also radically extended Pufendorf's argument. He not only defended the possibility of sovereignty being divided as well as limited; he argued that any regime in which sovereignty was not limited was a despotism.

Montesquieu's immediate motivation for defending a regime of limited sovereignty was that he wished to fortify the existing controls on the French monarchy, especially the *parlements*. However, he recognised that parallel principles also applied in republics. A healthy republic, he argued, was one in which the people did not do everything at will and was limited by a constitutional structure. In such a regime, the people delegated to consuls and senators the tasks it could not perform by itself. Only with the decline of virtue, and as self-interest and ambition became the domineering passions, would a people come to confuse sovereign power with absolute power.⁶⁵

Montesquieu bequeathed to his successors, from Madison to Sieyès to Constant, an account of limited sovereignty which would serve to counterbalance the more absolute conception of popular sovereignty that was also theorised in this period. According to this other and more familiar conception, the people or nation exists prior to any constitutional order and, as the author of all law, is in no way limited by law. Because Montesquieu rejected the idea that the people exist as an agent prior to or outside the laws, he could effectively describe a people which was sovereign within constitutional limits.

Modern democracy rests on a complex compromise between these two opposing ideas about sovereignty. It contains a people that, despite being thought of as the absolute author of its constitution, is strikingly limited in what it can practically accomplish and in how that constitution can be reauthored. In the words of Abraham Lincoln, who defended this complex state of affairs in his First Inaugural Address, ‘a majority held in restraint by constitutional checks and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only sovereign of a free people’.⁶⁶

It is somewhat puzzling that Montesquieu’s important contribution to helping us make sense of a constitutionally limited sovereign has been overlooked, to such an extent that in our own time a theorist as historically learned as Jürgen Habermas could believe that the eighteenth century had failed to produce any effective theory of limited popular sovereignty.⁶⁷ No doubt, the absence of reflection on Montesquieu and sovereignty is due to the fact that sovereignty continues to be frequently understood as absolute power. Carl Schmitt, among the most influential theorists of sovereignty in the twentieth century, was self-consciously within the Bodinian tradition.⁶⁸ As I noted in the introduction, in response to Schmitt, a tradition of thought has emerged that is critical of the very concept of sovereignty.⁶⁹

If a regime of limited sovereignty is possible, it would have obvious normative and conceptual advantages, for it would combine the effective political authority inherent in the concept of sovereignty with the freedom and pluralism prioritised by sceptics of sovereignty. I would submit that the question of whether political sovereignty can indeed be limited is ultimately not a philosophical question. The seventeenth- and eighteenth-century critics of Hobbes, beginning with Pufendorf, have made it clear that one can think coherently of a sovereign as the highest power in a state rather than as an absolute power. The question of whether it is possible for sovereignty to be limited is one of institutions and political attitudes. Can individuals living together under civil law and acting together in political institutions develop

common passions, a common spirit even, that leads to political loyalty and sustains sovereign power – but not absolute power? That was the question that preoccupied Montesquieu. It should preoccupy us as well.

Notes

- 1 See, for instance, Q. Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978); R. Tuck, *Philosophy and Government, 1572–1651* (Cambridge, 1993); J.G.A. Pocock, ‘A Discourse of Sovereignty: Observations on the Work in Progress’, in *Political Discourse in Early Modern Britain*, ed. N. Phillipson and Q. Skinner (Cambridge, 1993), 377–428; Q. Skinner, ‘The Sovereign State: A Genealogy’, in H. Kalmo and Q. Skinner (eds), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge, 2010), 26–46; D. Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford, 2016).
- 2 See, for instance, P. Rosanvallon, *La Démocratie inachevée. Histoire de la souveraineté du peuple en France* (Paris, 2000); I. Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge MA, 2010); R. Bourke and Q. Skinner (eds), *Popular Sovereignty in Historical Perspective* (Cambridge, 2016); R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2016).
- 3 See, for instance, R. Derathé, *Jean-Jacques Rousseau et la science politique de son temps* (Paris, 1950); E.S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988); Rosanvallon, *La Démocratie inachevée*; Tuck, *Sleeping Sovereign*.
- 4 See, for instance, O. Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, trans. Ernest Barker (Cambridge, 1934), 352; J. Ehrard, ‘Actualité d’un demi-silence: Montesquieu et l’idée de souveraineté’, *Rivista di Storia della Filosofia* 49 (1994), 9–20; Tuck, *Sleeping Sovereign*, 123–124; P. Sagar, *The Opinion of Mankind: Sociability and the Theory of the State from Hobbes to Smith* (Princeton, 2018).
- 5 See, for instance, M. Mosher, ‘Monarchy’s Paradox: Honor in the Face of Sovereign Power’, in D. W. Carrithers *et al.* (eds), *Montesquieu’s Science of Politics: Essays on the Spirit of Laws* (Lanham, MD, 2001), 159–230; M. Sonenscher, *Before the Deluge: Public Debt, Inequality, and the Intellectual Origins of the French Revolution* (Princeton, 2007), 95–172.
- 6 ‘I give thanks to Messrs Grotius and Pufendorf for having so well executed what a part of this work demanded of me, with that loftiness of genius which I would not have been able to attain’. Montesquieu, *My Thoughts (Mes Pensées)*, trans. H. Clark (Indianapolis, 2012), 441–442. Shackleton argues that Montesquieu’s unpublished *Treatise on Duties* was modelled off Pufendorf’s text of the same name. See R. Shackleton, *Montesquieu: A Critical Biography* (Oxford, 1962), 72. Their relationship is also treated in R. Kingston, *Montesquieu and the Parlement of Bordeaux* (Geneva, 1996), 131–164.

- 7 Recent works of scholarship that advocate different sides of this choice include Tuck, *Sleeping Sovereign* and Sagar, *Opinion of Mankind*. Classic works of twentieth-century political thought on either side include C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab (Chicago, 2005) and H. Arendt, *On Revolution* (New York, 1963).
- 8 See, for instance, J. Canning, 'Ideas of the State in Thirteenth and Fourteenth-Century Commentators on the Roman Law', *TRHS* 33 (1983), 1–27; D. Lee, 'Sources of Sovereignty: Roman Imperium and Dominium in Civilian Theories of Sovereignty', *Politica Antica* 2 (2012), 79–94.
- 9 J. Bodin, *The Six Books of a Commonweale*, trans. Richard Knolles (London, 1606), 183–197.
- 10 *Ibid.*, 197–252.
- 11 *Ibid.*, 183–197.
- 12 Tuck, *Sleeping Sovereign*, 1–62; Lee, *Popular Sovereignty*, 159–224.
- 13 Tuck, *Sleeping Sovereign*, 36–45.
- 14 Bodin, *The Six Books of a Commonweale*, 84.
- 15 See K. Hoekstra, 'Early Modern Absolutism and Constitutionalism', *Cardozo Law Review* 34 (2013), 1079–1098.
- 16 H. Grotius, *The Rights of War and Peace*, vol. 1 (Indianapolis: 2005), ed. R. Tuck, 309–318.
- 17 S. von Pufendorf, *Le droit de la nature et des gens*, trans. J. Barbeyrac (Amsterdam, 1706), II, 238.
- 18 *Ibid.*, 238–239.
- 19 *Ibid.*, 239.
- 20 Montesquieu, *Spirit*, 10–11.
- 21 *Ibid.*, 10, 17–19, 62.
- 22 See A. Lemaire, *Les lois fondamentales de la monarchie française d'après les théoriciens de l'ancien régime* (Paris, 1907).
- 23 *Ibid.*, 65.
- 24 *Ibid.*, 10–15, 17–19, 66.
- 25 *Ibid.*, 72–75.
- 26 Pufendorf, *Le droit*, II, 270.
- 27 *Ibid.*, 274.
- 28 *Ibid.*
- 29 Montesquieu, *Spirit*, 17–19, 29–30, 56–58. The classic analysis of Montesquieu's defence of limited monarchy in France is E. Carcassonne, *Montesquieu et le problème de la constitution française au XVIIIe siècle* (Paris, 1927).
- 30 Montesquieu, *Spirit*, 156.
- 31 *Ibid.*, 157.
- 32 E.g. *ibid.*, 351.
- 33 Pufendorf, *Le droit*, II, 239.
- 34 *Ibid.* For Montesquieu's defence of the power to pardon see Montesquieu, *Spirit*, 78.
- 35 T. Hobbes, *On the Citizen*, trans. M. Silverthorne and R. Tuck (Cambridge, 1998), 112–114.

- 36 Ibid., 104.
- 37 Ibid., 85–86, 136.
- 38 Montesquieu, *My Thoughts*, 342–345.
- 39 Pufendorf, *Le droit*, II, 203.
- 40 Ibid.
- 41 Ibid., 204.
- 42 Montesquieu, *Spirit*, 7.
- 43 Ibid.
- 44 Ibid., 8.
- 45 Pufendorf, *Le droit*, Table des matières.
- 46 Montesquieu, *Spirit*, 1–4.
- 47 Ibid., 8.
- 48 Ibid., 21.
- 49 Ibid., 26.
- 50 Ibid., 33.
- 51 Ibid., 22–24, 112–113.
- 52 Ibid., 29.
- 53 Ibid., 44–48.
- 54 Ibid., 48.
- 55 Ibid., 33–35.
- 56 See, for example, *ibid.*, 33, 48.
- 57 Ibid., 189.
- 58 Ibid., 155, 188.
- 59 Ibid., 326.
- 60 Ibid., 327.
- 61 Ibid.
- 62 Ibid., 326.
- 63 Sonenscher, *Before the Deluge*; A. de Dijn, ‘Was Montesquieu a Liberal Republican?’ *RP* 76 (2014), 21–41; K. Baker, *Inventing the French Revolution* (Cambridge, 1990), 167–199.
- 64 Montesquieu, *Spirit*, 166; Montesquieu, ‘Notes sur l’Angleterre’, in *Oeuvres complètes de Montesquieu*, eds Jean Ehrard, Gilles Bertrand, *et al.* (Paris, 2012), X, 501–505. A more optimistic attitude about England’s future is expressed in Montesquieu, *My Thoughts*, 593–596.
- 65 Montesquieu, *Spirit*, 112.
- 66 A. Lincoln, ‘First Inaugural Address’, in *Selected Speeches and Writings*, ed. D.E. Fehrenbacher (New York, 1992), 289.
- 67 J. Habermas, ‘Human Rights and Popular Sovereignty: The Liberal and Republican Versions’, *Ratio* 7 (1994), 1–13; J. Habermas, ‘Popular Sovereignty as Procedure’, in J. Bohman and W. Rehg (eds), *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, MA, 1997), 35–67.
- 68 Schmitt, *Political Theology*, 5–15.

- ⁶⁹ See, for instance, H. Arendt, *The Human Condition* (New York, 1958); Arendt, *On Revolution*; G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. D. Heller-Roazen (Stanford, 1998); A. Negri, *Insurgencies: Constituent Power and the Modern State*, trans. M. Boscagli (Minneapolis, 1999); A. Arato, *The Adventures of the Constituent Power: Beyond Revolutions?* (Cambridge, 2017). That such authors have fundamentally accepted Schmitt's account of the history of sovereignty and constitution-making while reversing his judgement of its necessity/value is the argument of L. Rubinelli, *Constituent Power: A History* (Cambridge, 2020).

The revolution for society: rethinking popular sovereignty, American independence and the Age of the Democratic Revolution

James M. Vaughn

Rethinking popular sovereignty and American independence

‘If there is a single country in the world where one can hope to appreciate the dogma of the sovereignty of the people at its just value, to study it in its application to the affairs of society, and to judge its advantages and its dangers’, Alexis de Tocqueville (1805–1859) observed in 1835, ‘that country is surely America’. This ‘dogma’ was of as much practical as theoretical import in the United States, working its way through every aspect of the political community and removing all obstacles before it: ‘The people reign over the American political world as does God over the universe. They are the cause and the end of all things; everything comes out of them and everything is absorbed in them’. While ‘the principle of the sovereignty of the people was the generative principle of most of the English colonies of America’, Tocqueville explained, ‘It was nevertheless very far from dominating the government of society then as it does in our day’. The turning point was the American Revolution, when ‘The dogma of the sovereignty of the people came out from the township and took hold of the government; all classes committed themselves to its cause; they did combat and they triumphed in its name; it became the law of laws’.¹

Tocqueville believed the Revolution’s success meant not merely American independence from the British Empire but also that ‘victory had already been irrevocably pronounced in favor of democracy’. Although women and the vast majority of non-white men were excluded from the franchise when *Democracy in America* was written, and although most American states did not eliminate property qualifications for voting until the 1820s, Tocqueville nevertheless contended that the expansion of democracy became inevitable when the idea of popular sovereignty took hold in everyday life during the intense politicisation and upheaval of the Revolutionary era. Once this theory had ‘gripped the masses’ (to borrow a phrase from Tocqueville’s

contemporary, Karl Marx [1818–1883]), there was no turning back. Eventually, all officeholders became elected or accountable to the elected, and the electorate itself would continue to expand.²

Putting aside Tocqueville's argument about the inevitability of democracy, there are significant reasons for regarding the American Revolutionary experience from the first stirrings of colonial resistance to the metropolitan reform of the British Empire following the Seven Years' War to the ratification of the Federal Constitution in 1788 as a world-historical theatre for the enactment of popular sovereignty – that is, the idea that the supreme and final authority in a political community rests with the people who compose it, and therefore that all public power exercised over them is delegated by and accountable to them. In practice, popular sovereignty was performed when revolutionary organisations and bodies supplanted royal authority and colonial governments, eventually transforming thirteen colonies into independent and confederated states. In theory, the doctrine was promulgated – along with its corollary concepts, government based on the consent of the governed and the social contract formed by naturally free and equal individuals – in the declarations and resolutions with which the Revolutionaries explained and justified their actions. To secure their natural and inalienable rights, 'Governments are instituted among Men, deriving their just powers from the consent of the governed', the Declaration of Independence announces, and 'That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness'. In the name of the sovereignty of the people, the Revolutionaries superseded colonial institutions and overthrew imperial rule, wrote and adopted state constitutions, established state governments and a continental confederacy, and won a war. A few years after achieving American independence, they created an unprecedented federal union and continental republic on the basis of that same sovereign power: 'We the People of the United States, in Order to form a more perfect Union, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America'.

In terms of the durability of the regime it put in place, the American Revolution was the greatest assertion of popular sovereignty in the eighteenth century. It was made in defence of colonial political institutions threatened by the reorganisation of the British Empire in the aftermath of the Seven Years' War and the assertion of the British Parliament's supremacy over the colonies accompanying that reorganisation. Those institutions

entailed a high degree of popular consent, with local government and the lower houses of the colonial assemblies resting on more frequent elections and a wider franchise than elsewhere in the Western world. The Revolution not only preserved but expanded the role of popular consent in the formation and operation of government in the United States. Remarkably, this assertion of popular sovereignty created a powerful and expansive state under which government continued, and continues, to be based on the consent of the governed.³

This chapter explores a dimension of these developments that is often neglected in the historiography on Britain's Atlantic imperial crisis and the American Revolution. Namely, that in making this assertion of popular sovereignty, colonial radicals and then Revolutionaries aimed to secure the supremacy of civil society over the state. In defending colonial representative institutions from the threat posed by the postwar imperial reforms pursued by metropolitan ministers and officials, the colonial resistance movement sought to maintain the subjection of the state to civil society that had existed in British North America since the imperial settlement following the Glorious Revolution of 1688. And in creating new representative governments that derived their powers from written constitutions, the Revolutionaries sought to re-establish and to permanently secure the subjection of the state to civil society.

Before this argument is elaborated, its terms must be defined. By *civil society*, I mean the collective realm of life that takes place beyond the privacy of the domestic household and that is not organised by public authority. In contrast to the other great collective realm – that is, the state – civil society is based on consent, not coercion. It consists of the free relations among people in the course of their daily lives. While innumerable exchanges and interactions between individuals and groups compose civil society, it is much greater than the sum of its parts. It is the world of commodity exchange and social labour, of voluntary association and contract, of competitive enterprise and joint venture, of public culture and entertainment, of popular discussion and debate, and of the formation of public opinion. The state regulates the operations and activities of civil society – and it may stimulate or repress them – but it does not create them.

The historical emergence of civil society was part and parcel of a profound transformation in the nature and dynamics of human community that took place in the early modern world. A fundamentally new form of social relations began in the West due to changes on a local and global scale. Across much of Western Europe during the later Middle Ages, relationships of personal dependency in the countryside eroded as serfdom collapsed and lords were no longer able to politically and juridically extract an economic surplus from the peasantry.⁴ By the late fifteenth century, when

the European voyages of discovery were beginning to connect the globe, free labour had spread from Northern Italy to England.⁵ Taken together, these developments led to the dramatic expansion of domestic and overseas markets, the growth of commercial farming and rural household industry, the decline of the guild system in towns and cities, the increasing movement of people throughout the countryside and into urban areas in search of employment and opportunity, and the establishment of Western Europe as the epicentre of a world market and a global division of labour.

In this new society based on commodity production, increasingly independent individuals freely exchanged their labour and its products. As Adam Smith (1723–1790) famously explained in *The Wealth of Nations*,⁶ such a commercial society based on free labour led to the continuing expansion of the market and the continuing extension of the division of labour. As production for subsistence gave way to production for the market, people became more independent and self-determining yet more dependent on other people (i.e. the market and the division of labour) to obtain their needs and fulfil their desires. Civil society came into its own and flourished in this world of simultaneously greater personal independence and greater social interdependence. ‘Relations of personal dependence ... are the first social forms, in which human productive capacity develops only to a slight extent and at isolated points’, Marx observed, ‘Personal independence founded on *objective* dependence is the second great form, in which a system of general social metabolism, of universal relations, of all-round needs and universal capacities is formed for the first time’.⁷ In this radically new form of society that arose in the early modern West – bourgeois society – the free relations of daily life greatly expanded and the scope for collective yet voluntary human endeavour dramatically increased.

By *the supremacy of civil society over the state*, I do not mean a state that is ‘weak’ or merely a ‘night watchman’, but rather a state that rules *through* civil society as opposed to *above* it. A functioning state is a necessary precondition for civil society. Indeed, it is difficult to imagine a flourishing civil society without the state’s successful provision of civil order, external defence and basic infrastructure. However, once civil society is effectively ‘up and running’, its operations and activities are mostly independent of public authority. In this sense, civil society is autonomous from the state. By *the state being subject to civil society*, I mean that it is accountable and responsive to civil society. The political elite at the helm of such a state cannot rule without reference to the interests and demands of civil society. They lack what the sociologist Michael Mann terms ‘despotic power’ – that is, the power of ‘the state elite itself *over* civil society’. This capacity encompasses ‘the range of actions which the elite is empowered to undertake without routine, institutionalized negotiation with civil society groups’.⁸ The state

that is subject to civil society does not refrain from intervening in it, but the interventions such a state undertakes are negotiated with forces in civil society (albeit indirectly). In the domain of political economy, the state that is subordinate to civil society – the state that must win the consent of civil society – does not use its powers of regulation and taxation for its own aggrandisement, but rather to provide the conditions that make possible the expansion of civil society. Such a state uses the wealth and resources that it draws from the world of commodity exchange and social labour to provide the public infrastructure necessary for the free play of private interests.

This chapter lays out, in very broad terms, a new conceptual framework for thinking about Britain's Atlantic imperial crisis and the origins of the American Revolution. It contends that an important aspect of the assertion of popular sovereignty by colonial radicals and then Revolutionaries was to maintain and then to re-establish the subjection of the state to civil society. Since the imperial settlement following the Glorious Revolution, colonial representative institutions that entailed a comparatively high degree of popular consent played an important role in making sure that the British imperial state was accountable and responsive to civil society in British North America.⁹ When the postwar imperial reorganisation diminished the role of these representative institutions, it risked sundering the ties that bound the imperial state to ruling through and not above civil society in the American colonies. It was at this point that the doctrine of popular sovereignty, as Tocqueville remarked, 'came out from the township and took hold of the government; all classes committed themselves to its cause; they did combat and they triumphed in its name; it became the law of laws'. In struggling under the banner of popular sovereignty to maintain the role played by these representative institutions in the political life of the Empire, the radicals in the colonial resistance movement sought to preserve the elements of the primacy of civil society over the state that existed in the colonial conditions of life. In forging new representative governments in the name of popular sovereignty in the midst of revolution and war – governments that were based on written constitutions and that included an expanded role for popular consent – the radicals hoped not only to re-establish these elements of primacy but also to permanently secure the supremacy of civil society over the state. When, after achieving American independence, the radicals turned rulers created a federal union and a constitutional republic over a vast extent of territory in the name of the sovereignty of the people, they aimed to found an 'empire of liberty' in the sense that the American state would extend its power across the continent and overseas while remaining subject to the civil society it governed. As a leading architect of that state, Alexander Hamilton, put it in *Federalist* no. 22: 'The fabric of American empire ought to rest on the solid basis of THE CONSENT OF

THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority'.¹⁰

Rethinking popular sovereignty and the Age of the Democratic Revolution

The American Revolution was of course one of many assertions of popular sovereignty throughout the Atlantic world during the later eighteenth and early nineteenth centuries. Considered collectively from the Seven Years' War to Napoleon's defeat at Waterloo, these assertions constituted a revolutionary epoch and inaugurated political modernity. While the radicals in British North America who undertook resistance and revolution in the name of the sovereignty of the people did so in response to specific imperial policies and actions and did so amid the local circumstances of life in the colonies, they nevertheless shared general aims and ambitions with radicals, reformers, and revolutionaries across the Atlantic world. I believe these common aims and ambitions originated in a shared social experience – an experience that developed throughout the early modern era and came into maturity in the eighteenth century: the world of civil society.

In making this argument, I am building on and modifying the interpretive framework developed in one of the most significant historical accounts of the shared purposes of radicals and revolutionaries throughout the Atlantic world during the later eighteenth century: R.R. Palmer's two-volume magnum opus, *The Age of the Democratic Revolution*.¹¹ Palmer (1909–2002) argues that the West 'was swept in the last four decades of the eighteenth century by a single revolutionary movement, which manifested itself in different ways and with varying success in different countries, yet in all of them showed similar objectives and principles'. This movement was 'essentially "democratic"' and these forty years were 'in fact the Age of the Democratic Revolution'. There are blind spots in Palmer's work – Latin America and the Caribbean are largely absent despite their relevance for the subject matter; in an account that argues for the existence of a single revolutionary movement that aimed to reduce the significance of hereditary status in political and social life, there are no analyses of transatlantic slavery and the role of women – but it remains the most compelling interpretation of the assertions of popular sovereignty in the Atlantic world during the later eighteenth century. To organise his narrative, Palmer establishes 'a larger framework, or conceptual structure, in which phenomena that are admittedly different, and even different in very significant ways, may yet be seen as related products of a common impulse, or different ways of achieving, under different circumstances and against different degrees of opposition, certain

recognizably common goals'.¹² For our purposes here, it is worth reviewing this framework in some detail.

By the mid-eighteenth century, the Western world from Central Europe to North America was, according to Palmer, in a 'revolutionary situation',

in which confidence in the justice or reasonableness of existing authority is undermined; where old loyalties fade, obligations are felt as impositions, law seems arbitrary, and respect for superiors is felt as a form of humiliation; where existing sources of prestige seem undeserved, hitherto accepted forms of wealth and income seem ill-gained, and government is sensed as distant, apart from the governed and not really 'representing' them. ... The crisis is a crisis of community itself, political, economic, sociological, personal, psychological, and moral at the same time. Actual revolution need not follow, but it is in such situations that actual revolution does arise. Something must happen, if continuing deterioration is to be avoided; some new kind or basis of community must be formed.¹³

The revolutionary conflicts that arose in these circumstances, and that dominated the political life of the Atlantic world in the later eighteenth century, were not between the defenders and opponents of the Ancien Régime, but rather between 'the proponents of "aristocratic" and "democratic" forms of the community' that hoped to supplant it. The revolutionary era entailed not so much a toppling of the old order by new forces as a crisis of the old order and a struggle to resolve it that pitted two forces with 'incompatible conceptions of what the community ought to be' against one another.¹⁴

The proponents of the 'aristocratic' form of community were those who believed that sovereign power inhered in particular individuals, groups and institutions – for instance, the King of France, the Genevan patrician oligarchy and the British Parliament – in the sense that their right to rule was based on a divinely or naturally ordained order or on their hereditary status. Hence, their authority to govern was not delegated or otherwise derived from the people. Amid the decades-long conflicts, these proponents of the 'aristocratic' form of community organised political counterrevolution and articulated the ideology of conservatism. Palmer stresses the essential modernity of this party to the epochal struggle, making clear that 'conservatism and counterrevolution were no mere "reactions" against revolution, but eighteenth-century forces against which revolution was itself a reaction'.¹⁵ By seeking not merely to defend the status quo but to reshape the political and social order along the lines of their vision of the community, the forces of aristocracy often stirred up the very radicalism that opposed them.

The bulk of Palmer's analytical attention is given to the forces of radicalism and revolution that promoted the 'democratic' form of community as the basis of the new order. This vision of political life was crisply summarised by one of its contemporary critics, the Rotterdam patrician and Orangist

statesman G.K. van Hogendorp (1762–1834), whose words provide the epigraph with which Palmer's work begins: to the party of 'Church and State ... is opposed the new system, which admits no right of government except that arising from the free consent of those who submit to it, and which maintains that all persons who take part in government are accountable for their actions. These principles go under the formula, Sovereignty of the People, or Democracy'.¹⁶ In viewing radicals and revolutionaries throughout Europe and North America as part of a single democratic movement, and in referring to an Age of the Democratic Revolution, Palmer does not understand 'democratic' in 'the sense of a later day in which universality of the suffrage became a chief criterion of democracy', but rather in a more expansive sense. In social terms, 'democratic' refers to 'a new feeling for a kind of equality, or at least a discomfort with older forms of social stratification and formal rank'. In political terms, it refers to those who were 'against the possession of government, or any public power, by any established, privileged, closed, or self-recruiting groups of men [and] denied that any person could exercise coercive authority simply by his own right, or by right of his status, or by right of "history"', and who 'emphasized the delegation of authority and the removability of officials, precisely because ... neither delegation nor removability were much recognized in actual institutions'.¹⁷ According to the proponents of the 'democratic' form of community, sovereignty remained with the people and all public authority was delegated by them for definite purposes, under definite conditions and for definite periods of time.

In what might seem like a paradoxical move, by shifting the criterion of democracy and the marker of popular sovereignty away from the extent of the electorate and towards the accountability and responsiveness of office-holders to those governed, Palmer expands democracy as a category of historical analysis. He does not downplay the importance of the existence and expansion of the franchise in democratic life, but rather emphasises that they were, and are, part of a wider range of mechanisms for securing a system of government based on the consent of the governed – including, but not limited to, written constitutions, divided government with checks and balances, equality under the law, civil rights ranging from freedom of speech and the press to freedom of assembly and association to trial by jury and due process, equal and proportionate representation, and regular elections. Additionally, Palmer's approach allows us to discern the shared aims of the proponents of the 'democratic' form of community in the later eighteenth century despite their important differences regarding the extent of the franchise, with some advocating for its expansion beyond substantial landholders to men of considerable moveable property (e.g. merchants, bankers and manufacturers), others advocating for its expansion to men of middling and small property of any sort, and yet others advocating for the removal of

property qualifications altogether (as well as a small minority going beyond universal manhood suffrage in arguing that some women should receive the vote). Behind all these stances on the franchise, there lay a common ambition to make public authority more accountable and responsive to the public over which it was exercised.

Palmer's interpretation of the revolutionary upheaval in the Atlantic world of the later eighteenth century as primarily entailing a struggle between the forces of aristocracy and the forces of democracy is remarkable and persuasive. It is particularly persuasive in its treatment of the radical and revolutionary movements as 'related products of a common impulse, or different ways of achieving, under different circumstances and against different degrees of opposition, certain recognizably common goals'. Yet, for all the power of Palmer's account in delineating the shared aspirations and aims of the forces of democracy, it is not clear why a 'revolutionary situation' stemming from a 'crisis of community' existed across the West by the middle decades of the eighteenth century. A great deal of analytical attention is given to the forces of aristocracy and of democracy and to the clash between them, but little is lent to the general situation in which they arose and to the general crisis that they were aiming to resolve. To be sure, in examining particular movements, uprisings and revolutions, Palmer explains in great detail the specific circumstances in which, and the specific causes for which, they emerged. However, he does not adequately explain how any single set of circumstances and causes was related to the general 'crisis of community' in the West, which his interpretive framework assumes to be the case. How was the democratic uprising in Geneva in 1768, or the American Revolutionary War that began in 1775, or the Dutch Patriot Revolt in 1787 related to the general crisis of the mid-eighteenth century? Furthermore, how did the general situation 'in which confidence in the justice or reasonableness of existing authority [was] undermined' come about? What were the origins of the general 'crisis of community'?

These shortcomings in Palmer's account are related to others that exist in his interpretation of the collective aims and ambitions of the forces of democracy – namely, the lack of attention given both to the general conditions that created the 'common impulse' animating these forces and to the process by which they came to share 'common goals'. While this impulse and these goals were undoubtedly rooted in similar political notions, Palmer is clear that a 'single revolutionary movement', which was 'essentially "democratic"', arose not only because radical ideas were espoused in print, letters and conversation, but also because such ideas circulated amid and sought to address a general 'crisis of the community'. There is no doubt that such ideas circulated in an unprecedented fashion throughout the length and breadth of the revolutionary Atlantic world,¹⁸ but more was entailed in

this process than new and regular mediums of communication and publicity. Why did so many people so readily take up the radical ideas they read in pamphlets, newspapers, books and private correspondence, or that they heard in discussions and debates in coffeehouses, taverns and town squares? How and why did these ideas speak to the circumstances and conditions in which readers and listeners found themselves? And how did these ideas speak to men and women across the Atlantic world despite the many differences between their local circumstances and conditions? What aspects of their varying situations were shared, allowing for radical ideas to speak to a wide range of people across countries and continents and, in doing so, to persuade them to join the cause of the 'democratic' form of community? It is difficult to understand how the democratic movement developed in the West without a better sense of the general 'crisis of community' that it sought to resolve.

I believe that the general 'crisis of community' that Palmer describes, and the 'common impulse' behind the forces of democracy that emerged from the crisis, are best understood in terms of the shared experience of the new civil society that was developing in the eighteenth century.¹⁹ The crisis that pervaded the West by mid-century – in which, as Palmer explains, 'government [was] sensed as distant, apart from the governed and not really "representing" them' – stemmed from the fact that many viewed their political regime as inadequate for the society it governed. Profound transformations in social relations had led to the development of civil society, which emerged slowly in the sixteenth and seventeenth centuries and came into its own in the eighteenth. A far more dynamic and participatory world had emerged in the West by the 1750s, one in which people freely exchanged goods and services in a commercial economy, freely congregated in the public spaces of growing towns and cities, freely conversed and debated in the coffeehouses, clubs, and *salons* that dotted the new urban landscapes, and freely associated with one another in enterprises and organisations in which they sought to achieve shared aims. Well before the revolutionary upheavals of the later eighteenth century, people were increasingly determining the course of their own lives, both individually and collectively, in the hustle and bustle of that great 'democracy of daily life', civil society. In this fluid world of countless encounters and exchanges, the ancient ideas of 'freedom' took on a new life and a new meaning as men and women experienced increasing autonomy – in the sense of individual and collective self-determination, not isolation – and developed a greater consciousness of it.

From the vantage point of civil society in the mid-eighteenth century, political regimes from the absolute monarchy in France to the parliamentary monarchy in Britain to the oligarchic republic in the Netherlands often seemed like obstacles not only to individual ambition and attainment but also to the free social and economic cooperation that created the wealth and

resources of their populations. The world of public authority began to lose legitimacy for many whose aspirations, ideals and interests were shaped in civil society. For men and women throughout the West, existing regimes – with their heavy taxes, their stifling regulations, and their ever-expanding bureaucracies and militaries – felt more and more like burdensome impositions. Aristocratic, patrician and royal governments were increasingly viewed as coercive and parasitic establishments that did little more than extract wealth from commoners and capriciously interfere in everyday life. These governments were seen by a substantial and growing minority of their citizens and subjects as ‘arbitrary powers’ in the sense that they were neither accountable nor beneficial to civil society. The radicalism that underlay the ‘democratic revolution’ of the later eighteenth century was born out of these concerns and fears.

The ‘democratic revolution’ is best understood as essentially a struggle to create political regimes that ruled through civil society instead of above it. The assertions of popular sovereignty throughout the Atlantic world – ranging from reform movements to full-blown revolutions – all sought to establish (or, to re-establish) and to permanently secure the supremacy of civil society over the state. To reiterate, I do not mean that the radicals and revolutionaries of the era sought to reduce government to a mere ‘night watchman’ responsible for little more than protecting the private property of the governed. On the contrary, they aimed to create a state that was accountable and beneficial to the world of civil society – the world in which men and women set the course of their own lives, individually and collectively. Such a state would assist, rather than impede, the expansion of civil society. It would provide the public infrastructure necessary for the free play of private interests and, in doing so, would foster free social and economic cooperation in daily life. The democratic movements, uprisings, and revolutions of the later eighteenth century expressed, at the level of the politics of the state, a profound transformation that had long since taken place in many arenas of everyday experience: the revolution of civil society. These forces – the proponents of the ‘democratic’ form of community – sought to defend, consolidate and expand a social revolution that had been developing in the West since the Renaissance. In this sense, the ‘democratic revolution’ of the later eighteenth century is best seen as a revolution *for* bourgeois society – that is, a bourgeois revolution. Such a characterisation will no doubt raise concerns that I am reducing these epoch-making political struggles to conflicts between social classes or between divergent economic interests. I hope to alleviate such concerns with the more detailed analysis of the British imperial crisis and the origins of the American Revolution provided below. For now, I will simply state that the concept of a political revolution that consolidates and expands ongoing transformations in social life,

leading to or furthering the development of the bourgeoisie as a social class, is very different from the concept of a revolution in which an existing bourgeoisie (however characterised) comes into conflict with and overthrows a political order that serves the interests of another social class (typically, the feudal or quasi-feudal nobility).²⁰

Building on the foundations laid by Palmer,²¹ I think the general political instability of the Atlantic world in the later eighteenth century is best characterised as a conflict between those who sought to maintain or to establish the primacy of the state over civil society and those who sought to establish or to re-establish the primacy of civil society over the state. The former were those whom Palmer refers to as the proponents of the 'aristocratic' form of community; those who believed that sovereignty inhered in particular individuals, groups and institutions such as the King of France, the patrician oligarchy of Geneva and the British Parliament. The latter were those whom Palmer refers to as the proponents of the 'democratic' form of community; those who believed that sovereignty resided in the people and, thus, that the powers exercised by public authorities were delegated to them in order to serve the collective interests of society. These forces of democracy aimed to establish, to reform or to expand the franchise not as ends in themselves but rather as part of a wider range of measures that were intended to subject the state to civil society – that is, to make political regimes accountable, responsive and beneficial to the 'democracy of daily life' that existed throughout much of the Atlantic world. As Palmer suggests, the forces of aristocracy were not merely the established order's automatic response to the challenges posed by the forces of democracy. In pursuing certain policies and actions, these aristocratic forces often provoked into being the very democratic movements arrayed against them. By attempting to constrain the world of civil society – that is, by interfering with or limiting the development of the free relations of daily life – these proponents of the 'aristocratic' form of community often transformed simmering discontents and burgeoning aspirations into organised movements of resistance and for reform. And such movements could, and indeed did, lead to revolutions.

It is to the origins of the first radical movement that successfully subjected the state to civil society during the later eighteenth century that we now turn. In the pre-revolutionary West, civil society developed to its greatest extent in the British Atlantic world. It was there in the 1760s that the 'democracy of daily life' was most robust, and in which, as Palmer argues, 'a growing number of dissatisfied persons, in America, in Ireland, and in England itself, expressed increasing doubts on the independence of Parliament, invoking a higher authority which they called the People'.²² And it was there, in the aftermath of the global triumph of Britain's parliamentary regime over the Bourbon monarchies of France and Spain in the Seven Years' War, that

the forces of aristocracy provoked the development of a democratic movement on both sides of the Atlantic that sought to subject the state to civil society. On one side of the Atlantic, in Britain, that movement took the form of the organised campaigns for parliamentary reform. On the other, in the mainland colonies of British North America, that movement took the form of organised resistance to the postwar imperial reforms pursued by metropolitan ministers and officials. The latter, which is the focus of our attention, led to a revolution that aimed not only at colonial independence but also to re-establish and to permanently secure the primacy of civil society over the state in British North America. By examining the origins of that revolution, we can see that the assertions of popular sovereignty in the Atlantic world during the later eighteenth century aimed to achieve representative government and political liberty not simply as ends in themselves, but as the means for making certain that the state was accountable, responsive and beneficial to the civil society it governed. The radicals in British North America valued representative government and political liberty to such an extent that they were willing to take up arms against the greatest imperial power of the day in defence of them. For these radicals, such government and such liberty were the best means for securing what they valued most of all: *civil liberty* – that is, the liberty to determine the course of their own existence, individually and collectively, in the ‘democracy of daily life’ that was, and is, civil society.

The revolution for society: the origins of American independence

On the eve of the Seven Years’ War, British overseas expansion consisted of a commercial, colonial and maritime empire that stretched from Kingston to Calcutta. Protected by the Royal Navy, British merchants plied their trade throughout the Atlantic and beyond to coastal enclaves in the Asian maritime world. They shipped and sold domestic manufactures and enslaved Africans to New World colonies while importing colonial commodities to the British Isles and Europe, linking together an Atlantic economy that generated ever greater public revenue and private wealth in the metropole. Britain’s Atlantic possessions consisted of agricultural settlements along the eastern seaboard of North America and in the West Indies, which were mostly populated by free British colonists and enslaved Africans who produced sugar, tobacco, rice, naval stores and other colonial exports for consumption in Western Europe. British settlers in the Americas thought of themselves as free subjects of the Crown with rights equal to those in Britain and as self-governing through their colonial assemblies.

During the reign of King George II (1727–1760), this imperial world was commonly understood by British subjects on both sides of the Atlantic

to be 'Protestant, commercial, maritime and free'.²³ While this ideological self-understanding occluded the displacement of Indigenous peoples and the expropriation of their lands, the forced immigration and enslavement of millions of Africans and the devastating consequences for West and Central Africa, and the coercive power of Britain's globe-spanning imperial state, there was, as P.J. Marshall argues, 'an element of truth, however distorted and exaggerated, behind the rhetoric of British commitment to peaceful dominion of the seas in the first half of the eighteenth century'.²⁴ Before the Seven Years' War, the British military had conquered no major territories and populations in the Americas, Africa or Asia. The Royal Navy did not facilitate foreign conquests; it defended the realm and secured Britain's Atlantic trade and settlements. The British Crown was not an absolute monarchy, but rather a constitutional one subject to Parliament and the common law. Royal government in the Atlantic colonies could do little without the consent of local assemblies. For all these reasons, it was possible to view British overseas expansion prior to the 1760s as consisting of an 'empire of liberty' in which mostly Protestant British subjects freely pursued their private interests.

Britain's mainland American colonies thrived within this 'empire of liberty'. Their social and economic development was remarkable in the decades leading up to the Revolution.²⁵ Although the colonial economy was overwhelmingly agricultural, it was thoroughly integrated into global networks of commodity exchange centred in Britain. Many free settlers owned land outright or were temporarily tenants until they could afford to purchase property, making family farms the dominant unit of the economy. Although farming families primarily produced food for their own consumption, by the 1750s they sold extensive surpluses on the market and purchased products from nearby, regional and overseas markets – including manufactured goods from Britain. Their consumption of such goods was expanding so rapidly that, by the Seven Years' War, over a quarter of British exports were destined for the American market. Slave plantations produced highly profitable cash crops for global markets. The insatiable colonial demand for labour meant that the wages of the free population were comparatively high and that artisans and craftsmen working in towns and cities were comparatively prosperous. With high birth rates and the steady flow of free and indentured immigration from the British Isles and Europe, as well as forced immigration from Africa, the population of British North America grew at a rate unprecedented in world history prior to the Industrial Revolution. Although the colonial population had been less than 200,000 on the eve of the eighteenth century, it was approximately 1.5 million by 1760. By the outbreak of the Revolution, it stood at over 2 million. Widespread land-ownership, land prices that increased with population growth, expanding domestic and overseas markets, and high wages made the free population of the American mainland colonies among the wealthiest in the world,

with a higher per capita income than in Britain. By mid-century, coastal British North America was a 'polite and commercial society' like Britain, with well-settled agriculture and growing towns and cities. Philadelphia was among the largest urban areas in the British Atlantic world. The populations and economies of the older port cities of New York, Boston, Providence, Newport and Charleston continued to expand, while newer ports like Baltimore and Alexandria grew even more rapidly. These towns and cities had robust public spheres and popular political cultures, and were the sites of innumerable voluntary associations and enterprises. As the booming colonial population pressed further and further into the western interior in search of available and inexpensive land, backcountry towns sprang up to connect the frontier and coastal economies. Long before the Revolution, colonial British Americans were a prosperous people 'on the move'.

Among the free population of the American colonies, the world of civil society was more dynamic and expansive than anywhere else in the West – for here many significant elements of the old regimes of Europe, from the absolute monarchies in France and Spain to the parliamentary states in Britain and the Dutch Republic, were absent. There were no feudal vestiges and no recognition of social-caste distinctions in the law. A titled nobility was lacking and, as Bernard Bailyn explains, 'In most areas the economy was too fluid to justify perpetual [land] rentals; land was too easily available, however limited it might be in specific areas at specific times; and mobility was too vital a part of the social and economic situation to make possible a re-creation of the stable pattern of *rentiers* and tenants that lay at the heart of traditional society'.²⁶ Thus, the traditional forces of aristocratic paternalism and social deference that continued to dominate a countryside as thoroughly commercialised as England's had no purchase on life in British North America beyond the slave plantations. Ceaseless immigration and religious diversity, as well as the absence of extensive Church land ownership, 'had weakened the force of religious establishments beyond anything known in Europe'.²⁷ Most conspicuously, there were none of the vast tax-collecting bureaucracies and standing armies that commanded the European landscape. Here, in the New World, the realm of civil society – i.e. the free relations of daily life in the new form of human community that had arisen in the early modern West – existed without so many of the encumbrances and impositions that it suffered in the Old World. Here, civil society clearly had primacy over the state in practical life. Here, the priority of the 'social' over the 'political' was, in an important sense, 'self-evident'.

This was the case despite the fact that British North Americans were subjects in the greatest empire – indeed, the most extensive system of power – the world had yet known. This was because that 'empire of liberty' ruled through rather than above civil society in the colonies. The institutions

and practices of representative government – above all, the assemblies – emerged in the English colonies during the seventeenth century amid conditions of relative political autonomy from the metropolitan state. Although the Crown made efforts to restrict and even to eliminate these institutions during the later seventeenth century, the imperial settlement that followed the Glorious Revolution in England and concurrent uprisings in Maryland, Massachusetts and New York consolidated and strengthened representative government throughout the colonies.²⁸ By the early eighteenth century, the elected lower houses of the assemblies were powerful and independent forces in colonial politics, and their electorates were large, comparatively speaking, since the majority of free adult males met the varying property qualifications for the franchise in all the colonies.²⁹ The availability and affordability of land made for a remarkably inclusive electorate (in eighteenth-century terms). As Edmund Morgan observes, a colonist in eighteenth-century British North America ‘knew that the king’s deputy in his colony confronted a house of representatives much more closely identified with the people it represented than the House of Commons which the king’s ministers had to deal with at Westminster’.³⁰ These representative institutions, combined with frequent (often annual) elections, freedom of the press and association, and an expanding public sphere, made colonial governments accountable and responsive to the governed.

None of this is to say that the imperial executive in North America was weak. Colonial governors and councils were for the most part appointed, not elected, and they remained powerful forces in political life. The governors were the representatives of the Crown in the colonies and, as such, wielded extensive prerogative powers. They were able to determine when assemblies met, to veto legislation, to create courts and appoint judges, and to dispense with executive offices and patronage. The councils were composed of colonial elites for the most part nominated by governors and appointed by the Crown. Furthermore, the status of colonial representative institutions within the unwritten constitution of the British Empire was uncertain, and remained the subject of much political conflict and debate from the Glorious Revolution to the imperial crisis.³¹ Nevertheless, despite the strength of the imperial state and the extensive powers of royal governors, the colonial assemblies were able, amid ‘the financial demands of colonial wars from 1689 to 1748’, to wield ‘their power to raise and borrow money and to oversee its expenditure as so many levers to bend British authority to their collective will’.³² Thus, largely though not exclusively through their control of the purse strings, colonial representative institutions were able to make the imperial state accountable and responsive to the interests and needs of civil society in the colonies.

When Britain waged global war with France in the mid-eighteenth century, British North Americans were happy to join their fellow subjects in

what they viewed as a great struggle to defend and expand their ‘empire of liberty’ against Bourbon absolutism and its allies. But, while British arms prevailed in every major theatre of combat across the globe from Quebec to Bengal, new political forces came to the fore in British politics that transformed imperial success into an imperial crisis and, ultimately, an imperial civil war.³³ In Britain, the political scene fundamentally changed due to the accession of King George III (1738–1820) in October 1760, the near doubling of the national debt during the war, and the rise of a democratic radicalism around the ‘Wilkes and Liberty’ movement. This radicalism sought the reform of Parliament so as to make it more representative of, and accountable to, ‘the People’. In the context of these developments, a conservative and authoritarian group of ministers and officials took the helm of the British ship of state. They were proponents of the ‘aristocratic’ form of community in Palmer’s sense because they believed that parliamentary sovereignty was absolute and indivisible – that the King-in-Parliament system was inherently sovereign. As one of their propagandists argued, from Parliament ‘all legal rights are emanations, which, whether equitably or not, may be legally recalled’.³⁴ These politicians and officials, who initially dominated the ministries of Lord Bute (1713–1792) and George Grenville (1712–1770) and, later, the ministry of Lord North (1732–1792), believed that the emerging democratic radicalism in Britain and the role played by colonial assemblies in the governance of the Empire were dangerous developments that imperilled the British state. From their perspective, civil society was growing unmanageable and leading to increasing domestic and imperial instability; an ‘empire of liberty’ had become an ‘empire of licentiousness’. These conservative and authoritarian leaders aimed to reinvigorate public authority at home by refusing the demands of the ‘democratic’ proponents of the community organised together in the ‘Wilkes and Liberty’ movement and the campaigns for parliamentary reform. They aimed to reinvigorate public authority in the Empire by subordinating the American colonies to metropolitan rule.

These forces of aristocracy sought to maintain a peacetime standing army in North America, to extend and enforce the Navigation Acts, and to accomplish these tasks in a manner that made imperial administration less dependent on colonial representative institutions. As the war drew to a close, the Bute ministry made the decision to station 10,000 British soldiers in North America – doubling the size of the pre-war army there – in order to control and defend new territories in Canada, Florida, and west of the Appalachians. The ministry’s method of raising revenue for the maintenance of the standing army departed from previous practices. Breaking with the tradition of royal requisitions, in which the Crown asked each colony for revenue and the colonial assembly raised it, the costs of imperial defence

were to be met in part by colonial taxes levied by the British Parliament. At the same time, the ministry reinvigorated the enforcement of the parliamentary trade and navigation laws, which had been evaded in the colonies for decades, to raise revenue and to stem the 'licentious' corruption and smuggling that flourished there. The two purposes of maintaining a standing army and enforcing the trade laws were combined and expanded with Parliament's passage of the Sugar Act in 1764. This legislation extended the trade and navigation laws, adding commercial regulations and customs duties on colonial consumer imports, and created new methods of enforcement: an expanded customs service with greater authority of search and seizure; the Royal Navy empowered to crack down on colonial smuggling and trial without jury for customs violations in vice-admiralty courts with royally appointed judges. In addition to imposing new customs duties, the Sugar Act adjusted the duty on foreign molasses to raise revenue for imperial defence. This was all a prelude to the passage of the Stamp Act in March 1765. The stamp tax, which affected many forms of paper ranging from legal documents to playing cards, was designed to offset the costs of imperial defence. This direct, internal tax on the Atlantic colonies for the purpose of generating revenue represented a dramatic departure from past imperial practice. Combined with the royal proclamation of 1763, which created several royal colonies, prohibited colonial settlement west of the Appalachians, and heavily regulated colonial trade with Indian Country, the Quartering Act of 1765, which required colonial assemblies to pay for quartering and provisioning the standing army, and the rest of the imperial reforms, the Stamp Act greatly increased metropolitan intervention in and authority over the Atlantic colonies.

In their totality, the new colonial policies pursued between 1763 and 1765 sought to militarise and to politically centralise Britain's Atlantic empire, and ultimately to make imperial administration independent of colonial representative institutions. The Grenville ministry was convinced of the necessity of making imperial governance independent of colonial assemblies.³⁵ The immense postwar strains on Britain's fiscal-military state and vastly expanded empire, coupled with the growth of domestic radicalism and of resistance to taxation, meant not only that revenue had to be extracted from the colonies but also that revenue-raising capacities could not depend on the will of a recalcitrant and 'licentious' colonial population.

These imperial reforms asserted metropolitan authority over the colonies in an unprecedented fashion, leading to an organised colonial resistance in short order. As Dora Mae Clark contends, the 'Americans immediately recognised the threat to their assemblies and their legislative power'.³⁶ The 'aristocratic' proponents of the community in the Grenville ministry and among the wider British ruling elite believed it essential to establish and

to uphold the undiminished sovereignty of Parliament over the American colonies, which included the ability to raise revenue without reference to colonial assemblies. 'I have done my duty by endeavouring to assert the Sovereignty of the King & Parl[iamen]t of Great Britain over all the Dominions belonging to the Crown', Grenville argued in defence of his colonial policies in 1768.³⁷ If imperial administration in the Atlantic colonies was no longer subject to the whims of colonial assemblies, the former prime minister contended that it would be able to 'give [the population] good Laws & good Government on the one hand & to exact from them on the other hand that just obedience & Subordination which by the original Compact of all Society is the Return due for it'.³⁸ The political centralisation and militarisation entailed in these imperial policies would allow metropolitan authorities to rule the Atlantic colonies without reference to their assemblies. Thus, the imperial state would rule above colonial civil society instead of through it. Although the Grenville ministry fell from power in 1765 and the successor Rockingham ministry repealed the Stamp Act in 1766, many of the imperial reforms remained intact and Parliament confirmed its absolute sovereignty over the American colonies with the passage of the Declaratory Act. While British politics was unstable in the later 1760s, the conservative-authoritarian ministers and officials who favoured the imperial reforms – that is, the forces of aristocracy – successfully captured the commanding heights of power when George III made Lord North prime minister in 1770.

For roughly a decade following the first stirrings of colonial resistance to the postwar reform of the British Empire in 1764, men and women across the eastern seaboard of North America assembled in mass meetings in towns and counties, wrote and read pamphlets and newspapers, formed associations and committees, and organised congresses and conventions in which the nature, extent and organisation of political authority were discussed and debated more than anywhere previously in the Western world. These developments reached a fever pitch in the wake of the British Parliament's passage of the Coercive Acts in 1774, giving rise to an alternative, revolutionary organisation of political life in British North America and, with it, the supersession of colonial governments.

The radical leaders of the colonial resistance movement and then Revolution believed in the sovereignty of the people – they were, in Palmer's terms, proponents of the 'democratic' form of community who rejected the idea that the right to rule was possessed by particular individuals, groups and institutions, including the British Parliament. Their commitment to popular sovereignty was not contravened by the fact that most of them supported property qualifications for the franchise and that many also believed the offices of the new state and federal governments should be filled by propertied elites with

sufficient education and leisure to govern. For the *primary, overriding* concern of the radicals was neither the precise form of government nor who could hold public office and who could vote for them, but rather that government secure and promote the pursuit of happiness in society.

According to these radicals, the sovereign people could delegate power to public institutions and officials through any number of constitutional arrangements – arrangements that would remain in place so long as public authority was accountable and beneficial to civil society. ‘I say this supreme absolute power is *originally* and *ultimately* in the people; and they never did in fact *freely*, nor can they *rightfully* make an absolute, unlimited renunciation of this divine right’, asserted the Boston lawyer and Patriot pamphleteer James Otis Jr. (1725–1783), whose *The Rights of the British Colonies Asserted and Proved* was the most influential and inflammatory response to the early imperial reforms including the Sugar Act in 1764. ‘It is ever in the nature of the thing given in *trust*, and on a condition, the performance of which no mortal can dispense with; namely, that the person or persons on whom sovereignty is confer’d by the people, shall *incessantly* consult *their* good. Tyranny of all kinds is to be abhor’d, whether it be in the hands of one, or of the few, or of the many’, Otis contended, ‘The form of government is by *nature* and by *right* so far left to the *individuals* of each society, that they may alter it from a simple democracy or government of all over all, to any other form they please’.³⁹ For Patriots, the doctrine of popular sovereignty was vital because it meant that government, however organised and constituted, must always remain accountable and beneficial to the interests and needs of the governed – and their greatest mutual interest and need was the flourishing of the collective world of civil society.

Otis’s popular pamphlet invoked the revolutionary Whig ideas of John Locke (1632–1704) and offered readers a powerful vision of a government that served the needs of individual independence and social interdependence, one under which civil society flourished:

The *end* of government being the *good* of mankind, points out its great duties: It is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property. There is no one act which a government can have a *right* to make, that does not tend to the advancement of the security, tranquility, and prosperity of the people. If life, liberty and property could be enjoyed in as great a perfection in *solitude*, as in society, there would be no need of government. But ... the valuable ends of life cannot be obtained, without the union and assistance of many. Hence ‘tis clear that men cannot live apart or independent of each other: In solitude men would perish; and yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge, makes all men seek one[.]⁴⁰

For Otis, like so many Patriots and Revolutionaries, ‘Taxation without Representation’ was ‘tyranny’ because an imperial state capable of raising revenue without the consent of colonial assemblies was a state that would be less and less accountable to the civil society it governed. Political liberty was important because it was a bulwark of civil liberty. Colonial representative institutions were not ends in themselves – they were not forums of classical republican virtue, but rather the means for making sure that the state allowed for and indeed promoted the pursuit of happiness in society.

Amid the renewal of the imperial crisis in 1768 caused by Parliament’s passage of the Townshend Acts, the Scottish immigrant and leading Patriot jurist, as well as future Associate Justice of the Supreme Court of the United States, James Wilson (1742–1798), wrote that ‘The first maxims of jurisprudence are ... that all power is derived from the people – that their happiness is the end of government’.⁴¹ Wilson was among the most important theorists of popular sovereignty, which he articulated in opposition to the doctrine of unlimited parliamentary sovereignty that accompanied and justified the imperial reforms pursued by metropolitan ministers and officials following 1763.⁴² Like many Patriots, Wilson believed that popular sovereignty and the pursuit of happiness in society were integrally related since ‘All men are, by nature, equal and free: no one has a right to any authority over another without his consent’.⁴³ Since it was only in the free relations of daily life that people could pursue and achieve happiness,⁴⁴ governments were created to provide civil order and, thus, to allow self-determining individuals to enjoy such relations to the maximum extent possible: ‘all lawful government is founded on the consent of those who are subject to it: such consent was given with a view to ensure and to increase the happiness of the governed, above what they could enjoy in an independent and unconnected state of nature’. The ‘social’ had priority over the ‘political’ in the sense that people founded governments in order to secure and to enlarge the benefits of society. ‘The consequence is, that the happiness of the society is the *first* law of every government’, Wilson argued, ‘it must control every political maxim: it must regulate the legislature itself. The people have a right to insist that this rule be observed; and are entitled to demand a moral security that the legislature will observe it. If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery’.⁴⁵

By February 1776, Wilson believed that the British Parliament’s continuing assertion of supremacy over the colonies meant that imperial government could no longer be the guarantor of the pursuit of happiness in society, but rather only its destroyer: ‘The Sentence of universal Slavery gone forth against you is; that the British Parliament have Power to make Laws,

without your Consent, binding you in all Cases whatever'. This provided the theoretical foundation for arbitrary power, and it was only a matter of time before the bureaucratic and military tentacles of the imperial state practically destroyed the civil society that it was no longer subject to: 'Your Fortunes, your Liberties, your Reputations, your Lives, every Thing that can render you and your Posterity happy, all are the Objects of the Laws: All must be enjoyed, impaired or destroyed as the Laws direct'.⁴⁶

The great fear of the Patriots was that the globe-trotting British imperial state, freed from the consent of the governed in colonial North America, would ride roughshod over society there. They were concerned not only with individual liberty but with what was, in their estimation, the only sure basis for it: civil society. According to the Patriots and their radical brethren throughout the Atlantic world of the later eighteenth century, it was only in the free social and economic cooperation of everyday life, and not in isolation, that people could pursue and achieve happiness. It was therefore no accident that the most widely read pamphlet throughout the entire imperial crisis and Revolution, the pamphlet that more than any other shifted public opinion towards independence in the early months of 1776, the pamphlet that was discussed and debated throughout the bustling civil society of British North America, Thomas Paine's *Common Sense*, opened with the following observation:

Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher. Society is in every state a blessing.⁴⁷

For the American Revolutionaries who drafted and signed the Declaration of Independence, the governments 'instituted among Men' were not ends in themselves but rather the means by which people enjoyed their 'unalienable Rights', which included 'Life, Liberty and the pursuit of Happiness'. And they believed that 'whenever *any Form of Government* becomes destructive of these ends' (emphasis mine), it is subject to popular dissolution and reconstitution. Although the Revolutionaries were in the midst of creating new state governments that were republican in form when the Second Continental Congress adopted the Declaration in the summer of 1776, it is important to realise that, for them, the 'Form of Government' was secondary to the essential purpose of government, which was 'to secure these rights'. Whether a government was royal, oligarchic or republican, the primary question for the Revolutionaries, and for radicals throughout

the West in the later eighteenth century, was whether it was the servant or master of the civil society it governed. Did the state rule through or above civil society? The form of the state was secondary to whether or not it was accountable, responsive and beneficial to civil society. In this sense, the Revolutionaries were representative of the colonists in general, who, as Jack Greene argues

subscribed to the ideas that society – what the [Scottish Enlightenment] meant by the term *civil society* – was anterior to government; that the functions of law, governments, and constitutions were to promote the ends of civil society, especially the great end of facilitating the pursuit of happiness by the individuals who composed that society; and that, that pursuit would be, for most people, conducted far more satisfyingly in the society of the family, neighborhood, or local civic institutions than in the small political arenas that characterized the colonies.⁴⁸

The Patriots defended colonial representative institutions from the threat posed by British imperial authority, and created new representative governments based on written constitutions, because they viewed political liberty and representation as the best means for securing and expanding civil liberty – that is, freedom in society. They were, like so many democratic radicals throughout the Atlantic world, enthusiasts for what the Swiss-French revolutionary republican turned liberal politician Benjamin Constant (1767–1830) would later call ‘modern liberty’:

The exercise of political rights, therefore, offers us but a part of the pleasures that the ancients found in it, while at the same time the progress of civilization, the commercial tendency of the age, the communication amongst peoples, have infinitely multiplied and varied the means of personal happiness. ... The aim of the ancients was the sharing of social power among the citizens of the same fatherland: this is what they called liberty. The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures.⁴⁹

The Patriots overthrew British imperial rule because they believed that it was no longer accountable, responsive and beneficial to the ‘democracy of daily life’ in colonial North America. They contended that the British Empire of the 1760s and 1770s was no longer an ‘empire of liberty’ and, as such, was no longer compatible with ‘modern liberty’ – with freedom in society.⁵⁰ The Patriots sought American independence because they aimed to defend civil society from the threat posed to it by the postwar transformation of the imperial state. In achieving the Revolution and creating a federal union and continental republic, they not only secured civil society but greatly expanded its scope. They were not social revolutionaries but rather revolutionaries for society.

Notes

- 1 Tocqueville, *Democracy*, 53–55.
- 2 Ibid., 54–55.
- 3 Contrary to received wisdom regarding a ‘weak state’ in Revolutionary and Early Republican America, both the Revolutionaries and the drafters of the Federal Constitution sought to reconcile power and liberty along the lines of the British model of government in creating a strong and effective state while securing civil and religious freedom. For the aims of the Revolutionaries, see S. Pincus, *The Heart of the Declaration: The Founders’ Case for an Activist Government* (New Haven, 2016). For the purposes of the Federal Constitution, see M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (Oxford, 2003).
- 4 P. Anderson, *Passages from Antiquity to Feudalism* (London, 1974), 197–209 provides a brief but excellent overview of the crisis and collapse of feudalism in Western Europe.
- 5 By *free labour*, I do not mean the fully free and juridically guaranteed labour that existed in the industrialising West in the nineteenth century, but rather non-servile labour that was contractually or voluntarily agreed to by the labourer.
- 6 See Book I, chapters I–III.
- 7 K. Marx, *Grundrisse: Foundations of the Critique of Political Economy*, trans. M. Nicolaus (London, 1973), 158.
- 8 M. Mann, *States, War and Capitalism: Studies in Political Sociology* (Oxford, 1988), 5–7.
- 9 Many of these representative institutions came into existence before the Glorious Revolution, but they only secured a stable place within the British Empire after it. During the reigns of Charles II and James II, the imperial state attempted to diminish the political role of the colonial assemblies and even to eliminate them altogether.
- 10 I. Kramnick (ed.), *The Federalist Papers* (London, 1987), 184 (no. 22). This should be read in light of Hamilton’s imperial vision previously enunciated in *Federalist* no. 11: ‘I shall briefly observe that our situation invites and our interests prompt us to aim at an ascendant in the system of American affairs. The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe, by her arms and by her negotiations, by force and by fraud, has in different degrees extended her dominion over them all. Africa, Asia, and America have successfully felt her domination. The superiority she has long maintained has tempted her to plume herself as the mistress of the world, and to consider the rest of mankind as created for her benefit. ... It belongs to us to vindicate the honor of the human race, and to teach that assuming brother moderation. Union will enable us to do it. Disunion will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness! Let the thirteen States, bound together in a strict and indissoluble Union, concur in erecting one great American system superior to the control of all transatlantic force or influence

and able to dictate the terms of the connection between the old and the new world!’ (ibid., 134–135).

- 11 The first volume was published in 1959 and the second in 1964. All references here are to the new, single-volume Princeton Classics edition: R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760–1800* (Princeton, 2014).
- 12 Ibid., 6, 10.
- 13 Ibid., 19.
- 14 Ibid., 19–20.
- 15 Ibid., 20.
- 16 Quoted in ibid., 5.
- 17 Ibid., 6–7.
- 18 On this, see the most important recent work of Atlantic revolutionary historiography, one written in a Palmerian spirit: J. Polasky, *Revolutions without Borders: The Call to Liberty in the Atlantic World* (New Haven, 2015), esp. 17–47.
- 19 This paragraph and the next four draw on my forthcoming book, *A Very Bourgeois Revolution: An Essay on the British Empire, American Independence, and the Origins of Liberal Democracy*.
- 20 For more on this conceptualisation of a bourgeois revolution as a revolution made for bourgeois society – to defend, consolidate and expand civil society – as opposed to a revolution made by the bourgeoisie, see: K. Marx, ‘The Bourgeoisie and the Counter-Revolution, II’, *Neue Rheinische Zeitung*, 15 December 1848, in Marx, *Political Writings*, ed. D. Fernbach (2010), I, 192–193; C. Hill, ‘A Bourgeois Revolution?’, in J.G.A. Pocock (ed.), *Three British Revolutions: 1641, 1688, 1776* (Princeton, 1980), 109–139; J. Vaughn, ‘1776 in World History: The American Revolution as Bourgeois Revolution’, *Platypus Review* 62 (December 2013–January 2014), <https://platypus1917.org/2013/12/15/1776-in-world-history/>.
- 21 While the account presented here builds on and modifies Palmer’s general interpretive framework for understanding the era of the revolutionary Atlantic in general, it significantly departs from the particulars of his interpretation of the political developments in Britain and British North America leading up to the American Revolution. For the latter, see Palmer, *Age of the Democratic Revolution*, 106–76.
- 22 Ibid., 106.
- 23 D. Armitage, *The Ideological Origins of the British Empire* (Cambridge, 2000), 173.
- 24 P.J. Marshall, ‘Britain and the World in the Eighteenth Century: I, Reshaping the Empire’, *TRHS* 8 (1998), 5.
- 25 This paragraph draws on J. Butler, *Becoming America: The Revolution Before 1776* (Cambridge, MA, 2001); A. Jones, *The Wealth of a Nation to Be: The American Colonies on the Eve of the Revolution* (New York, 1980); J. McCusker and R. Menard, *British America, 1607–1789* (Chapel Hill, 1985); E.J. Perkins, *The Economy of Colonial America*, 2nd ed. (New York, 1988); D. Shields, *Civil Tongues and Polite Letters in British America* (Chapel Hill, 1997).

- 26 B. Bailyn, *The Peopling of British North America: An Introduction* (New York, 1986), 84–85.
- 27 B. Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA, 1967), 51.
- 28 R. Dunn, ‘The Glorious Revolution and America’, in N. Canny (ed.), *The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century* (Oxford, 1998), 445–465.
- 29 A. Tully, ‘The Political Development of the Colonies after the Glorious Revolution’, in J. Greene and J. Pole (eds), *A Companion to the American Revolution* (Oxford, 2000), 30–32, 34–35.
- 30 E. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988), 146.
- 31 J. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, 2011), 19–66.
- 32 J. Shy, ‘The American Colonies in War and Revolution, 1748–1783’, in P.J. Marshall (ed.), *The Eighteenth Century* (Oxford, 1998), 301.
- 33 J. Vaughn, *The Politics of Empire at the Accession of George III: The East India Company and the Crisis and Transformation of Britain’s Imperial State* (New Haven, 2019), 165–200.
- 34 S. Johnson, *Taxation No Tyranny* (1775), 25.
- 35 L. Bellot, *William Knox: The Life and Thought of an Eighteenth-Century Imperialist* (Austin, 1977), 41.
- 36 D. Clark, ‘George Grenville as First Lord of the Treasury and Chancellor of the Exchequer, 1763–1765’, *Huntington Library Quarterly* 13 (1950), 397.
- 37 George Grenville to Thomas Pownall, 17 July 1768, British Library, Add MS 42086, fol. 68v.
- 38 George Grenville to Dr. Spry, 19 August 1766, quoted in Clark, ‘George Grenville’, 394, n. 55.
- 39 J. Otis Jr., *The Rights of the British Colonies Asserted and Proved* (Boston, 1764), in G. Wood (ed.), *The American Revolution: Writings from the Pamphlet Debate, Vol. I: 1764–1772* (New York, 2015), 50–51, 53. Emphasis in the original.
- 40 Ibid., 52. Emphasis in the original.
- 41 J. Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* (1774), in K. Hall and M. Hall (eds), *Collected Works of James Wilson* (Indianapolis, 2007), I, 9. This pamphlet was written in 1768 but not published until 1774.
- 42 On this, see J. Jezierski, ‘Parliament or People: James Wilson and Blackstone on the Nature and Location of Sovereignty’, *JHI* 32 (1971), 95–106.
- 43 Wilson, *Considerations*, 4.
- 44 For an excellent account of Wilson’s views on civil society, see S. Conrad, ‘The Rhetorical Constitution of “Civil Society” at the Founding: One Lawyer’s Anxious Vision’, *Indiana Law Journal* 72 (1997), 335–373.
- 45 Wilson, *Considerations*, 4–5.

- 46 J. Wilson, 'An Address to the Inhabitants of the Colonies' (1776), in *Collected Works of James Wilson*, I, 48.
- 47 T. Paine, *Common Sense*, in Paine, *Rights of Man, Common Sense, and Other Political Writings*, ed. M. Philp (Oxford, 1995), 5.
- 48 J. Greene, 'Civil Society and the American Foundings', *Indiana Law Journal* 72 (1997), 380.
- 49 B. Constant, 'The Liberty of the Ancients Compared with that of the Moderns', in Constant, *Political Writings*, trans. and ed. B. Fontana (Cambridge, 1988), 316–317.
- 50 Vaughn, *Politics of Empire*, 201–231.

Filippo Mazzei's Atlantic revolutions: a new dawn for popular sovereignty or populism?

Anna Vincenzi

Scholars seem to struggle in defining what populism is. Yet, two main features seem to run across many recent scholarly definitions of populism: First, the tendency to privilege the unilateral action of a charismatic leader, who claims to have a direct connection to the people and therefore a right to bypass traditional representative institutions; second, the fact that, by its nature, in claiming to satisfy the immediate needs of 'the people' and being fuelled by resentment against the elites, populism privileges sudden change over gradual reform.¹ Examples of both of these features can easily be found in recent news on both sides of the Atlantic and from political formations at both extremes of the political spectrum. One iconic image that comes to mind is that of the ministers of the Italian 'Five Stars Movement' celebrating the 'defeat of poverty in Italy' on 28 September 2018, after having unilaterally resolved to push the Italian deficit beyond the EU targets to fund their flagship measure, the 'Citizens' Income', and before having defined any details on how the measure would work.² On the opposite side of the political spectrum, one could think of the British Prime Minister Boris Johnson attempting to shut down Parliament in August 2019, aiming to rush the enactment of Brexit – deal or no-deal – so that the will of the people would not be betrayed.³

Where do the roots of such a style of political leadership and conduct lie? This chapter points at the Age of Revolution as a key moment in the genealogy of modern populism. At the end of the eighteenth century, the Western world faced dilemmas similar to those that we face today: How could the inequalities of the Old Regime be solved? How could sovereignty be put in the hands of the people? How, through what channel, should social and political change be pursued?

According to traditional narratives of the Age of Revolution, the answer that the age gave to these questions was popular sovereignty. This notion was particularly in vogue in the 1950s and 1960s, when historians labelled the revolutions of the late eighteenth century as 'democratic'.⁴ However, the idea that popular sovereignty was at the core of the upheavals of the

‘age’ finds supporters still today – Jonathan Israel’s recent *The Expanding Blaze* being an excellent example of the lasting power of this view – and still has appeal in the broader public.⁵ The view is, of course, far from universally accepted. The notion of an ‘age of democratic revolution’ has been criticised by many as a quaint and naïve, a typical Cold-War product.⁶ The historiography of the American Revolution, for example, has taken great steps in criticising this view, and it seems like no one today would wholeheartedly embrace the view that the American Revolution was a movement for democracy.⁷ Other historians have expanded the critique to the Age of Revolution overall, arguing that the upheavals of the late eighteenth and early nineteenth century did not aim to overthrow the Old Regime and Atlantic empires, and instead represented a phase of readjustment giving way to a revitalised imperial reality and a new age of colonialism.⁸

Both the ‘age of democratic revolution’ and ‘age of imperial revolution’ frameworks, however, tend to miss one crucial aspect of the Age of Revolution – what, in fact, seems to be the very core of the age: the introduction of a new notion of ‘revolution’, revolution as the destruction of the Old Regime and a possibility to create a new society on a blank slate, a society where ‘the people’ would truly be sovereign.⁹ The notion that the existing order could be wiped out and a completely new order could (and should) be created on the ashes of the Old Regime only took hold in the early 1790s, thanks to the example set by the Jacobins during the French Revolution. The French 1790s made ‘revolution’ an inescapable reference point for political and social change in the modern age, drawing many away from the idea (much more widespread until that moment) that popular sovereignty could be pursued by way of reform. A by-product of this notion of revolution was a model of revolutionary leader that one could define as ‘proto-populist’: the revolutionary leader as the charismatic figure that, in the name of popular will, acts outside the traditional institutions, promoting their destruction.¹⁰

If it is not uncommon to see the Age of Revolution as one of popular sovereignty, we are not used to seeing it as one of populism. With good reasons, we tend to associate populism with the late nineteenth century and after – an era of mass politics, mass media and organised political parties.¹¹ However, this chapter suggests that the category could also be usefully applied to the Age of Revolution, which was a movement for popular sovereignty but also a step in the genealogy of modern populism. If fully-fledged populist leaders only appeared in the nineteenth century, their ancestors can be found in the Age of Revolution.

This double-faced nature of the Age of Revolution seemed quite glaring to Filippo Mazzei (1730–1816). Physician, merchant, writer, (supposed) revolutionary hero, cultural broker and fierce supporter of popular sovereignty,

Filippo Mazzei was one of the most famous Europeans to have directly participated in the American Revolution. He spent most of the 1780s in Paris, working to promote the image of the United States in the European public, and from Paris witnessed the outbreak of the French Revolution. Historians of the Age of Revolution generally portray Mazzei as a sort of human bridge between the revolutions of the age, often associating him with figures such as Paine, Condorcet or Brissot. Like these intellectuals, we are told, Mazzei obviously saw the revolutions of his time as part of a unitary movement, originating from North America. Meaningfully, the title of the most recent volume on Mazzei situates him 'at the dawn of modern democracies'.¹²

Mazzei's understanding of his own age, however, was more complex than the story we tell about it. The question of *how* popular sovereignty could become the foundation of government, *through what process* power could be put in the hands of the people, was, for him, crucial. Concern over this guided him in interpreting and evaluating the upheavals of the age. As a result, he ended up praising some of those movements (such as the American Revolution and the Polish constitutional revolution) as successful examples of how popular sovereignty could be established, and condemning others (such as the French Revolution) for falling victim to self-styled popular leaders that had taken control of the crowd and abruptly turned the forces of change against the institutions (the monarchy and the National Assembly) entitled to guide the reform process.

Mazzei's views of the American Revolution suffered from a great deal of idealisation and should not be taken at face value. He depicted that revolution as more transformative, idealistic and democratic than it actually was, as a vast scholarship on revolutionary America has demonstrated.¹³ But it is not his views of America to which this chapter wants to bring attention. What is being investigated here is, instead, the reason why he went from exulting for what he saw as the establishment of a truly democratic republic (in America) to harshly criticising another attempt to establish a democratic republic (in France). Retracing the path that led him from a confident hope that the American experience would reinvigorate a movement for reform and popular sovereignty in the European states, to the failure of that hope in the face of the French events, introduces us to an early example of an anti-populist critique that complicates both our views of Mazzei's figure and of the Age of Revolution, and contributes to build a genealogy of populism and anti-populist discourse.

Mazzei and the Age of Revolution ultimately suffer from analogous tendencies to oversimplify them. Mazzei is generally depicted as one who loved popular sovereignty, and therefore loved revolutions. The Age of Revolution is understood as a movement for popular sovereignty, and therefore an inevitably revolutionary one. The assumption underlying both notions is that

revolution was *the* path towards popular sovereignty. Through Mazzei's eyes, this chapter complicates this narrative. It investigates Mazzei's belief that revolution was not the only (or the best) way to pursue a popular sovereignty that he, however, very intensely desired. Thus, Mazzei's example encourages a reflection – a very timely one, given our current political context – on how popular sovereignty is pursued, and on the benefits and unintended consequences of pursuing it by way of 'revolution', of idealistic demolition. By exploring both the benefits and drawbacks of the revolutionary option, this chapter suggests that the Age of Revolution was both a cradle of popular sovereignty and of populism.

There is no doubt that Mazzei valued popular sovereignty, and that he was extremely critical of how popular sovereignty was *not* a reality in the European states. His support of popular sovereignty is what brought him to America in the first place. Mazzei had always been a restless spirit. Already in his youth he had attracted the attention of the Inquisition for his rationalistic and intermittently atheistic ideas on religion, and his open aversion towards Church hierarchies won him an expulsion from his native Tuscany.¹⁴ It was this circumstance that, in 1755, led him to England, a land that he thought of as one where people were free to express whatever they believed.¹⁵ During his stay in London (1755–1772, with a few breaks), he entered into contact with the English radicals around John Wilkes, with the Corsican patriot Pasquale Paoli (1725–1807), but also with Benjamin Franklin (1706–1790) – at the time a colonial agent in London – and other American residents in town.¹⁶ Probably thanks to his acquaintance with these figures, Mazzei's views of Britain gradually changed. Franklin and Thomas Adams persuaded him that America was the only truly free and democratic land, and that the English were carrying out a scheme to deprive the American colonies of their freedom.¹⁷ Thus, sure that America would finally give him a happy existence, Mazzei left London and moved to Virginia in 1773. He had obtained permission from the Grand Duke of Tuscany, Peter Leopold (1747–1792), to export a variety of Tuscan plants to America and start a cultivation of Tuscan crops in Virginia.¹⁸ At his arrival in North America, Mazzei immediately entered into contact with some of the future leaders of the revolutionary movement, such as Thomas Jefferson – who was also his neighbour – and George Washington.¹⁹ He was immediately drawn in by the climate of turmoil and the fervour for the patriot cause, and participated actively in the American Revolution, for example by supporting the boycott of British goods, enrolling in a militia and writing in colonial gazettes.²⁰

Mazzei saw the American Revolution as a chance to build the most perfect political system that ever existed, one in which sovereignty would truly be in the people. In his *Instructions of the freeholders of Albemarle county to their*

delegates in convention (1776), Mazzei represented the relationship between the people and government through a metaphor which made governors and representatives employees of their electors: 'the People are the Land-Lord, the Representatives are the Steward', Mazzei wrote, and the representatives would only have power to the extent that the 'body of the People' – 'the only fountain of Power' – are willing to delegate to them.²¹ On this basis, he asked the Virginian representatives to elaborate for their state a truly democratic constitution, which would establish annual elections for political representatives, prevent anyone from holding political office for more than two years, and abolish birth rights and any form of social hierarchy. He also asked that any individual dispose of only one vote, independently of the extension of one's property, and that the number of representatives be proportionate to the number of voters.²² The American Revolution that emerged from Mazzei's American writings, in short, was a chance to build a reformed society along democratic lines. From this point of view, his ideas were certainly quite radical, and more radical than the average Virginian gentry's ideas, so much so that his friend Thomas Jefferson refused to read his *Instructions* to avoid being associated with Mazzei's relatively unpopular ideas on the future of the American constitutions.²³

Mazzei, however, believed that the perfection of the American republic lay in its capacity to balance, through its representative institutions, popular sovereignty and the need for order. This was the central message of Mazzei's most famous work, the *Recherches historiques et politiques sur les États-Unis de l'Amérique Septentrionale*, published in Paris in 1788.²⁴ Mazzei had returned to Europe four years earlier after failing to secure a spot in American diplomacy, and was working side by side with Jefferson to promote the image of the United States in Europe. In particular, his *Researches* aimed at defending the United States' reputation from the attacks of writers, such as the Abbé Mably (1709–1785), who argued that the American governors had not envisaged adequate safeguards against the danger that their democracy would degenerate into chaos.²⁵ Most importantly, he praised the wisdom of the American system, which had envisioned institutions that would be truly representative and prevent the creation of an aristocracy, while at the same time being centralised enough that they would succeed in maintaining order, according to the principle that 'the more complicated the machine, the more easily it can get out of order' and that 'power concentrated in a small group will be more forceful than in a larger one'. Mazzei went as far as to say that 'if a prince were just, wise, and attentive to his duty and if one could be assured his heirs would be like him, no one could ask for a better government'.²⁶ The American constitutions had been able to solve the unpredictability of hereditary power through popular sovereignty and representation, while at the same time keeping power concentrated enough to be manageable.²⁷

The prudence and judiciousness of the American constitutions, Mazzei argued, ensured that a hypothetical 'American Gracchus' would fail to win support and stir popular agitation.²⁸ The reference was, of course, to the Roman Tribune of the Plebs Tiberius Gracchus (c. 163–133 BC) and the turmoil he sparked in support of agrarian redistributive laws. 'A skillful, sly, and eloquent American Gracchus' producing a 'remonstrance devoid of the respect due an assembly representing the government', Mazzei argued, would face in the American republic a procedure that would make the remonstrance an object of public consideration and discussion, and would settle the matter without damaging public trust in the institutions.²⁹ Had the legislative institutions been found guilty of 'endangering public safety and passing laws opposed to liberty', the current representatives would have been 'dismissed from public service and new representatives would be chosen for a convention'. 'Everything would be set in order' and the representative institutions would have been reinforced instead of undermined.³⁰

The American Revolution itself, after all, had been an occasion to build a truly free and egalitarian state, but not the result of a utopian or aprioristically planned project 'to overthrow a system of government or change principles'.³¹ Mazzei charged the whole responsibility of the American crisis upon the British, accused of destroying the bond of affection that kept the Americans loyal to the British monarchy.³² In line with this narrative, he argued that just as 'Americans did not think of separating from Great Britain and did not conceive of being forced to such a fatal step', they had no 'thought of writing new constitutions'.³³ Mazzei presented the Declaration of Independence as a list of precise and 'incontrovertible facts' that had 'led [the colonies] to separate from Great Britain', and he criticised the Abbè Raynal's *Histoire des deux Indes* for speaking 'of the Declaration of Independence as if it were a naïve manifesto', concerned essentially with a question 'almost metaphysical in nature'.³⁴

Mazzei's account of the creation of the American republican institutions represented the process as very little 'revolutionary': not as a break from the colonial past, but as a smooth and almost natural evolution from it. Americans, he argued, 'were in a much better position than other nations (if we can believe history) when establishing their governments'.³⁵ They were 'morally different' from Europeans, better educated and less superstitious, and 'accustomed from childhood to deliberate'.³⁶ The absence of a hierarchy of social ranks and privileges made the American situation immune from the evils and 'horrors' that had afflicted the ancient classical republics and made it possible, therefore, for republicanism and democracy to thrive here.³⁷ The main point, which Mazzei made over and over again, is that democracy could work in America because of the absence of a hierarchy of social ranks

and privileges.³⁸ Moreover, they had a long experience of self-government that no other colonial people had, and that came from their colonial past.³⁹

By rooting the experience of the American Revolution in exceptional and uncommon preconditions, Mazzei's exceptionalism essentially extinguished the exemplary potential of the American experience.⁴⁰ If certain preconditions were needed to make something like the birth of the American republic possible, then it followed that the United States could not become a model to be mechanically applied to, let's say, the various realities of the European states. His statements in favour of the rights of man, of equality of access to vote and to offices, and of the freedom of the press were always confined to the specific situation of North America, and never developed into pleas for a universal revolution that would overthrow the Old Regime. He did not present the American Revolution as an invitation to wipe out the existing institutions in Europe and establish a new society fashioned according to ideal images of a democratic and republican society. There was nothing in Mazzei's treatment of the American Revolution that 'place[d] the republican system in opposition to the absolute monarchy', Edoardo Tortarolo argues.⁴¹ A friend of Mazzei, Pietro Paolo Celesia (1732–1806), defined him in a 1782 letter as one who 'Loves the Republic in that Part of the World, and Monarchies in Our Europe'.⁴² Even though saying, like Celesia did, that he *loved* European monarchies might be an exaggeration, it is true that there was nothing in his writings that made the American Revolution inherently antithetical to those forms of government.

Mazzei did not see the American experience as antithetical to a reformist path. In a European context, instead, he believed that monarchical and imperial reform was the way to go about solving the flaws of the Old Regime. This does not only emerge in an indirect way from his accounts of the American Revolution, but also explicitly from his writings on the state of France, most notably in an exchange that he had with his friend Condorcet in 1788, just a few months after the publication of the *Researches*. On that occasion, Mazzei accused Condorcet of being too anxious to revolutionise the structure of the French government and suggested that France should follow a path of gradual reform rather than one of abrupt revolution. The reform process, Mazzei argued, should be gradual and prudent; a 'desire for moving too far too soon' would only be counterproductive.⁴³ He also explicitly rejected Condorcet's idea that America should become an example for France, arguing that France was socially and culturally unprepared for a revolution such as the one that had taken place in America, and this suggested that reformers 'should be satisfied with taking much shorter steps'.⁴⁴ He restated the concept in another text published a few months later, where Mazzei favoured a path of incremental reform in France by comparing it to

a very sick person who chooses a long and patient recovery over a shock treatment that would deplete the little energies that the sick still has:

A people that, after living in oppression for many centuries, tries to free itself from oppression without taking into account all the prejudices and absurd institutions that still surround it is like a sick man who, although extremely weak due the lasting suffering and fever, dies as a victim of his own impudence, for using drugs that are too strong or for using too many at once. If that sick man had become aware of his own weakness and had employed drugs suited to his condition, if he had followed nature step by step instead of trying to go faster than nature itself, he would have triumphed thanks to his patience and courage and would have recovered strength and good health.⁴⁵

These words were written in the early months of 1789, and clearly reveal that Mazzei did not think that the evils of the Old Regime should be solved by way of revolution, by destroying the Old Regime itself. He was confident, instead, that that system could be reformed. His Florentine background certainly played a role in this. After all, the Grand Duke of Tuscany Peter Leopold in the previous years had carried out a courageous reformist programme inspired by ideas of popular participation in government, which culminated in a draft for a new constitution for Tuscany that grounded the legitimacy of monarchical rule in the consent of the subjects.⁴⁶ Programmes of reform were also being pursued in the Hapsburg Empire, the Kingdom of Naples, imperial Russia, Bourbon Spain, and France itself. This was the context in which Mazzei understood the American experience. And Mazzei was not alone in thinking this. Even Thomas Jefferson – who would later link his own political fate with that of the French Revolution – did not think that a revolution should happen in France. As late as 1789, in his personal correspondence, Jefferson expressed the hope that a process of reform would lead France to develop into a constitutional monarchy, similar to the English but deprived from its flaws.⁴⁷ Just like Mazzei, Jefferson of course had a very low opinion of monarchy and aristocracy. Just like Mazzei, he had no doubt about the superiority of the American system of government and, in an ideal world, he would have certainly wished that it could be applied everywhere.⁴⁸ But, like Mazzei, he believed that this could not happen, owing to the insurmountable difference that existed between the American and French societies: Frenchmen lacked the experience of self-government that Americans had from their colonial past. In addition, he believed that their poverty and Catholicism made them ignorant and too easily controllable by their rulers, and therefore unfit for self-government.⁴⁹ For this reason, in his correspondence to French friends he urged patience and gradualism, and in 1788–1790 he declared hopeful that the path of reform undertaken would lead to a positive change in the French constitution.⁵⁰ The process that the American Revolution had encouraged, in his view, was one of reform, not revolution.⁵¹

Over the years that followed, Mazzei watched France choose a different path that he had envisioned. A few months after his exchange with Condorcet, the French Revolution broke out. Mazzei witnessed the Storming of the Bastille from Paris. A few months after the publication of the *Recherches* in 1788, he had been unexpectedly hired as a diplomat at the service of Stanislaw II King of Poland (1732–1798), a sovereign who enjoyed the fame of being a great reformer. From Paris, Mazzei worked as an informer and envoy for the Polish king, whom he kept informed about the unfolding of the political situation and the ongoing debates among the French intellectual and political elites.⁵² He witnessed the storming of the Bastille with mixed sentiments of fear and excitement. The impetuosity and rapidity with which events unfolded gave Mazzei cause for distress. The excitement, of course, came from his conviction that something had to be done to correct the evils of the Old Regime. In 1789, it seemed like the time for change was finally coming.

His reaction to the French events, thus, was initially one of optimism for the path of reform that the National Assembly had undertaken. The reform process seemed to be securely guided by the Assembly and the king. In his letters to King Stanislaw, he minimised the significance of the current chaos. An 'aristocratic cabal' or 'hydra' was trying to oppose the path of reform taken by the National Assembly. Chaos and disturbance were nothing but the unavoidable consequences of such an opposition.⁵³ In October 1789, therefore, he reassured King Stanislaw that even though 'the shocks have been great' and 'some reforms (in my opinion) should have been less hasty ... *on the whole*, there is reason to be satisfied'.⁵⁴ On top of these considerations, Mazzei's letters kept reporting on public expressions of devotion to the king and his family, suggesting that, even in times of distress, the compact between the sovereign and his subjects remained sound.⁵⁵ When solicited by King Stanislaw on the topic, Mazzei also tried to reassure him on the character of the Parisian political clubs. With regard to the Jacobin club, Mazzei told him that even though some 'hot-headed deputies' belonged to it, it was 'frowned upon by many wise and worthy citizens'. As for himself, he had, along with his friends Condorcet, Sieyès and Lafayette, subscribed to the *Société de 1789*. He called it a club 'meant to generate order and quiet' (while the Jacobins 'aimed to set everything on fire'), of which Franklin and Washington were honorary members, and where the Polish king was held in the highest regard as '*a man ... who brings honor to the crown he wears*'.⁵⁶

Mazzei's optimism about the French Revolution extinguished between the summer of 1790 and 1791, when he started to fear that the hot-heads among the Jacobins and anti-institutional elements were taking over the club, and that the revolution was taking a different route. He started reading periodicals containing 'execrable remarks against the King' and he wrote

in his reports to the Polish king that the authors 'are not members of the National Assembly but of the Jacobin Club, within which, I am convinced, nestle the leaders of that wicked party which ... hopes to achieve its end by means of extreme disorder'.⁵⁷ Jacobin journals such as Marat's 'horrible sheet', *L'Ami de Peuple*, deserved indignation for the 'atrocities' with which they were filled, which were 'made expressly to provoke the populace'.⁵⁸ It seemed clear to Mazzei that those who now guided the revolution in the name of the people – figures such as Marat or Danton – were leading France into a state of anarchy.⁵⁹

What was happening in France did not seem like a continuation of the Enlightenment or an attempt to reform the Old Regime anymore. It now looked like something different than what had happened in America – a new kind of revolution, aiming to overthrow the very institutions that should have guided the reform process.⁶⁰ In 1791, Mazzei's accounts to the Polish king recounted the story in terms of 'friends of good order' and supporters of 'universal disorder'.⁶¹ The first group included people like Mazzei's good friend the Marquis de Lafayette – reformers, supporters of a constitutional monarchy. The second group included both the Jacobins and the aristocratic conservatives opposed to all kinds of reform – the two were not different in Mazzei's eyes. The damage that the 'fanatics and wretches' of the Jacobin club were provoking to France, he believed, was no smaller than that of the 'aristocratic cabal'.⁶² Both the 'friends of the ancient injustices and the new demagogues' aimed towards 'one goal only: universal disorder, chaos, and anarchy'.⁶³

For Mazzei, as for many others, Louis XVI's attempted flight marked a turning point.⁶⁴ It provoked a polarisation in French politics, it caused the French Revolution to take a decisive republican turn and, as a side effect, Mazzei's definitive disillusionment with the revolution. The most visible sign of this was the end of his friendship with Condorcet and his wife, Sophie de Grouchy. According to what Mazzei wrote to King Stanislaw, he remained deeply troubled by Condorcet's pamphlet *De la République, ou un roi est-il nécessaire à la conservation de la liberté?* (1791). Mazzei discussed Condorcet's republican conversion personally with him, restating his conviction that the Assembly and the monarchy should keep guiding a process of incremental reform, which would eventually lead to the creation of a constitutional monarchy. He expressed his belief that while 'a republican government might be suitable to a vast and well populated country ... the vaster and more populated it was, the more it was necessary to entrust the executive power to only one person', adding that 'what the first magistrate was called did not matter, but that it was necessary to give him a life-style such as to impress the multitude'.⁶⁵ Mazzei argued against Condorcet that the process of establishing popular sovereignty had to be guided, gradual

and careful. But the process that had begun in 1789 seemed to Mazzei to have remained guideless. Deeply disappointed by the path taken by the revolution, Mazzei decided to flee France. He left on 16 December 1791 and headed back to Tuscany.⁶⁶ It is from his Tuscan homeland that he learned of the execution of Louis XVI; he subsequently wrote to King Stanislaw that he '[did] not have the heart to speak of the unlawful, rash, violent, and tragic acts of the people of that country'.⁶⁷

Of course, Mazzei was not alone to criticise the demolishing turn that the French Revolution had undertaken. Anyone familiar with Edmund Burke's critique of the French events likely found similarities between the *Reflections on the Revolution in France* (1790) and Mazzei's debate with Condorcet. Mazzei's thought was not as systematic and refined as Burke's, and yet his example is maybe even more striking. While Burke carries with him the reputation of being the 'father of conservatism', historians have always portrayed Mazzei as a fighter for popular sovereignty, a father of 'modern democracies' – and with good reasons, as this chapter shows.⁶⁸ While some have explained Burke's opposition to the revolution as caused by a sort of conservative conversion, giving the same explanation for Mazzei is not possible.

Mazzei had not suddenly become an opponent of popular sovereignty. He had not suddenly become a fan of European monarchies. For example, he would be very critical, a few years later, of the harshness with which Italian monarchs repressed the republican and philo-Jacobin movements in Italy after the fall of the Sister Republics.⁶⁹ He had still no doubt that America was a better place than any European polity, precisely because he believed that sovereignty truly was in the people in America. His disappointment was with the *way* in which the French Revolution had attempted to pursue popular sovereignty. One could say – based on a definition of populism as a style of political conduct characterised by haste to fulfil a supposed will of 'the people', with a tendency to privilege the actions of charismatic leaders rather than traditional representative institutions – that Mazzei was disappointed with the 'populist' turn that the French Revolution had taken.

According to Mazzei, this happened between 1790 and 1791, as the Jacobins took over the course of the revolution. Historians have often called this phase, triggered by the king's flight to Varennes, the 'Second French Revolution'. The expression fits Mazzei's perception of the facts well: the events of 1790–1791 introduced a 'second', novel notion of 'revolution'. As studies by Keith Baker, Dan Edelstein and Erasmo Leso show, it was as a consequence of the French Revolution that the term 'revolution' took on the meaning that we give it today.⁷⁰ Until the early 1790s, 'revolution' was understood as a synonym of 'reordering', 'vicissitude' or 'disturbance'.⁷¹ The French Revolution's 'second', Jacobin phase gave a common word a new meaning: revolution came to indicate a 'collective political act ushering

in the birth of a new world' – a possibility to build a new society, where 'the people' would be sovereign, on a blank slate.⁷² While 'revolution' in its earlier meaning was not necessarily antithetical to reform, 'revolution' in its modern meaning became associated with tumultuous and unstoppable speed and destructive impetus. According to this new notion of revolution, destruction – wiping out the existing order – became an occasion for an idealistic refashioning of society, for building 'a new political order', 'a new order of things'.⁷³ What kind of order 'revolution' should bring about was very well defined: since the Second French Revolution the word 'revolution' started being consistently associated with the expressions a 'democratic order' or a 'popular order'.⁷⁴ Supporters of revolution announced that the birth of the new world – a truly democratic and egalitarian one – could happen here and now, that there was no need to wait further to sweep away the centuries-old legal traditions, customs, institutions and beliefs, that the edifice of the Old Regime could and should be torn down.⁷⁵ Revolution had become a radical alternative to reform and this turned Mazzei – a passionate lover of popular sovereignty – into a critic of revolution.

On 12 October 2019, the Italian 'Five Stars Movement' celebrated in Naples the tenth anniversary of the movement's foundation. Its founding father, the comedian Beppe Grillo, did not attend. Instead, he sent a video message, in which he appeared made up like the famous DC Comics anti-hero, 'the Joker'. He justified his physical absence from the celebration by saying that, had he been present, people would have asked him what his plans for the future were. He did not have plans, he answered, because making plans is foolish: 'I don't make plans. I just live. Chaos is the greatest kind of democracy of this century. And I am chaos, I am the real chaos'.⁷⁶

Most people watching Grillo's video in that night of October were probably just baffled. But, had Mazzei been alive, what would he have thought? We can speculate that he would have thought that this was his nightmare coming back again. He would have seen in that video what he had disliked about the Jacobin turn taken by the French Revolution: an inconsiderate and irrational way to pursue democracy, lacking care for the complexity of the context and respect for the institutions, which would lead to nothing but chaos.

Populism, Grillo's example and Mazzei's case study tell us, starts as a push for popular sovereignty, which could eventually evolve into a push to overthrow the representative institutions of the state. Looking at the Age of Revolution through the lenses of popular sovereignty and populism tells us how narrow the line dividing the two is – the French Revolution went from one to the other in a matter of weeks, with tragic outcomes. At the same time, revisiting the Age of Revolution through Filippo Mazzei's eyes suggests that 'revolution' – or, better, 'revolution' in its modern meaning – was not an inevitable path towards the pursuit of popular sovereignty. Looking

at the crisis of the Old Regime through Mazzei's eyes gives us insights into a variety of reformist options that the ultimate success of the French revolutionary model tends to obscure. It reminds us that there is not one single way to put sovereignty in the hands of the people: the Jacobin option – creating a blank slate by way of sudden disruption and demolition – was not the only option, and the 'second Revolution' was not destined to happen. What we could call a populist-revolutionary path was just *one* path that was taken and, just like today, it was not without alternatives.

Notes

- 1 D. Kelly, 'Populism and the History of Popular Sovereignty', in C. Kaltwasser *et al.* (eds), *Oxford Handbook of Populism* (Oxford, 2017), 511–530, at 511 defines populism as a style of political action, whose defining traits are aggressiveness and speed. M. Kazin, *The Populist Persuasion* (Ithaca, 2017), 3, 5 also defines populism as 'style' and 'impulse' rather than ideology. P. Taggart, 'Populism in Western Europe', in *Oxford Handbook of Populism*, 248–263, at 249 puts representation and the masses–elites relationship at the centre, defining as populists 'political parties whose approach sets them in an antagonistic relationship to elites, ... fetishizing the purity of the people as an undifferentiated mass and contrasting this with the nature of the elite and the establishment as tainted, unrepresentative, and indeed often corrupt'. Similarly, Jan-Werner Müller identifies the core of populism in the claim that populists alone are morally entitled to represent the 'real people'. Because they only see themselves as entitled to represent the people, Müller suggests that, once in power, populists become subversive of the representative institutions. J.-W. Müller, *What is Populism?* (Philadelphia, 2016). Mudde and Kaltwasser offer a minimal definition of populism as a 'thin-centred ideology' based on the Manichean distinction between the 'pure people' and the 'corrupt elite' and 'which argues that politics should be an expression of the *volonté générale* (general will) of the people'. C. Mudde and C. Kaltwasser, 'Populism', in M. Freeden *et al.* (eds), *Oxford Handbook of Political Ideologies* (Oxford, 2013), 493–512, at 498. Cf. C. Barker, 'Political Theory and its Problems with Populism', in M. Nadesan and A. Ron (eds), *Mapping Populism: Approaches and Methods* (New York, 2020), 227–235.
- 2 'Deficit al 2,4% Tria cede ai partiti. M5S: è la manovra del popolo', *Corriere della Sera*, 28 September 2018. J. Ewing and J. Horowitz, 'Why Italy Could Be the Epicenter of the Next Financial Crisis', *International New York Times*, 15 October 2018.
- 3 'Johnson Goes for Broke', *The Times of London*, 29 August 2019.
- 4 R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760–1800* (Princeton, 1959–1964).
- 5 J. Israel, *The Expanding Blaze: How the American Revolution Ignited the World, 1775–1848* (Princeton, 2017).

- 6 See for example, H. Applewhite and D. Levy, *Women and Politics in the Age of the Democratic Revolution* (Ann Arbor, 1993), 1; D. Armitage and S. Subrahmanyam, *The Age of Revolutions in Global Context, C. 1760–1840* (New York, 2010), xvi–xvii.
- 7 Recent historiographical accounts that characterise the American Revolution as an ‘imperial’ revolution – to be understood in a context of imperial competition – and depict it as less transformative, less radical, less inevitable and less remarkable than an older republican-idealist historiography did. The list could be very long but would certainly include M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (Oxford, 2003); J. Greene, *The Constitutional Origins of the American Revolution* (New York, 2010); E. Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Cambridge, MA, 2012); E. Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA, 2014); A. Taylor, *American Revolutions: A Continental History, 1750–1804* (New York, 2016); S. Pincus, *The Heart of the Declaration: The Founders’ Case for an Activist Government* (New Haven, 2016). See also M. Hale, ‘Regenerating the World: The French Revolution, Civic Festivals, and the Forging of Modern American Democracy, 1793–1795’, *JAH* 103 (2017), 891–920. Hale argues that democracy became a central feature of American political discourse only during the 1790s and suggests that the French Revolution played a key role in this development.
- 8 J. Adelman, ‘An Age of Imperial Revolutions’, *AHR* 113 (2008), 319–340. For a similar view, see also W. Klooster, *Revolutions in the Atlantic World: A Comparative History* (New York, 2009).
- 9 For the notion that the French Revolution contributed to a radical change in meaning of the word ‘revolution’, this chapter builds on work by Keith Baker and Dan Edelstein. See below, n. 70.
- 10 One could debate whether these notions of change and of political leadership were novel or had antecedents in previous events in human history – from 509 BC to the English Civil War and Cromwell, for example. This discussion would deserve more space than it can receive in this chapter, which instead focuses on the key role that the Age of Revolution – and the French and Jacobin revolutionary experience in particular – had in building a genealogy of modern populism.
- 11 C. Kaltwasser *et al.*, ‘Populism: An Overview of the Concept and the State of the Art’, in *Oxford Handbook of Populism*, 2–4.
- 12 The quotation comes from the title of the most recent volume on Filippo Mazzei: R. Pasta (ed.), *Agli albori delle democrazie moderne: Filippo Mazzei (1730–1816)*. In addition to this volume and for similar interpretations of Mazzei’s figure, see D. Echeverría, *Mirage in the West: A History of the French Image of American Society to 1815* (Princeton, 1957), 148–155; Palmer, *Age of the Democratic Revolution*, I, 245, 251, 253, 385–386, 423, 469–470; F. Venturi, ‘Libertas Americana’, in *Settecento riformatore* (Turin, 1969–1979), IV:I, 3–145, at 83, 91–94, 115–138; G. Billias, *American Constitutionalism*

Heard Round the World, 1776–1989: A Global Perspective (New York, 2009), 99–102. For another recent example, see Jonathan Israel's *The Expanding Blaze*. Israel never truly delves into Mazzei's biography and ideas, but systematically groups him together with the canonical figures mentioned in this paragraph. See Israel, *Expanding Blaze*, 17, 49, 55, 70, 76, 78, 100, 130, 248, 251–252. The best biography of Filippo Mazzei available today is still E. Tortarolo, *Illuminismo e rivoluzioni: Biografia politica di Filippo Mazzei* (Milan, 1968), which however partly endorses the view – criticised in this essay – of Mazzei as bridge between revolutions.

- 13 See above, n. 7.
- 14 Tortarolo, *Illuminismo*, 13–14.
- 15 Ibid., 14.
- 16 Ibid., 15–24.
- 17 F. Mazzei, *Memorie della vita e delle peregrinazioni del fiorentino Filippo Mazzei* (Lugano, 1845), I, 317–318.
- 18 Tortarolo, *Illuminismo*, 26.
- 19 Mazzei to Adams, 12 April 1773, in *PMSW*, I, 39.
- 20 Tortarolo, *Illuminismo*, 47.
- 21 Mazzei, 'The Instructions of the Freeholders of Albermarle County to their Delegates in Convention', *PMSW*, I, 91–92.
- 22 Ibid. Mazzei expressed the same ideas in 'Political Memorandum on the Forms of a New Government in Virginia', *PMSW*, I, at 104–105. See also Tortarolo, *Illuminismo*, 50–59.
- 23 Ibid., 49, 52–54.
- 24 F. Mazzei, *Recherches historiques et politiques sur les États-Unis de l'Amérique Septentrionale* (Paris, 1788). From now on, I will be citing from the 1976 English translation of the text: F. Mazzei, *Researches on the United States*, trans. and ed. C. Sherman (Charlottesville, 1976).
- 25 A. de Mably, *Observations sur les lois et le gouvernement des États-Unis d'Amérique* (Amsterdam, 1784). See Mazzei, 'Introduction', in *Researches*, 1–4; Tortarolo, *Illuminismo*, 108.
- 26 Mazzei, *Researches*, 86.
- 27 Mazzei also accused Mably of willingly ignoring that the American legislators had passed numerous laws aiming to prevent democracy from degenerating into anarchy, liberty of the press from degenerating into sedition, and the right to gather in an assembly from degenerating into tumult. See, for example, *ibid.*, 133, 135, 175.
- 28 Ibid., 136.
- 29 Ibid.
- 30 Ibid., 137. Mazzei, generally a more propagandistic than systematic writer, does not specify what process he was referring to.
- 31 Ibid., 175.
- 32 Ibid., 12–14, 31, 53–54, 58–64. See also, Mazzei, 'Letter from a Citizen of Virginia', *PMSW*, I, 77, 81; Mazzei, 'Ragioni per cui non può darsi agli Stati Americani la taccia di Ribelli', in P. Del Negro, 'Mazzei e gli Asburgo. Una

versione della rivoluzione americana “ad usum principum”, in *Atti del I congresso internazionale di storia americana ad oggi (1776–1976)* (Genoa, 1978), 235–244, at 241–243.

- 33 Mazzei, *Researches*, 65. For a similar argument on continuity between the British and American systems of government, see Mazzei, ‘Letter from a Citizen of Virginia’, *PMSW*, I, 78.
- 34 Mazzei, *Researches*, 269.
- 35 *Ibid.*, 78.
- 36 The first quotation comes from *ibid.*, 125, the second from 119. For the point that Americans are better educated than Europeans, see 119, 122, 125–126. For the notion that Americans are used to debating on public matters, see 119 and 126.
- 37 *Ibid.*, 121, 131.
- 38 *Ibid.*, 121.
- 39 *Ibid.*, 175. Mazzei accused Mably of mistakenly ‘imagin[ing] that our division of states into counties or districts, the election of representatives, and the establishment of juries are all modern institutions’. *Ibid.*, 115. For another passage where Mazzei rejects the argument on the ‘modernity’ of the American institutions, see *ibid.*, 120.
- 40 This has led some historians to call Mazzei’s attitude toward America ‘exceptionalist’. In this instance ‘exceptionalism’ has the double meaning of indicating a value judgement – the American experience as ‘exceptional’ because better, more perfect than any other earlier republican experiment – but also the singularity of the event – ‘exceptional’ as constituting an exception, as singularity: the excellence of the American republic was firmly rooted and only made possible by the singular and uncommon preconditions that had prepared the ground for it. On Mazzei’s American exceptionalism, see for example J. Greene, *Understanding the American Revolution: Issues and Actors* (Charlottesville, 1995), 108–110; Del Negro, ‘Mazzei e gli Asburgo’, 238.
- 41 Tortarolo, *Illuminismo*, 84.
- 42 Biblioteca Nazionale Centrale di Firenze, Celesia to Mazzei, 19 gennaio 1782, Appendice Capponi, Carte Mazzei. Quoted in Tortarolo, *Illuminismo*, 127.
- 43 We know of this discussion from a memorandum that Mazzei wrote on 21 November 1788. ‘Observations on the Important Issue Presently Being Debated in France, November 21, 1788’, *PMSW*, II, 67–73. See also Tortarolo, *Illuminismo*, 159–160.
- 44 ‘Observations on the Important Issue’, 72.
- 45 *Examen du gouvernement d’Angleterre comparé aux constitutions des États-Unis* (Paris, 1789), 287. The quotation comes from a note, written by Mazzei and included at the end of the volume. The volume was a French edition of J. Stevens, *Observations on government, including some animadversions on Mr. Adams’s Defence of the constitutions of government of the United States of America and on Mr. De Lolme’s Constitution of England, by a farmer, of New Jersey* (New York, 1787). The French edition came out in the early months of 1789 as *Examen du gouvernement d’Angleterre*. Mazzei and Condorcet

collaborated in the editorial enterprise, along with Pierre Samuel Dupont de Nemours, Évariste Gallois and the abbè Piattoli Scipione. Mazzei later mentioned this collaboration in his *Memorie*, I, 504–505. Tortarolo attributes to Mazzei the first and last notes (1 and 28; pages 67–68 and 225–240), as well as a section entitled ‘On the Changes Proposed by the State of Virginia’ in the conclusive pages of the volume (276–287) that includes the above quotation. See Tortarolo, *Illuminismo*, 161–163.

- 46 A. Trampus, *Storia del costituzionalismo italiano nell'età dei Lumi* (Bari, 2009), 124–126, 133, 192–202. A. Wandruszka, *Leopold II. Erzherzog von Österreich, Grossherzog von Toskana, König von Ungarn und Böhmen, Römischer Kaiser* (Vienna, 1963–1965), 192–193, 383–383, 390–391. B. Sordi, *L'amministrazione illuminata. Riforma delle comunità e progetti di costituzione nella Toscana leopoldina* (Milan, 1991), 293–343. ‘Idee sopra il progetto della creazione delli Stati’, ASF, Segreteria di Gabinetto, f. 167, ins. 21, www.circit.it/uploads/20_167_21bis.pdf. Accessed 5 September 2018.
- 47 See, for example, Thomas Jefferson to Richard Price, Paris, 8 January 1789, *PTJ*, XIV, 420–424; M. Philp, ‘Revolutionaries in Paris: Paine, Jefferson, and Democracy’, in S. Newman and P. Onuf (eds), *Paine and Jefferson in the Age of Revolution* (Charlottesville, 2013), 137–160, at 146; L. Kaplan, *Jefferson and France* (New Haven, 1967), 34; R. Palmer, ‘The Dubious Democrat: Thomas Jefferson in Bourbon France’, *Political Science Quarterly* 72 (1957), 388–404, at 397, 402.
- 48 For very harsh comments on monarchy and aristocracy, see, for example, TJ to James Madison, 20 December 1787, *PTJ*, XII, 438–443; TJ to George Washington, 2 May 1788, *PTJ*, XIII, 124–129.
- 49 TJ to Eliza House Trist, 18 August 1785, *PTJ*, VIII, 403–405; TJ to Edward Carrington, 16 January 1787, *PTJ*, XI, 48–50; TJ to Madison, 20 December 1787; ‘Memorandum Taken on a Journey from Paris into the Southern Parts of France and Northern of Italy, in the Year 1787’, *PTJ*, XI, 415–462. Philp, ‘Revolutionaries in Paris’, 146. Kaplan, *Jefferson and France*, 18, 28–29. Similarly to what seen above for Mazzei, Philp employs for Jefferson the expression ‘American exceptionalism’ with reference to his belief that an ‘American system of government’ could not be replicated everywhere. Philp, ‘Revolutionaries in Paris’, 145–146.
- 50 TJ to Lafayette, 28 February 1787, *PTJ*, V, 283–285; TJ to Rabaut de St. Etienne, 3 June 1789, *PTJ*, XV, 166–167. Kaplan, *Jefferson and France*, 35. P. Ziesche, *Cosmopolitan Patriots: Americans in Paris in the Age of Revolution* (Charlottesville, 2012), 25, 34–36. Palmer, ‘Dubious Democrat’, 396, 399. It is also important to notice that he often presented the king as an ally to that path of reform, and as an ally to the third estates and the enlightened parts of the aristocracy and the clergy: TJ to Eliza House Trist, 18 August 1785; TJ to Edward Carrington, 16 January 1787; TJ to William Carmichael, 8 May 1789, *PTJ*, XV, 307–308.
- 51 For America as an inspiration for French reform, see TJ to George Washington, 14 November 1788, *PTJ*, XIV, 531–535; TJ to Richard Price, 8 January 1789.

- 52 Tortarolo, *Illuminismo*, 157–158.
- 53 See, for example, Mazzei to King Stanislaw, 17 July 1789, 14 September 1789, 22 March 1790, *PMSW*, II, 169–171, 202–204, 301–304. See also, Tortarolo, *Illuminismo*, 164–168; H. Burstin, ‘Filippo Mazzei e le incognite della rivoluzione parigina’, in *Agli albori delle democrazie moderne. Filippo Mazzei (1730–1816)*, 88–91.
- 54 Mazzei to King Stanislaw, 19 October 1789, *PMSW*, II, 218. Emphasis in the original.
- 55 See, for example, Mazzei to King Stanislaw, 28 August 1789, *PMSW*, II, 273.
- 56 Mazzei to King Stanislaw, 26 April 1790, *PMSW*, II, 331–333. Mazzei, *Memorie*, II, 43. See Tortarolo, *Illuminismo*, 169–170; P. Ugniewski, ‘Filippo Mazzei au service de Stanislas-Auguste à Paris et à Varsovie (1788–1792)’, in *Agli albori delle democrazie moderne*, 131. Emphasis in the original.
- 57 Mazzei to King Stanislaw, 2 August 1790, *PMSW*, II, 398–399.
- 58 Mazzei to King Stanislaw, 19 January 1791, *PMSW*, II, 489.
- 59 Tortarolo, *Illuminismo e rivoluzione*, 185.
- 60 See Mazzei to King Stanislaw, 2 August 1790, 27 August 1790, 22 August 1791, *PMSW*, II, 398–400, at 398–399, 413–415, 625–627. See also Tortarolo, *Illuminismo*, 172–177; Burstin, ‘Filippo Mazzei’, 94–95.
- 61 See, for examples, the dispatches sent on 25 March 1791, 22 April 1791, 27 May 1791, 3 June 1791, 27 June 1791, 18 July 1791, 22 July 1791 and 16 September 1791. Of these, the 25 March and 22 July ones are missing from Marchione’s collection (*PMSW*) but are available in F. Mazzei, *Lettere di Filippo Mazzei e del re Stanislao Augusto Poniatowski*, ed. S. Gelli (Florence, 2016), 87–89, 255–265.
- 62 Mazzei to King Stanislaw, 2 August 1790, 18 July 1791, *PMSW*, II, 398–399, 598.
- 63 Mazzei to King Stanislaw, 22 July 1791, in *Lettere di Filippo Mazzei e del re Stanislao*, 261.
- 64 T. Tackett, *When the King Took Flight* (Cambridge, MA 2003).
- 65 Mazzei to King Stanislaw, 19 August 1791, *PMSW*, II, 622–623. On the relationship between Mazzei and Condorcet, see also Tortarolo, *Illuminismo*, 185. Tortarolo, ‘Filippo Mazzei e la costruzione della memoria rivoluzionaria’, in *Agli albori delle democrazie moderne*, 19–20.
- 66 Burstin, ‘Filippo Mazzei’, 96–99.
- 67 Mazzei to King Stanislaw, 18 February 1793, *PMSW*, III, 97–98, at 97.
- 68 In partial disagreement with the widespread view of Burke as the ‘father of conservatism’, R. Bourke, *Empire and Revolution: The Political Life of Edmund Burke* (Princeton, 2015) reckons that Burke was a reformer and not a conservative, and argues that there is coherence and continuity between his ideas on the American Revolution or Ireland and his positions on the French Revolution.
- 69 Mazzei to Thomas Jefferson, 30 August 1804, *PMSW*, III, 348.
- 70 K. Baker, ‘Revolution 1.0’, *JMH* 11 (2013), 187–219. The article partially builds on evidence illustrated in an older essay: K. Baker, *Inventing the French Revolution* (Cambridge, 1990), 203–223. D. Edelstein, ‘Do We Want

a Revolution Without Revolution? Reflections on Political Authority', *French Historical Studies* 35 (2012), 269–289. To some extent, Baker and Edelstein revive an argument already made by Furet, who wrote that 'the revolutionary event, from the very outset, totally transformed the existing situation and created a new mode of historical action that was not intrinsically a part of that situation'. F. Furet, *Interpreting the French Revolution* (Cambridge, 1981), 22. Quoted in Edelstein, 'Do We Want a Revolution without Revolution?' In his article, Edelstein criticises Furet for not taking into account that ideas of revolution changed over the course of the French Revolution itself, and for regarding the transformation as inevitable and preordained because born out of a Rousseauian ideology of popular democracy. At the same time, however, Edelstein and Baker's articles revive Furet's argument that the French Revolution introduced a radically new notion of revolution. A great deal of evidence in support of this argument (with reference to the Italian language and context in particular) is also offered by E. Leso, *Lingua e Rivoluzione: Ricerche sul Vocabolario Politico Italiano del Triennio Rivoluzionario 1796–1799* (Venice, 1991).

- 71 See S. Johnson, *A Dictionary of the English Language* (London, 1755), II, unpaginated ('Vicissitude'); 'Revolution', *The Law-French Dictionary Alphabetically Digested, to which is Added the Law-Latin Dictionary* (London, 1701); A. Antonini, 'Rivoluzione', *Dizionario italiano, latino e francese* (Lyon, 1770); F. Altieri, *Dizionario italiano ed inglese. A dictionary Italian and English, containing all the words of the Vocabulary della Crusca* (London, 1750) ('Rivoluzione' and 'Rivoluzione'); L. Franciosini, 'Rivoluzione', *Vocabolario italiano e spagnolo* (Venice, 1735). *Vocabolario degli Accademici della Crusca* (Venice, 1741) ('Rivoluzione').
- 72 Baker, 'Revolution 1.0', 200. See also Leso, *Lingua e Rivoluzione*, 228.
- 73 Ibid., 199.
- 74 Ibid., 226.
- 75 Ibid., 227, 230–233.
- 76 'Italia 5 stelle, Beppe Grillo apre il suo intervento a Napoli truccato da Joker: "Non faccio piani, sono il caos"', *Il Fatto Quotidiano*, 13 October 2019.

Popular sovereignty as populism in the early American republic

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On the eve of their Civil War, Americans could not stop bickering about popular sovereignty. Invocations of ‘the great principle of popular sovereignty and self-government’ peppered political rhetoric.¹ What Americans were debating was a public policy going by the loaded name of ‘popular sovereignty’. This narrow policy, advanced by the United States Democratic Party in the 1840s and 1850s, was meant to sidestep the polarising question of whether the federal government should allow slavery’s expansion. With ‘popular sovereignty’, Democrats instead empowered local majorities of white men in the federal territories to legalise or ban the institution. Democrats like U.S. Senator Stephen A. Douglas (1813–1861) of Illinois, the policy’s greatest proponent and an ardent advocate of majoritarian democracy, argued that direct democracy among white men would defuse the crisis over slavery. By labelling this specific proposal ‘popular sovereignty’, Democrats conflated white men’s supposed right to democratically determine the status of African Americans with ‘the American theory that the power of self-government is inherent in and emanates from the people’. This theory, Douglas explained, distinguished American constitutionalism from ‘the European theory that the King or Monarch is the fountain of justice and the source of all legitimate power’. Democrats thus applied a venerable theory – and one with radical democratic potential – to the republic’s most contentious moral and political issue.²

Countless Americans cried foul. ‘But shall not the people rule?’ Caleb Cushing (1800–1879) mockingly asked in 1860. Although a fellow Democrat, Cushing was a conservative who opposed Douglas’s expansive grant of democratic sovereignty to territorial settlers. He conceded that ‘This is a cry, which has a plausible sound ... I reply, – yes, the people shall rule’. Yet he specified that ‘they must rule rightfully and lawfully, not wrongfully and unlawfully; and they must be the people in fact, not in pretension merely’. The people’s democratic power required legal and constitutional restraints. ‘It avails nothing for those persons to talk to me about popular

sovereignty, self-government, and the rights of man', Cushing lectured. He was immune to such 'clap-trap phrases'.³

The dispute over slavery's expansion in the 1850s became couched in a larger, longstanding debate over whether popular sovereignty amounted to more than rhetorical claptrap. In the decades before the Civil War, Americans disagreed over the extent to which the theory of popular sovereignty inherited from the American Revolution should be put into practice. Thinkers suspicious of democracy would have preferred that popular sovereignty were, as some scholars have subsequently characterised it, merely a 'fiction', with the sovereign people no more than a 'mythical entity' or 'ghost'. After touring the United States in 1831–1832, however, Alexis de Tocqueville (1805–1859) reached a contrary conclusion. He recounted that popular sovereignty 'has been disengaged from all the fictions with which one has taken care to surround it elsewhere'. More reality than fiction, 'the principle of the sovereignty of the people is not hidden or sterile as in certain nations; it is recognized by mores, proclaimed by the laws; it spreads with freedom and reaches its final consequences without obstacle'. Popular sovereignty reached its 'final consequence' in the messy, substantive democracy that Tocqueville chronicled.⁴

Despite their reservations over democracy in the so-called 'Age of Jackson', conservatives did not repudiate popular sovereignty. Tocqueville discerned an American consensus regarding popular sovereignty. Part of this consensus, American conservatives had the tricky task of critiquing American democracy while accepting its premises and participating in it. 'Conservatives' included diverse political thinkers and actors in the early 1800s, from the few who rejected democracy outright to the more numerous who acknowledged popular sovereignty but sought to tame the theory in practice. Conservatives acclimated themselves to democratic self-governance, but they recommended that the people channel their sovereignty through constitutions and institutions as opposed to exercising it directly. Many conservatives would have been more comfortable with how Tocqueville described popular sovereignty in other nations, where it was a concept that, although 'at the foundation of almost all human institutions, ordinarily dwells there almost buried', with the result that, 'if sometimes it happens to be brought out in broad daylight for a moment, one soon hastens to plunge it back into the darkness of the sanctuary'.⁵

Jacksonian Democrats, however, would not let popular sovereignty repose in peace. In the early American republic, the party of Andrew Jackson (1767–1845) equated the theory of popular sovereignty with the routine practice of democracy on the part of white men. The Democratic Party was enthusiastic about those whom Jackson called 'the great body of

the people' ruling themselves, even when the people acted on their own initiative in defiance of their governments and constitutions. Jacksonians knew that average white men in the United States regarded themselves as sovereigns and demanded recognition of their right to govern themselves.⁶ Thus did 1850s Democrats like Stephen Douglas conclude that territorial settlers possessed sovereign power over slavery. Throughout the antebellum era, moreover, Jacksonians' democratic sensibilities led them to endorse even rowdy examples of self-government. They tended to welcome constitutional conventions, including extralegal ones, as moments when the sovereign people could revise or create new social contracts. Jacksonian Democrats also favoured energetic government, especially executive power wielded in the name of the people.⁷

For conservatives, however, Jacksonians' commitment to *popular sovereignty* facilitated dangerous *populism*. Conservatives saw the theory of popular sovereignty, as implemented by Jacksonian Democrats, degenerating into a political style that they knew as demagoguery and that today we refer to as populism. The American republic was susceptible to populist 'usurpation' because a radical notion of popular sovereignty rested at its foundation. In a nation in which the citizenry retain their sovereignty separate from the government, democracy threatened to devolve not simply into majoritarian tyranny but to disintegrate into the state of nature itself. Conservatives likened the people enacting their sovereignty, particularly in constitutional conventions, to the populist demagogue usurping the people's power. The tyranny of the majority and the usurpation of the demagogue acting in the people's stead seemed one and the same, because both the sovereign people and the populist usurper ignored the rule of law and abided by the laws of nature, heedless of institutions, constitutions and moral admonitions. Examining the conflicting attitudes towards popular politics held by Jacksonian Democrats and their conservative critics allows for an appreciation of how political thinkers in the early nineteenth century understood the connection between popular sovereignty and populism and how, for conservatives, the uniquely American theory of popular sovereignty slipped all too easily into distinctly American tyranny.⁸

In the early American republic the state of nature always beckoned, tempting the sovereign people to reforge their society. Even after the formation of government, the state of nature lingered within institutional interstices because the people retained their primordial power apart from the government. Tocqueville perceived that 'above all the institutions and outside all the forms resides a sovereign power, that of the people, which destroys them or modifies them at its will'.⁹ Unlike earlier social contract theorists, America's constitutional framers did not believe that the people surrendered their sovereignty upon exiting the state of nature. Instead, the

people remained sovereign over and above governmental officials and institutions. According to this radical departure, the people were free to act upon their reserved sovereignty when necessary, making them an important counterweight to their government.¹⁰

When the sovereign people circumvented their governmental agents, they drew upon a power similar to that which they originally enjoyed in the pre-political wilderness. The consonance between the people exercising popular sovereignty and the people operating in the state of nature troubled those who were already rattled by mass democratisation, white manhood suffrage, perfectionist reform movements and robust competition between political parties in the first decades of the nineteenth century – processes which reached their crescendo in the phenomenon historians call ‘Jacksonian Democracy’. Many observers anticipated that Jacksonian Democracy could relapse into the state of nature when the people translated their sovereignty into actual self-governance unmindful of institutional and constitutional restraints.

Conservatives sought to prevent the state of nature’s reemergence. In 1844 Calvin Colton (1789–1857), a pamphleteer for the conservative and anti-Jacksonian Whig Party, answered abolitionists who advocated emancipation of enslaved Americans on the ground of natural rights by cautioning, ‘the best authority, therefore, is not to go back to a *state* of nature – for that is where man first began, and is ... “a state of *despotism and wretchedness*”’.¹¹ Some conservatives foreclosed a return to the state of nature by thinking outside the liberal social contract tradition altogether. Pro-slavery political theorist John C. Calhoun (1782–1850) defanged appeals to natural rights and natural equality, such as those marshalled by abolitionists, by denying the very existence of the ‘hypothetical’ or ‘so called, state of nature’. Duties and rights took shape within ‘the social and political state’, the only reality humanity had ever known and one in which individuals had never been ‘free and equal’.¹² Calhoun had no patience for those who based rights and self-government in theory. Colton summed up the conservative response to Jacksonian Democracy: ‘No more theories. No more experiments’.¹³

Yet conservatives could not disregard states of nature and social contracts in a nation founded on those liberal precepts. John Quincy Adams (1767–1848), whose family had done so much to put social contract theory into effect by waging revolution and fashioning new polities during the American Revolution, acknowledged as much. ‘Every nation has a right as unquestionable to dissolve the bands of civil society, by which they are united, and to return to that state of individual imbecility in which man is supposed to have existed, previous to the formation of the social compact’, he admitted. But, qualified this erstwhile revolutionary, the right of revolution ‘ought never to be exercised, but in cases of extreme urgency’.¹⁴

Recognising an abstract right of revolution, conservatives imposed impossibly strict criteria for invoking that right as a means of revisiting the state of nature. In 1845 Whig legal scholar Rufus Choate (1799–1859) located the right of revolution outside of time. He desired ‘to place the power of revolution, overturning all to begin anew, rather in the background, to throw over it a politic, well-wrought veil, to reserve it for crises, exigencies, the rare and distant days of great historical epochs’. No fan of Jacksonian Democracy, he did pay lip service to the ‘American theory’ of popular sovereignty. The American Revolution had proved that Americans could make and unmake constitutions through orderly constitutional conventions or even ‘by revolution’. ‘This is the theory’, Choate granted, ‘But I do not know that any wise man would desire to have this theory every day, or ever, acted upon up to its whole extent, or to have it eternally pressed, promulgated, panegyricized as the grand peculiarity and chief privilege of our condition’. Ensuring that theory was never put into practice prohibited the sovereign masses from casting society back into the state of nature.¹⁵

Yet there was one moment when Americans undeniably acted in their sovereign capacity in a forum evoking the state of nature – the constitutional convention. To the consternation of conservatives, the early nineteenth century was a period of continuous constitution-making. Tocqueville cited the fact that ‘almost all the American constitutions have been amended within thirty years’ as evidence that majoritarianism ‘renders the law unstable’ in the United States. He recorded this observation in 1835, before even more constitutions were revised or rewritten and before additional states came into the Union.¹⁶ As federal territories were formally organised and as new territories were conquered or annexed, they required constitutions before becoming states. Older states also democratised their polities with new or revised constitutions. In what historian Silvana R. Siddali calls ‘the great age of state constitutional revision’ between the 1820s and 1850s, attempts to overhaul constitutions occurred in every state. Conservatives could not obscure the right of revolution behind Choate’s ‘well-wrought veil’ when the sovereign people were regularly ripping up, rewriting and drafting fundamental charters in all-too-frequent conventions.¹⁷

The constitutional convention was an institutional legacy of the American Revolution’s reformulation of popular sovereignty. According to the distinct constitutionalism imparted by the Revolution, conventions are not representative bodies but are the people themselves in their sovereign, constituent capacity. While this constitutional innovation could serve to diminish the power of the sovereign people in daily governance, the potential for the people to emerge out of abstraction apart from and even antagonistic to their government alarmed conservatives. Zealous proponents of popular sovereignty, particularly among Jacksonian Democrats, contended

that nothing could constrain a convention. Thus a worried member of the more conservative Whig Party in Indiana privately wrote to a delegate to their state's 1850–1851 constitutional convention, inquiring, 'What are you all doing there? And what will you do? Turn the inside of the world out & the out side in? I fear at least as much if not worse will be attempted'. Another onlooker told a Whig convention delegate, 'I regret that there is so much radicalism in your Honourable body'. A state of nature had opened up in Indianapolis.¹⁸

Constitutional conventions, especially when meeting without governmental authorisation, were wormholes through which the people transported society back to the state of nature in order to reconstitute social and political order.¹⁹ Alongside legally sanctioned constitutional conventions called by state legislatures, the early American republic was home to a dizzying array of what Calhoun and others denounced as 'self-created assemblage[s]'. These unauthorised bodies claimed to act on behalf of the sovereign people and included irregular constitutional conventions, mob politics, secessionist and separatist movements, political party conventions and vigilante organisations.²⁰ That the people routinely took it upon themselves to act like the sovereign disconcerted the stewards of social order.

Jacksonian Democrats, meanwhile, encouraged efforts to democratise state governments through constitutional revision and even countenanced extralegal conventions of 'the people'. In 1837 the staunch Jacksonian Thomas Hart Benton (1782–1858) of Missouri defended conventions that met without consent from state legislatures in Michigan and Maryland by citing 'the inherent and unalienable right of the people to meet in convention of their own mere will and motion, and change their form of government at their pleasure'.²¹ Jacksonians rallied behind the era's most notorious case of irregular constitution-making, when Rhode Islanders defied their legislature by convening illegally to create a new constitution and government during the Dorr Rebellion of the early 1840s. Numerous Democrats, including Andrew Jackson himself, cheered what Massachusetts Democrat Benjamin Hallett (1797–1862) called Rhode Islanders' 'work of abolishing old and establishing new forms of government'. Hallett rejected the conservative quibble that legislative approval was necessary to summon a convention. 'The position may seem plausible and eminently conservative, that it will not do to trust the mass of community with the power to assemble together', he moralised, 'but this is not an American principle'.²² Jacksonians like Hallett asked those wary of the people acting on their own, 'Well, then, if we have this sovereignty, how and when and by what process may it act? Does it really exist in practice or only in abstraction?'²³

Conservatives agreed with Jacksonians on popular sovereignty as an 'abstraction' but diverged on the 'practice'. Even Calhoun, hostile to

majoritarian democracy and the social contract tradition, validated the convention as ‘a meeting of the people in the majesty of their power – in that in which they may rightfully make or abolish constitutions, and put up or put down governments at their pleasure’.²⁴ In 1858 Samuel S. Nicholas (1796–1869), a conservative Kentucky jurist, similarly referenced ‘our fixed American ideas as to the right of a people to remodel their frame of government’. Yet such conservatives shunned extralegal conventions. Nicholas insisted that constitutional revisionists had to adhere to an extant constitution’s amendment process. Relying upon ‘the inalienable right of rebellion or revolution’ to hold a convention when a constitution ‘provides a reasonable mode for its amendment’ was illegitimate.²⁵ On the question of altering a constitution for Kansas without abiding by the document’s amendment provisions, a correspondent advised a Democratic congressman: ‘Abstractly, the people have an undoubted right to change their form of government, regardless of the existing organic law’. Concurring with Nicholas, he continued, ‘but, it is the *right of revolution*, and the use can only be justified under the plea of pressing necessity’.²⁶ Conservatives also added the caveat that a government had to acquiesce in its own refurbishing by authorising conventions. Calhoun condemned an 1836 Michigan convention that met without permission from the state legislature. He contrasted this ‘informal, irregular, self-constituted assembly’ with the legitimacy of ‘a convention of the people of the State, regularly convened under its constituted authorities’. Such procedural safeguards guaranteed that the sovereign people would not take theory too far by using constitutional revision as an opportunity to re-enter the state of nature.²⁷

Nicholas went beyond these explicit stipulations by intuiting additional, unwritten limitations on conventions. Fretting over a constitutional convention in his state of Kentucky in 1849, he disputed delegates’ belief that they enjoyed ‘the *power*, in contradistinction to the *right*, to do anything and everything they please’. ‘This absolute power, thus broadly claimed’, Nicholas lectured, ‘does not exist, and public sentiment should be kept right or set right on that subject. The principle affirmed is most pernicious and anti-republican. It caused all those bloody atrocities of that reign of terror which signalized the French Revolution with such enduring infamy’. He argued instead that an ‘inherent’ and ‘implied limitation’ circumscribed conventions. Implicit constraints prevented constitutional conventions from violating individual rights or property rights, the protection of which had to be the goal of all constitutions anyway. There were things the sovereign people simply could not do, even in convention.²⁸

In addition to hemming in their conventions, conservatives also defined ‘the people’ in a way that diluted their sovereignty. Thomas W. Dorr (1805–1854), who led Rhode Islanders into the state of nature to inaugurate a new

political order during the Dorr Rebellion, asserted that 'the actual, living majority of the day possess the true sovereignty of the country, & have a right to investigate, review & amend its political Constitution'. For conservatives, however, 'the people' were not Dorr's 'actual, living majority of the day' but were an intergenerational collectivity organically united through time.²⁹ Rufus Choate wanted to correct 'the pernicious sophism that the successive generations, as they come to life, are but as so many successive flights of summer flies, without relations to the past or duties to the future'. The truth was 'that all – all the dead, the living, the unborn – were one moral person, ... that the engagements of one age may bind the conscience of another'. An intergenerational 'people' could not contract with one another at the same moment. Choate informed Americans, who had 'learned from Rousseau and Locke, and our own revolutionary age, its theories and its acts, that the State is nothing but a contract', that the state was, in fact, a 'corporate being'. The people were sovereign; they may have once contracted with one another to leave the state of nature, but they could never do so again, placing a check on the practical application of their theoretical sovereignty.³⁰

Without restraints on the people's sovereignty, conservatives feared that constitutional conventions would usher in democratic anarchy. Democratic self-governance, galvanised by the awesome power of popular sovereignty, seemed to offer no more security than the state of nature. But conventions promised more than democratic instability. They also allegedly exposed the polity to despotism, because conventions allowed demagogues direct access to the people's distilled power. The Whig who agonised that Indiana's constitutional convention would 'Turn the inside of the world out & the out side in' detected a more immediate peril than unruly efforts to expand democracy. The convention itself was an arena for populist seduction. Democrats in the convention, he grumbled, were kowtowing to the masses with pledges to further democratise the state government and with lies about 'their confidence in the people & their readiness to trust them'.³¹ When convened in their sovereign capacity, the people presented a ripe target for demagoguery. Popular sovereignty was power, and conservatives were apprehensive over the people transferring their power to a usurping demagogue. Democracy veered towards tyranny when popular sovereignty empowered populist usurpation.

As good republicans, Americans were always on guard against the usurper and those who would elevate him to power. With Jackson and his supporters in mind, Nicholas warned of 'a class of politicians in this country who have long been suspected of having no great love or admiration of our republican institutions' and who were 'rather impatient for the advent of some bold, great man sufficiently powerful to do away with the idle trumpery of a constitution, and relieve us from the trouble of governing

ourselves'.³² Democrats shared this anxiety. In 1859 Stephen Douglas, often charged with demagoguery himself, received reports from an ally in Missouri about 'intriguing demagogues [*sic*], who aim to control the ballot Box by ingenious, plausible sophistries, to deceive the masses'. All Americans considered usurpation, defined as the illegitimate seizure and exercise of power, as an existential threat to their republic.³³

Jacksonians and conservatives nonetheless differed as to the source of usurpation. Although avowed majoritarians, and while often accused of fostering the tyranny of the majority, Jacksonians could not fathom the majority as a despotic force. Trusting in the virtue of 'the people' and also advocating limited government, Democrats did not believe that the majority would or could use the state to oppress minorities as conservatives predicted. Minority cabals and a grasping government instead conspired to thwart the people's will. U.S. Senator James Buchanan (1791–1868), a leading Democrat from Pennsylvania, dismissed the argument that legislatures had to sanction constitutional conventions as a brief for 'legislative usurpation', with usurpation here reckoned as stymying the sovereign will of the people.³⁴ Benjamin Hallett meanwhile spoke of 'the usurpation of the minority' in its resistance to Rhode Islanders' determination to democratise through constitutional revision. For Jacksonians, usurpation resulted from curbing the majority not from indulging it.³⁵

The conservative critics of Jacksonian Democracy reached the opposite conclusion. In a republic premised on popular sovereignty, conservatives expected tyranny to come clothed in democratic garb. As Tocqueville reflected, 'National will is one of the terms that intriguers in all times and despots in all ages have most largely abused'.³⁶ Tyrants came to power by claiming the people's imprimatur. This danger was more pronounced in the United States, where the people had sovereign power to bequeath. Americans were of a divided mind – they extolled the sovereignty of the people, yet many simultaneously worried that the self-governing people would fall prey to demagogues. In 1852 Whig Party polemicist Horace Greeley (1811–1872) seconded Tocqueville, observing, 'What the sycophant, the courtier, is to the Sovereign Prince, the demagogue is to the Sovereign People'.³⁷ To explain how Jackson won the presidency in 1828 despite being 'wholly unfit', fellow Whig Alexander Hill Everett (1790–1847) surmised that his victory could 'be attributed in part to the sort of caprice which sometimes prevails in popular, as well as in arbitrary governments. King Demos [Demos], like other sovereigns, has his moments of wantonness'. 'Jacksonism' was a perversion of democracy, one that 'addresses itself to the worst passions of the least informed portion of the people'. Everett diagnosed Jacksonism as a 'political disease, naturally incident to free governments'. Democratic

government based on popular sovereignty, such conservatives anticipated, was ripe for populist excess.³⁸

Jacksonian Democrats were the quintessential populist demagogues for such conservatives. Not only did Democrats more eagerly embrace majoritarian democracy and democratising constitutional conventions, they also crafted an enduring populist script for Americans to follow when practising democracy. The Jacksonian political narrative pitted the virtuous masses against undemocratic monopolies. According to historian Harry L. Watson, 'Jackson repeatedly cited the first key tenet of his populist creed – faith in the popular majority, usually as channeled and embodied by himself'.³⁹ With Jackson and their party at the helm, Democrats looked to government to strike down the people's amorphous foes, which could take the form of economic privilege, condescending aristocrats or racial others. A Democratic pamphlet set forth the Jacksonian view: 'The sovereignty of our republic is the concentrated power of the people, and the government is its executive agent. As the people vote, so will they characterize their government, for good or evil, for vigor or imbecility, for success or failure'.⁴⁰

Imagining the government as the 'executive agent' of popular sovereignty became a hallmark of American populism, a disturbing prospect for conservatives who preferred institutional barriers to direct democracy. The 1890s Populist Party, for instance, declared: 'We believe that the power of government – in other words, of the people – should be expanded'.⁴¹ Republican political thought had traditionally differentiated between governmental officials and the people, the rulers and the ruled, thereby positioning the people to police their potentially tyrannical government. Jacksonian thought undermined this distinction by equating the people with their government, at least when Democrats controlled the state. Jacksonians envisioned the presidency in particular as the instrument of the people's sovereignty. In 1840 Whig Calvin Colton regarded Democrats' 'concentration of influence in the national Executive' under Jackson's successor Martin Van Buren (1782–1862) as 'the violation of this vital principle of democracy'. For conservatives, the democratically enabled executive acting in the people's name represented a usurper who would betray the people and destroy true self-government.⁴²

In amassing power, the usurper, furthermore, like the people in convention, flouted the rule of law and scoffed at institutional impediments. Nicholas, inveterate foe of unchecked power, decried 'absolute arbitrary power over the lives, liberty, or property of freemen' when assumed by conventions.⁴³ He employed similar rhetoric to denounce 'the arbitrary will of a self-appointed dictator' as evinced by Andrew Jackson in his earlier military career. In an 1842 essay condemning martial law as unrepugnant,

Nicholas held that General Jackson, by instituting martial law during the War of 1812, had usurped ‘the highest attributes of sovereign power, far above the power of ordinary legislation: the power to revoke or suspend existing constitutional law, and the power to substitute other law in its stead’ – the same usurpations committed by constitutional conventions. Jackson, with his party following his lead, did the same as president in the 1830s, when Democrats defended both his high-handed actions and the people’s illegitimate conventions. In 1837 Calhoun arraigned a Democratic senator for maintaining ‘that a mere majority might, at their pleasure, subvert the constitution and government of a State, – which he seemed to think was the essence of democracy’.⁴⁴ Democrats, like their chieftain, apparently had no qualms bypassing established constitutional authority, especially if they could conjure ‘a mere majority’ to justify themselves as Jackson always did.

The language conservatives used to attack what Everett called ‘the usurpation of Jackson’ echoed that used to express concern about the sovereign people meeting in constitutional conventions, because the power sought by demagogues was akin to that exercised by overzealous conventions.⁴⁵ Nicholas contended that if a convention ‘repealed the present Constitution’ and claimed illegitimate power in the resulting constitutional vacuum, it would be guilty of ‘attempted usurpation’ and ‘society would be dissolved into its original elements’. So too, according to Everett, would Jacksonian populism terminate in tyranny after having ‘brought the people to acts of open violence, and broken down the existing forms of government’.⁴⁶ The sovereign people in convention and the demagogue aligned in their defiance of constitutional order.

The alliance between the unscrupulous demagogue and the people was cemented in the convention. Calhoun analogised extralegal sovereign conventions with political party conventions masterminded by wire-pulling politicians. Little seemed to separate an irregular constituent convention in Michigan that met to consider a constitutional question from the Democratic Party’s 1836 national presidential nominating convention. Party nominating conventions were new in the 1830s. Both conventions Calhoun fumed, had ‘been dignified with the name of a convention of the people’. Andrew Jackson, Calhoun charged, had engineered his party’s ‘mock convention of the people’, underscoring its artificial nature. ‘Through its instrumentality he has succeeded in controlling the voice of the people’, groused Calhoun, ‘and for the first time the President has appointed his successor; and thus, the first great step – of converting our Government into a monarchy, has been sustained’.⁴⁷ The unique status of conventions, through which the sovereign people supposedly acted, allowed the usurper to coerce them and to presume to speak in their name.

The usurper, like the extralegal constitutional convention, embodied the state of nature because he relied upon an elemental source of power beyond institutions and antecedent to constitutions – the power of the sovereign people. Charles Eliot Norton (1827–1908), a conservative intellectual in Massachusetts, critiqued the European revolutionaries of 1848 for their ‘assumption that wisdom and power are derived directly and immediately from the people’. He recounted that exiled Hungarian revolutionary Louis Kossuth (1802–1894), while touring the United States, had told an American audience, ‘I know that I have the honor to be in a country where the Sovereign is not the Government, but the People’. Norton accused Kossuth of having ‘set the people above the government which they themselves had chosen and established; and he appealed from the constituted authority to popular passion’. Norton sourly noted that Kossuth’s rhetoric ‘was received with applause and with satisfaction by the foolish crowd of fickle followers, by whom he was then flattered with unworthy adulation’.⁴⁸ The demagogue flirted with a power that originated in the state of nature. Pandering to the people was bad enough, but pandering to a *sovereign* people made the populist political style especially menacing because that power transcended ‘constituted authority’.

The ease with which popular sovereignty slipped into populism prompted conservatives to situate democracy and despotism on a continuum – they were not mutually exclusive categories in the early American republic. As Jackson’s reelection loomed in 1832, Everett shrieked that ‘the spirit of Jacksonism’ constituted a homegrown ‘JACOBINISM’. Jacksonism demonstrated ‘two distinct tendencies – one towards disorganization and anarchy, the other towards despotism and a concentration of the whole power of society in the hands of a single ruler’. Democratic excess and tyrannical usurpation reinforced one another under Jacksonism – ‘Its Alpha is ANARCHY, and its Omega DESPOTISM’.⁴⁹ In an age of mass democracy and regimented partisan politics, many Americans likewise felt adrift between the ‘Scylla and Charybdis of anarchy and despotism’, as Nicholas described their plight.⁵⁰

Nicholas ultimately saw no difference between ‘lynch law’ or ‘mob law’ enforced by the people and ‘martial law’ decreed by a ‘military despot’ like Jackson. Democratic anarchy and autocratic despotism melded. ‘They are equally the same arbitrary usurpation of power’, Nicholas concluded.⁵¹ Whether perpetrated by the demos or by the despot, the illegitimate usurpation of power in the name of the people imperilled ordered liberty. The usurper claimed primordial legitimacy – that of the sovereign people. For most Americans in the early republic, the people *were* sovereign, a theoretical consensus that inspired majoritarian democracy. Conservatives registered

their dismay over this democratisation by updating the demagogue, scourge of the classical world. In a polity in which the people's sovereignty was more than abstract, the populist usurper was a more vexing manifestation of the ancient tyrant because he was animated by the modern theory of popular sovereignty. The people themselves, however, with their capacity to empower demagogues or to fundamentally alter constitutions at will were the true antagonists to social order. The populist usurper merely embodied anxiety over this sovereign people in the early American republic. Sounding the alarm over the populist was a way to vainly rail against the otherwise ascendant and exceptionally American idea of popular sovereignty.

Notes

- 1 S. Douglas, *Remarks of the Hon. Stephen A. Douglas, on Kansas, Utah, and the Dred Scott Decision. Delivered at Springfield, Illinois, June 12th, 1857* (Chicago, 1857), 6.
- 2 S. Douglas, *Popular Sovereignty in the Territories: Judge Douglas in Reply to Judge Black* (n.p., [1859]), 4; J. Lynn, *Preserving the White Man's Republic: Jacksonian Democracy, Race, and the Transformation of American Conservatism* (Charlottesville, 2019).
- 3 C. Cushing, *Speech of Hon. Caleb Cushing, in Norombega Hall, Bangor, October 2, 1860, before the Democracy of Maine* (n.p., [1860]), 3.
- 4 Tocqueville, *Democracy*, 55, 53. For popular sovereignty as a legitimising 'fiction', see E. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988). For the 'fictitious people' as a 'mythical entity' or 'ghost' animating popular sovereignty, see J. Miller, 'The Ghostly Body Politic: *The Federalist Papers* and Popular Sovereignty', *PT* 16 (1988), 99–119, quotations on 104.
- 5 Tocqueville, *Democracy*, 53.
- 6 A. Jackson, 'Second Annual Message', 6 December 1830, in J. Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents, 1789–1897* (Washington, DC, 1896–1899), II, 511.
- 7 On antebellum and Civil War-era conservatism and Jacksonianism, see Lynn, *Preserving*; J. Lynn, 'Stephen Douglas's Enlightenment: Democracy, Race, and Rights in Civil War-Era Political Thought', *Civil War History* 66 (2020), 272–294; R. Shalhope, *The Baltimore Bank Riot: Political Upheaval in Antebellum Maryland* (Urbana, 2009); and A.I.P. Smith, *The Stormy Present: Conservatism and the Problem of Slavery in Northern Politics, 1846–1865* (Chapel Hill, 2017), esp. 34–42.
- 8 Democratic populism's illiberal tendencies are of current concern. P. Corduener, 'The Populist Conception of Democracy beyond Popular Sovereignty', *Journal of Contemporary European Research* 10 (2014), 423–437; F. Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York, 2003).

- 9 Tocqueville, *Democracy*, 165.
- 10 Morgan, *Inventing the People*; G. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, 1969).
- 11 Colton was quoting Nathan Dane in this passage. Junius [pseud., C. Colton], *The Junius Tracts. No. V. Political Abolition* (New York, 1844), 11–13, quotation on 12. Emphasis in the original.
- 12 J. Calhoun, ‘A Disquisition on Government’, in Calhoun, *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. R. Lence (Indianapolis, 1992), 44–45. Calhoun did, nonetheless, affirm the social contract tradition’s ‘glorious right of rebellion and revolution’ as ‘the last remedy’. J. Calhoun, ‘Speech on the Same Subject, Delivered in the Senate, January 5, 1837’, *WJCC*, II, 615–616.
- 13 Junius [pseud., C. Colton], *The Crisis of the Country* (New York, [1840]), 11.
- 14 Publicola [pseud., J.Q. Adams], *Observations on Paine’s Rights of Man, in a Series of Letters* (Glasgow, [1792]), 13.
- 15 R. Choate, ‘The Position and Functions of the American Bar, as an Element of Conservatism in the State: An Address Delivered before the Law School in Cambridge, July 3, 1845’, in R. Choate and S. Brown, *Works of Rufus Choate with a Memoir of His Life* (Boston, 1862), I, 432–433; D. Howe, *The Political Culture of the American Whigs* (Chicago, 1979), 225–237. Choate borrowed the veil metaphor from E. Burke, *Reflections on the Revolution in France*, ed. J.G.A. Pocock (Indianapolis, 1987), 17.
- 16 Tocqueville, *Democracy*, 238–239.
- 17 S. Siddali, *Frontier Democracy: Constitutional Conventions in the Old Northwest* (Cambridge, 2016), 3, 6–8. Christian Fritz clarifies that a robust, but not uncontested, understanding of popular sovereignty ‘supplanted the last-ditch right of revolution with an ongoing, inherent right of the people to revise their constitutions after Independence’. For debates over the extent of the people’s sovereignty in early American constitutionalism, see C. Fritz, *American Sovereigns: The People and America’s Constitutional Tradition before the Civil War* (Cambridge, 2008), 235.
- 18 George G. Dunn to A.B. Conduitt, 16 October 1850, William Hayden English Family Papers, Manuscript and Visual Collections Department, William Henry Smith Memorial Library, Indiana Historical Society, Indianapolis; B.W. Oakley to Allen Hamilton, 13 December 1850, Hamilton Family Papers, Manuscripts and Rare Books Division, Indiana State Library, Indianapolis; Fritz, *American Sovereigns*; T. Tate, ‘The Social Contract in America, 1774–1787: Revolutionary Theory as a Conservative Instrument’, *WMQ* 22 (1965), 375–391; Wood, *Creation*, 306–343.
- 19 For antebellum conventions as bodies responsive to the popular will as they democratised state politics and reconsidered fundamental questions of social and political order, see Siddali, *Frontier Democracy*. On conventions’ role in revising ‘fundamental law’, see P. Herron, *Framing the Solid South: The State Constitutional Conventions of Secession, Reconstruction, and Redemption, 1860–1902* (Lawrence, 2017), especially 37–68 on how antebellum southern conventions simultaneously democratised for white men and strengthened slavery.

- 20 J. Calhoun, 'Speech on the Bill for the Admission of Michigan, Delivered in the Senate, Jan'y 2, 1837', WJCC, II, 593; C. Fritz, 'Popular Sovereignty, Vigilantism, and the Constitutional Right of Revolution', *Pacific Historical Review* 63 (1994), 39–66.
- 21 J. Buchanan and T.H. Benton, *Speeches of Messrs. Buchanan and Benton, on the Bill to Admit the State of Michigan into the Union. Delivered in the Senate, January 3, 1837* (n.p., [1837]), 12.
- 22 B. Hallett, *The Right of the People to Establish Forms of Government. Mr. Hallett's Argument in the Rhode Island Causes, before the Supreme Court of the United States, January, 1848* (Boston, 1848), 10, 40–41. On Democratic support for Dorr, see Fritz, *American Sovereigns*, 247, 257–259. On the Dorr Rebellion, see Fritz, *American Sovereigns*, 246–276; and W. Wiecek, "'A Peculiar Conservatism" and the Dorr Rebellion: Constitutional Clash in Jacksonian America', *American Journal of Legal History* 22 (1978), 237–253.
- 23 Hallett, *Right*, 39–40.
- 24 Calhoun, 'Speech on the Same Subject', 612.
- 25 S.S. Nicholas, 'Power of Majorities over Constitutions', 3 March 1858, in S.S. Nicholas, *Conservative Essays, Legal and Political* (Philadelphia, 1863), quotations on 23, 24.
- 26 James M. Morrison to William H. English, 16 February 1858, English Family Papers. Emphasis in the original.
- 27 Calhoun, 'Speech on the Bill for the Admission of Michigan', quotations on 596; Fritz, *American Sovereigns*, esp. 235–245; Shalhope, *Baltimore Bank Riot*, 127–152.
- 28 S.S. Nicholas, 'Powers of a State Convention', 25 October 1849, in Nicholas, *Conservative Essays*, 11, 12. Emphasis in the original. See also, Nicholas, 'Power of Majorities', 16–17.
- 29 Dorr quoted in Fritz, *American Sovereigns*, 251.
- 30 Choate, 'Position and Functions', 417–418, 423–424.
- 31 George G. Dunn to A.B. Conduitt, 16 October 1850, English Family Papers.
- 32 S.S. Nicholas, 'Martial Law', 1842, in Nicholas, *Conservative Essays*, 166.
- 33 J. Lloyd to Stephen A. Douglas, 29 September 1859, Stephen A. Douglas Papers, Special Collections Research Center, University of Chicago Library, Illinois. For an enduring statement of antebellum Americans' fear of the usurper, see A. Lincoln, 'The Perpetuation of Our Political Institutions: Address before the Young Men's Lyceum of Springfield, Illinois', 27 January 1838, in R. Basler (ed.), *Collected Works of Abraham Lincoln* (New Brunswick, 1953, 1955), I, 108–115.
- 34 Buchanan and Benton, *Speeches*, 4.
- 35 Hallett, *Right*, 25. H. Watson, 'Andrew Jackson's Populism', *Tennessee Historical Quarterly* 76 (2017), 218–239 clarifies that Jacksonian populism was distinct from subsequent manifestations of populism on both the right and left because of its antistatism, especially in economic matters.
- 36 Tocqueville, *Democracy*, 53.

- 37 H. Greeley, *Why I Am a Whig: Reply to an Inquiring Friend* (New York, [1852?]), 2.
- 38 [A.H. Everett], *The Conduct of the Administration* (Boston, 1832), 9–10, 74–75.
- 39 For a nuanced discussion of Jacksonian populism, see Watson, ‘Andrew Jackson’s Populism’, 224.
- 40 *Plain Facts and Considerations: Addressed to the People of the United States, without Distinction of Party, in Favor of James Buchanan, of Pennsylvania, for President, and John C. Breckinridge, of Kentucky, for Vice President. By an American Citizen* (Boston, 1856), 3. For more on Jacksonian populism, especially the malleability of its appeal, see the additional articles by J. Lynn, R. Richard, and L. Clark Shire and J. Knetsch in *Tennessee Historical Quarterly* 76 (2017), 214–217, 276–291, 240–257, 258–275.
- 41 ‘Populist Party Platform of 1892’, The American Presidency Project, www.presidency.ucsb.edu/node/273285. Accessed 7 December 2019.
- 42 Junius, *Crisis*, 12. For the Jacksonian conception of the presidency, see H. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York, 2006), 97–98, 149, 155–157.
- 43 Nicholas, ‘Powers of a State Convention’, 15.
- 44 Nicholas, ‘Martial Law’, 174, 184; Calhoun, ‘Speech on the Same Subject’, 613. Nicholas did not protest all forms of arbitrary power. Chief among his objections to martial law was the argument that enslaved individuals could be emancipated in wartime, which he viewed as an arbitrary exercise of power. Coerced emancipation – not slavery itself – struck him as unjust. Nicholas, ‘Martial Law’, 160–172.
- 45 [Everett], *Conduct*, 84.
- 46 Nicholas, ‘Powers of a State Convention’, 12–13; [Everett], *Conduct*, 75.
- 47 Calhoun, ‘Speech on the Same Subject’, 608.
- 48 [C.E. Norton], *Considerations on Some Recent Social Theories* (Boston, 1853), 7–8.
- 49 [Everett], *Conduct*, 74–76.
- 50 Nicholas, ‘Martial Law’, 180.
- 51 Nicholas, ‘Martial Law’, 164.

Like a god on earth: popular sovereignty in Tocqueville's *Democracy in America*

Heather Pangle Wilford

Alexis de Tocqueville's treatment of popular sovereignty in *Democracy in America* (1835–1840) offers a rich portrait of a thoroughgoing democratic republicanism in action – one that, in contrast to experiments in republican government in France since 1789, is remarkably stable and robust.¹ Tocqueville describes the principle of the sovereignty of the people in the United States as a dogma that governs the whole world of mores, customs and laws – it is the ‘law of laws’.² The dogma of the sovereignty of the people elevates the people to a god-like status and stature; they reign ‘over the American political world as does God over the universe’.³

This chapter investigates why Tocqueville (1805–1859) deploys this analogy between the people and God in order to illuminate the nature of popular sovereignty. In what ways do conceptions of the divine, in particular the attributes of omnipotence and omniscience, univocity and simplicity, justice and goodness, come to characterise the people in democracies? How do such conceptions benefit democracies, and how might they threaten them? While Tocqueville employs theological language in order to highlight several characteristics of popular sovereignty as manifest in America, he also considers it essential for democratic republicanism that the people recollect that they are not God. Indeed, he suggests that popular sovereignty is sustainable only when the people remember this humbling truth.

The question of a successful democratic republic is therefore: how can the people exercise popular sovereignty, and thereby take on god-like attributes, without losing sight of their all-too-human limitations? How can the people avoid falling into the temptation of hubris that leads to the nemesis of tyranny? Tocqueville demonstrates that a delicate interplay between reverence for the sovereign and independence from the sovereign – including the willingness to place limits on its power, especially in the form of respect for individual rights – characterises the desired balance of opinions and attitudes if a democracy is to flourish. In his contrasting portrayals of France and America Tocqueville provides vivid illustrations of successful and unsuccessful attempts to ‘put into practice’ the principle of the sovereignty of the people.⁴

Tocqueville offers the example of popular sovereignty in America as a model for other nations to emulate, yet his descriptions of the exercise of popular authority in the United States point to an underlying paradox. On the one hand, Tocqueville describes popular sovereignty as absolute in America – as the sole source of legitimacy. The people possess an indisputable claim to preeminence and authority; the dogma of popular sovereignty expresses the regnant assumption that the people are the arbiter of what is to be held good and just. On the other hand, Tocqueville praises the ‘hindered and incomplete’ character of sovereignty in the American federal system, as though the very clarity of the sovereignty of the people in theory is best realised by ambiguous and partial sovereignty in practice.⁵ Thus, paradoxically, divided and limited sovereignty proves to be the key to preserving popular sovereignty in the American system – a feature notably absent from the French system.

The difficulty of attaining the American balance is underscored by the analogy between the people and God: to the degree that the people are understood to be god-like, there would seem to be no basis on which one could justify limitations to their will. When Tocqueville describes America, in his 1848 preface to *Democracy in America*, as the country in which popular sovereignty has been instituted in the most absolute and unlimited way, he is referring to the recognised validity of the principle. As Tocqueville shows, however, the effective realisation of this principle in American political practice is far more complicated.⁶ Tocqueville thus presents an example of fragmented and limited popular sovereignty that he thought contained the counterbalances necessary for preventing the catastrophe that the French proceeded to bring upon themselves in 1851–1852, when, in authorising the coup of Louis Napoleon Bonaparte and a new, authoritarian constitution, they ‘destroyed all public liberties in the name of the sovereignty of the nation’.⁷

This chapter explores how modern democratic republics can realise the principle of popular sovereignty while safeguarding public liberty, first by examining the god-like characteristics of the people’s authority encountered in the United States and the vital role that religion and the principle of individual rights play in restraining the preeminent power of the majority, and then by contrasting Tocqueville’s favourable portrayal of America with his descriptions of less successful and less desirable manifestations of popular sovereignty in France and Switzerland.

The sovereignty of the people in America

Sovereign power is supreme authority within a state. Tocqueville defines sovereignty ‘properly speaking’ as ‘the right to make laws’.⁸ Acts of sovereignty include establishing laws and police regulations, naming magistrates,

and making war and peace.⁹ Sovereignty combines, in other words, supreme legal and coercive authority over domestic and foreign affairs. In the United States, the people are sovereign. One finds there no powers external to the social body; nothing restrains or directs the movement of society. Rather, 'There society acts by itself and on itself. Power exists only within its bosom'.¹⁰ Politically, this manifests insofar as '[t]he people participate in the drafting of laws by the choice of the legislators, [and] in their application, by the election of the agents of the executive power'.¹¹ The people also participate in the application of laws through jury service, which Tocqueville calls 'as extreme a consequence of the dogma of the sovereignty of the people as universal suffrage'.¹² According to Tocqueville, 'the principle of the sovereignty of the people' permeates every feature of democratic life; it 'hovers over the whole political system of the Anglo-Americans'.¹³

Equality is a fundamental premise and operating principle of popular sovereignty. 'In nations where the dogma of the sovereignty of the people reigns, each individual forms an equal portion of the sovereign and participates equally in the government of the state'.¹⁴ The idea of popular sovereignty rests on the presupposition that every individual possesses 'the degree of reason necessary for him to be able to direct himself in things that interest him exclusively'.¹⁵ 'Each individual is ... supposed to be as enlightened, as virtuous, as strong as any other of those like him'.¹⁶ The American township applies this idea 'to those under its administration, the province to the townships, the state to the provinces, [and] the Union to the states. Extended to the entirety of the nation, it becomes the dogma of the sovereignty of the people'.¹⁷ As a dogma, it constitutes an article of belief, firmly, even incontrovertibly held.¹⁸ Paradoxically, implicit in the justification of popular sovereignty by means of an appeal to the dogma of individual equality is a limitation on the scope of the sovereign's authority. Each individual ought to retain as much autonomy and leeway for personal decision-making as is compatible with other individuals doing the same. As Tocqueville puts it: 'In all that concerns the duties of citizens among themselves', each becomes 'a subject'. But 'in all that regards only himself he has remained master: he is free and owes an account of his actions only to God'.¹⁹ Such an understanding of sovereignty foregrounds the individual rather than the community or the nation and assumes the legitimacy of the dogma that each individual is equally capable of discerning his or her own good, and therefore has the right to determine what counts as good for himself or herself.²⁰

Yet to be sure, the unchallengeable, dominating belief in the dogma of popular sovereignty also establishes 'the people' as the ultimate authority and judge over the nation. Their right to rule comes to possess the same aura of unquestionable legitimacy that divine right monarchs once possessed. The people may even come to think of themselves as endowed with

a transcendent authority on par with that of the divine itself. In America, Tocqueville observes: 'The people reign over the ... political world as does God over the universe. They are the cause and the end of all things; everything comes out of them and everything is absorbed into them'.²¹ In short, the people are the alpha and the omega in a democratic republic. Inasmuch as they reign in a manner analogous to God, the people taken as a whole increasingly appear to possess god-like qualities. This is borne out in Tocqueville's description of democracy in the United States; the people are conceived of as an omnipotent, omniscient unity. Tocqueville sheds light on how or why these opinions come about, how they may benefit democracy, their truth or their dubiousness, and the ways they threaten democracy.

The unity of the people – the idea that actions can be carried out in the name of the whole and with the authorisation of the whole – is a necessary condition for the legitimacy of popular sovereignty. If the people are fundamentally fragmentary, a collection of groups and individuals without a general will, then there is no people with a voice, and consequently popular sovereignty would be a mere illusion.²² The people's unity is a necessary presupposition if they are to speak, choose or act as one – hence the preamble to the constitution: 'We the people of the United States'. Yet as Tocqueville notes: 'In the United States, as in all countries where the people reign, it is the majority that governs in the name of the people'.²³ The effective truth of the sovereignty of the people is majority rule. A part of the people must rule the whole because in truth, the individuals and groups composing the people are so rarely of the same mind that to wait for their *unified* decision could mean waiting for eternity.²⁴ Majority rule is a concession to the fact that, in practice, the unity of the people is a principle more honoured in the breach than the observance, even though, in the best case, majority rule will aspire to reflect and respect the common good of the whole.²⁵

The attempt to discern the good of the whole – to approximate as far as possible its general will – is the mark of a salutary political orientation that is nurtured by the dogma of popular sovereignty. But various risks attend this orientation as well. As the unity, authority and magnificence of the people loom large in citizens' minds, the importance of particular individuals fades. The good of the people may appear to justify the sacrifice of a few individuals or their rights. Although popular sovereignty rests on the capacity and competence of its individual subjects, thereby acknowledging and esteeming their individuality, Tocqueville observes that the *equal* regard for and status of all individuals diminishes them, too:

As conditions are equalized in a people, individuals appear smaller and society seems greater, or rather, each citizen, having become like all the others, is lost in the crowd, and one no longer perceives [anything] but the vast and magnificent image of the people itself.²⁶

This naturally gives men in democratic times a very high opinion of the privileges of society and a very humble idea of the rights of the individual. [Consequently, men in such times] are naturally brought to exaggerate [the idea] that the interest of one individual ought always to bend before the interest of several.²⁷

If the aggregate forms a unity, surely that unity has greater substance and importance and can claim legitimate precedence over the claims of mere individuals. Tocqueville fears the deleterious effects of this thought and cautions the Americans against it, arguing that ‘the first object of the legislator’ in the democratic age should be to grant and guarantee individual rights, and thus to set ‘visible and immovable ... limits for social power’.²⁸ Popular sovereignty is thus potentially self-undermining insofar as the claim to work for or on behalf of the people as a whole can justify sacrificing the individual’s good, despite the fact that it was on the principle of individual equality that popular sovereignty was established. The preservation of individuality and individual rights is the imperative counterweight to the tendency of democratic peoples to mistake the will of the majority for the will of the whole.

The capacity for individuals to discern their own good that justifies popular sovereignty is the source of a democratic penchant to believe in the possibility of aggregate wisdom. This latter belief relies on a hidden intermediate step from the premise that each is the best judge of his own interest to the supposition that each is an equally competent judge of the common interest. Eliding these two suppositions, citizens in democracies tend to believe in an arithmetic of intellects: ‘The moral empire of the majority is founded in part on the idea that there is more enlightenment and wisdom in many men united than in one alone’; this is ‘the theory of equality applied to intellects’.²⁹ Tocqueville thus indicates how democratic epistemology leads to the conclusion that the greater number possess greater wisdom. If taken to its logical conclusion, the arithmetic of intellects would justify the majority’s claim ‘to be the unique organ of reason’.³⁰ The majority’s purported moral and intellectual superiority could therefore serve as a justification for majority tyranny. At the very least, the status of common opinion is so elevated in a democratic society that ‘faith in common opinion ... become[s] a sort of religion whose prophet [is] the majority’.³¹ The people not only has the capacity to rule itself, but its decisions are altogether wise and just.

The strength and force of the majority under conditions of popular sovereignty breeds a ‘fawning and flattering’ spirit towards the people that degrades souls.³² No writer in America, Tocqueville notes, ‘can escape the obligation of singing the praises of his fellow citizens. The majority, therefore, lives in perpetual adoration of itself’.³³ Precisely because the people must be respected as the ultimate judge and arbiter of what is good, they

themselves easily become the foremost object of praise. And it is almost a maxim of popular government that the people ought to esteem themselves. Nevertheless, while reverence towards the source of political authority may provide stability, cohesion and even nobility to democratic politics (as a cause for devotion that draws people out of themselves and orients them towards something larger and more important), it also must be moderated: worship is appropriate for God, but it is pernicious when directed towards the people.³⁴ Self-worship is the form of idolatry to which democratic peoples are most susceptible.

There is of course something deeply dubious about the idea of common opinion possessing God-like infallibility. For, as Tocqueville explains, human reason is subject to fundamental limitations for which no amount of aggregation can compensate. First, whereas God knows particulars as particulars, human beings necessarily employ general ideas that elide or obfuscate the infinite particulars that make up the world. Since human conceptual knowledge is always of particulars as universals, it is necessarily partial and incomplete. Second, time and capacity limit anyone or any group of people from being able to test, establish and verify all the knowledge they would need to guide their own lives.³⁵

Complementing the majority's claims to knowledge are its claims to omnipotence. 'It is of the very essence of democratic governments that the empire of the majority is absolute; for in democracies, outside the majority there is nothing that resists it'.³⁶ The power of the majority is both 'material and moral'; it encourages and restrains, fosters and suppresses: 'the majority is vested with a force ... that acts on the will as much as on actions, and which at the same time prevents the deed and the desire to do it'.³⁷ The effect of the majority is similarly material and moral: it circumscribes the realm of acceptable ideas, delineates the range of possible projects, and even shapes the landscape of conceivable thoughts. Under these conditions, the power wielded by the majority in the name of the people is virtually absolute, unconstrained by any natural limits or sacred prohibitions: 'Americans believe that in each state the social power ought to emanate directly from the people; but once that power is constituted, they imagine so to speak no limits to it; they willingly recognize that it has the right to do everything'.³⁸

But such unimpeachable power – whether vested in the people as a whole or an absolute monarch – is 'an evil and dangerous thing in itself': omnipotence is 'above the strength of man'. It is the seed of tyranny. Indeed, only God 'can be omnipotent without danger, because his wisdom and justice are always equal to his power'. Consequently, 'there is ... no authority on earth so respectable in itself or vested with a right so sacred that I should wish to allow it to act without control and to dominate without obstacles'.³⁹ 'The omnipotence of the majority' is therefore 'a great peril' for democratic

republics.⁴⁰ Such omnipotence leads to legislative and administrative instability since laws and their execution are continually bent or transformed to suit the whims of the majority, to conform to shifting public opinion. Such juridical instability is a form of despotism.⁴¹ The possibility of instability is compounded by the tendency of minorities 'to despair' in the face of the majority's omnipotence. Finding themselves in desperate straits, minorities are tempted 'to make an appeal to material force'.⁴² Ironically, the majority's omnipotent authority, which rests on its claim to speak for the whole, can easily become a preeminent source of civil strife, and thus undermine the unity of the people it claims to promote. Another, and indeed the deeper and more pervasive, threat to freedom in democracies that Tocqueville fears is the tyranny of the majority over opinion, in the realm of ideas.⁴³ Once the majority has formed an opinion, 'there are so to speak no obstacles that can, I shall not say stop, but even delay its advance, and allow it the time to hear the complaints of those it crushes as it passes'.⁴⁴ Complaints will not even occur to those whose opinions are moulded by the immense weight of public opinion – an operation that occurs not by means of persuasion but by a subtle, imperceptible imposition, penetrating 'souls' by a sort of immense pressure of the minds of all on the intellect of each'.⁴⁵

At least two problems therefore attend the power of the people under popular sovereignty; first, democracy encourages genuflection towards social power and public opinion, a problem evident in the tendency for individuals to orient themselves towards public opinion as if towards God. Individuals become overawed by public opinion and let themselves be shaped by it, carried away by it and dominated by it. This is the obverse of the second problem of individuals thinking they are like God insofar as they are members of the sovereign, causing them to overreach, thinking there are no limits to their social and political power, no moral boundaries to what they can think or do. The ostensible conjunction of omnipotence and omniscience in the people paves the way for the abuse or suppression of individuals and minorities by the majority, which presumes to speak and act for the people as a whole.

Tocqueville's remedy for these ills requires that the people, rather than conceiving of themselves as omnipotent, understand their scope of action to be constrained by principles of justice that transcend their will. In an inspired piece of pedagogic rhetoric, Tocqueville portrays justice as perhaps itself deriving from popular sovereignty writ large across the whole human species. Justice is a law 'that has been made or at least adopted not only by the majority of this or that people, but by the majority of all men'.⁴⁶ Justice 'forms the boundary of each people's right' and each nation 'is like a jury charged with representing the universal society and with applying the justice that is its law'. It is because he can appeal to justice that Tocqueville says he

can both place ‘the origin of all powers in the will of the majority’ and at the same time ‘detest the maxim that in matters of government the majority of a people has the right to do everything’.⁴⁷

Precisely because the analogy with God highlights the omnipresent power of the people in democratic republics, it also serves to highlight what the people are most likely to forget, namely that they are *not* God. The force of the principle of popular sovereignty must be balanced by a countervailing force, one that cannot be derived from the same source, and so must come from outside society. Thus, the one analogy illustrates both the potential pitfalls of popular sovereignty and the necessary remedy. The people can only remember what they are if they are continually reminded of what they are not. The town legislature is buttressed by the community chapel, and the president’s podium by the preacher’s pulpit. The people must recall the existence of the actual God – indeed, Tocqueville suggests that only by remembering as much is popular sovereignty sustainable. Religion gives moral ballast to a people, answers the needs of their souls and restrains the beast in man. When religion provides ‘certain primary givens’ and ensures that ‘everything is certain and fixed in the moral world’, the political world can safely be opened up and given over ‘to the discussion and attempts of men’.⁴⁸ The disciplining of human imagination by religion inculcates a moral disposition that prepares individuals to discharge the responsibilities of self-rule: ‘habits of restraint are to be found in political society and singularly favour the tranquillity of the people as well as the longevity of the institutions’.⁴⁹ Religion thereby ‘singularly facilitates’ the exercise of freedom.⁵⁰ It elevates and ennobles mores; it bestows dignity on the individual in his or her moral freedom, and it sacralises a yearning for the transcendent. It thereby tames passions for material wellbeing and material gain, preventing them from becoming so dominant as to undermine the taste for freedom and self-government.⁵¹ Tocqueville captures the apparently contradictory condition of autonomy in the rhetorical question: ‘What makes a people master of itself if it has not submitted to God?’⁵² God must remain the sovereign of sovereigns for popular sovereignty to resist careening into tyranny or anarchy.⁵³ Only God can manifest, and manifest in a salutary fashion, the unity, omnipotence and omniscience that the people or the majority are wont to pretend to.

According to Tocqueville, democracy will flourish if and only if the people believe that there is a trans-political limit to the morally permissible. To establish such a pre-political commitment requires that religion shape the moral imagination of the people and thereby influence their rule in practice. Through religion, rational standards of justice can inform the sensibility of the people and thereby be enlisted to check the will of the people, even as they are only realised through the work of the people. Tocqueville

concludes his analysis of the democratic age with an example of how even a mind as independent as his own ought to regulate its understanding of what is just by the standard of what must be so in God's eyes.⁵⁴ Man's political autonomy will endure only so long as individual men remain subordinate to the sovereignty of God; man can be sovereign over himself only so long as he remains accountable to God.⁵⁵

Popular sovereignty in practice: democratic institutions in the United States, Switzerland and France

Tocqueville's hope for America's future as a flourishing democratic republic rested in large measure on the widespread practice of religion. Although Tocqueville's sojourn in America convinced him that good mores were the most important check against majority tyranny and the most important condition for healthy democratic politics, he also recognised several institutional mechanisms by which the Americans had codified self-restraint and thereby established forms for tempering popular sovereignty so as to preserve liberty.⁵⁶ Four are particularly notable: (1) structural limits through checks and balances among the three branches of government, (2) divided sovereignty in the form of federalism, (3) constitutionalism as a constraint on democratic rule, and (4) representation as a means of filtering popular opinion. Employing such mechanisms, the American people enact the paradox of absolute sovereignty within limits.

Tocqueville remarks that 'Each government brings with it a natural vice that seems attached to the very principle of its life'; for democracies, it is 'laws that render [the] action [of the people] more prompt and irresistible'.⁵⁷ The popular will can be rash and changeable, and so democracies ought to find ways to resist it, stabilise it or slow it down. The ideal democratic political arrangement is one with checks and balances among distinct branches of government: the legislative body will be 'composed in such a manner that it represents the majority without necessarily being the slave of its passions'; the executive power will have 'a force that is its own', especially a force by which it can resist encroachments of the legislative; and finally, 'a judicial power [will be] independent of the other two powers' and empowered so that it can 'correct the aberrations of democracy' and 'slow and direct' 'the movements of the majority', 'without ... being able to stop them' entirely.⁵⁸ Tocqueville believes that with such an established order in place, one 'will still have democratic government, but there will be almost no more chance of tyranny'.⁵⁹ In Tocqueville's judgement, the operations of American government came close to approximating this ideal.⁶⁰ The 'greatest merit' of America's founding legislators was their awareness of democracy's natural

vice and their endeavours to counteract it.⁶¹ They established powers that could resist the pull of the majority if need be. They made the president strong and able to fend off encroachments of the legislature with the veto; this put the executive among ‘a certain number of powers that, without being completely independent of [the people], nonetheless enjoyed a rather large degree of freedom in their own sphere; so that, when forced to obey the permanent direction of the majority, they could nevertheless struggle against its caprices and refuse its dangerous demands’.⁶² In addition, they divided the legislature into two houses, thus slowing the legislative process and creating ‘a court of appeal for the revision of laws’.⁶³ And finally, they granted an independent judiciary the power to review the constitutionality of legislation.⁶⁴ The operation of the branches themselves in conjunction with the dynamic relation among them served to institutionalise restraints on the effects of the popular will. In America, therefore, expressions of popular sovereignty would be channelled through institutional arrangements that check the despotic tendencies of the majority.

Such institutional arrangements are complemented by the divided sovereignty of American federalism. The advantages of such ‘fragmented sovereignty’ – a system in which powers and responsibilities are divided between township, state and federal governments – are evident in the United States:

As the sovereignty of the Union is hindered and incomplete, the use of that sovereignty is not dangerous for freedom. Neither does it excite those immoderate desires for power and attention that are so fatal to great republics. ... Political passions, instead of spreading in an instant over the whole area of the country like a sheet of flames, break against the individual interests and passions of each state.⁶⁵

The advantages of federalism are found across several dimensions: first, in the experience of township life that inculcates in ‘the people the taste for freedom and the art of being free’;⁶⁶ second, in the education of ambition that might otherwise loom tyrannically at the highest levels; and third, in the moderation of the effects of political passions achieved by channelling those passions through more localised centres of power in accordance with the principle of subsidiarity.⁶⁷

Federal systems have various shortcomings and vulnerabilities, however, and a nation must have the right strengths (and luck) to counterbalance those weaknesses. A federal system ‘necessarily brings two sovereignties face to face’, which leads to conflicts and controversies.⁶⁸ A federal system also relies heavily on a sufficiently enlightened populace to adjudicate these conflicts when they arise. The application of divided sovereignty is so complicated that ‘it can be suitable only for a people long habituated to directing its affairs by itself, and in which political science has descended to the

last ranks of society'.⁶⁹ Further, a federal system lacks the political cohesion of a unitary state, and so it is prone to factionalism and conflict that can threaten dissolution.⁷⁰ In order to address this difficulty, to achieve the aim of *e pluribus unum*, a nation needs common (material) interests as well as common ideas and sentiments – 'homogeneity in the civilization'.⁷¹ Cultural considerations, however, are not sufficient. Federalism also requires geographic luck. Tocqueville believes geography is in fact the principal reason for the viability of a federal system.⁷² Confederations are weak; to mount a great war, or to defend oneself from one, one needs a strong central government. Accordingly, federal systems can only be sustained over the long run in locations where great wars can be avoided. Federalism is therefore not an arrangement that Tocqueville thinks every people should institute; 'it is not given to all peoples to enjoy its benefits'.⁷³ Though a massive advantage for the United States, federalism is perhaps the least transferable aspect of the American political settlement. Tocqueville recognises that it is not a feasible proposition for France, especially in light of the deep cultural divisions within the nation exposed and exacerbated by the Revolution. Lacking the requisite homogeneity in its civilisation, France needs a more centralised system to keep all its parts in harmonious cohesion, both so that it will not descend into civil war again and so that it can defend itself from foreign invasion.⁷⁴

The circumscribing of power through federalism is supplemented by state and national constitutionalism and by the practice of electoral representation. Constitutionalism serves both to express and to limit the people's will. In drawing up a constitution, a people gives voice to the general will but also, through this fundamental act of legislation, pledges to bind and restrain that very same will in the future according to pre-established principles. Constitutions restrain the popular will in two especially important ways: first, they establish procedural criteria for legality, and second, they enshrine protections for individual rights and liberties. Provisions for constitutional amendments concede the legitimate supremacy of the popular will in each generation, but the stringent requirements often attending the amendment process act as a barrier to quick or divisive constitutional changes. While such fundamental change will be rare, the punctuated regularity of electing representatives serves to verify what the popular will is and to translate that will into particular policy while nevertheless still keeping political decisions at one step removed from direct popular control.⁷⁵

Tocqueville's case for constitutionalism and representation is highlighted in a comparison that he draws between New York and Switzerland in a report on *Democracy in Switzerland* delivered before the Academy of Moral and Political Sciences in 1848:

In the state of New York, as in the Swiss cantons, the principle of government is the sovereignty of the people, put into practice through universal suffrage. But [in New York] the people exercise their sovereignty for one day only, when they choose their delegates. In general, in no case do the people retain any part whatsoever of the legislative, executive, and judicial power. They choose those who will govern in their name and until the next election they step down. ... Although the laws are changeable, their foundation is stable. Nobody has ever conceived in advance the idea of submitting the constitution, as is the case in Switzerland, to repeated and periodic revision whose occurrence or mere anticipation keeps the social body in suspense.⁷⁶

The exercise of universal suffrage confirms the sovereignty of the people without undermining the constitutional structure and thereby disrupting the continuity of the legal order. Citizens can rest assured of an enduring legal framework within which to conduct their affairs. New York also demonstrates the advantages of the separation of powers:

Even if the legislature [in New York] cannot escape the force of public opinion any less than it does in Switzerland, it is organized in such a way as to resist its whims. No proposition can become law until it has been subject to consideration by two assemblies. ... In New York, the separation of powers exists not only in appearance, but also in reality.⁷⁷

Tocqueville concludes that New York's constitution, while still being 'completely democratic in character', moderates the defects of democracy by limiting the pernicious effects of majority rule. Switzerland, by contrast, exacerbates democracy's fragility by failing to provide any mechanisms for the moderation of popular whims.⁷⁸ In the Swiss case, rather than 'restrain[ing] the people', the laws 'push them forward. In America, the fear is that [the people's] power might be tyrannical, whereas in Switzerland the intention seems to be to make it irresistible'.⁷⁹ So long as 'all powers derive ... from and return ... to the people' through the regular election of delegates, as in New York, a government can be democratic even if it institutionalises multiple restraints on popular will.⁸⁰

Like Switzerland, France failed to instantiate the principle of popular sovereignty in a reliable and stable institutional structure. This shortcoming was not simply a practical failure but stemmed in part from theories of popular sovereignty that animated Enlightenment-era French *philosophes* and *économistes* and that were put into practice in the revolutionary era.⁸¹ In Tocqueville's portrayal, eighteenth-century French 'Economists' or 'Physiocrats' writing prior to the Revolution, among them François Quesnay (1694–1774) and Anne Robert Jacques Turgot (1727–1781), envisioned a democratic society 'composed of almost identical and entirely equal individuals, an indistinct mass recognized as the only legitimate sovereign but carefully deprived of all the faculties that might allow it to rule or even oversee

its government by itself'.⁸² This was because these thinkers envisioned 'a single designated official charged with acting in [the people's] name without consulting it'. 'To control that official', the Economists in effect proposed 'a public reason deprived of organs; to stop him, revolutions and not laws'. Such a ruling power, while 'de jure a subordinate agent' would be 'de facto a master'; for the 'state' – 'the product and representative of all' – carried 'the duty to ensure that the rights of each individual were subordinate to the will of all'.⁸³ This government, democratic without being free, providing omnipotent and unlimited prerogatives to the state, amounted to 'a particular form of tyranny': democratic despotism.⁸⁴ Even though conceptions of popular liberty arose in the following decades to supplement and modify such ideas (and were indeed essential to initiating the Revolution) what came to pass during the revolutionary era had strikingly similar features to the Economists' early vision – in particular in the institution of despotic and unaccountable powers established in the name of the people and ostensibly enacting their will, but in fact operating apart from it.⁸⁵

According to Tocqueville, the Ancien Régime paved the way for such revolutionary excesses. For in its desire to consolidate power, it succeeded in isolating Frenchmen from one another, depriving them of common sentiments and purposes and leaving them without any experience of working together or any inclination to do so:

The administration of the Ancien Régime had deprived the French in advance of both the ability and the desire to help one another. When the Revolution came, one would have searched in vain in most of France for ten men accustomed to acting together in a disciplined way and defending themselves. The central government alone was supposed to take charge of defending them all, so that when the royal administration lost control of that central government to a sovereign and unaccountable assembly, and this once-complacent body turned terrifying, nothing could stop it or even slow it for a moment.⁸⁶

The French were accordingly entirely unprepared to exercise popular sovereignty at the time of the Revolution. They lacked the necessary conditions of cohesiveness, trust and cooperation. None of the various post-revolutionary regimes were able to remedy this problem. Although the Revolution aimed at securing the political rights and civil liberties necessary for self-rule, the ideals of the *Declaration of the Rights of Man and of the Citizen* (1789) foundered on the shoals of fear, old habits and tyrannical leadership. France failed to instantiate the Declaration's principles in a constitutional order because Frenchmen lacked the habit of association. Instead, after the Revolution:

A government more powerful, and far more absolute than the one the Revolution overthrew ... seized and concentrated all power, suppressed all the

liberties for which such a high price had been paid, and put useless imitations in their place. ... This government applied the name 'popular sovereignty' to the suffrage of voters who were unable to educate themselves, organize, or choose and ... it applied the term 'free vote' to the assent of silent or subjugated assemblies.⁸⁷

Thus the individuals making up the French nation lacked the protections, the capacities, the experience and the institutions necessary to realise more than an illusory popular government.

A persistent problem for the French was that from the revolutionary era onward they 'sought to combine unlimited administrative centralization with a preponderant legislative body: bureaucratic administration and representative government. The nation as a body enjoyed all the rights of sovereignty, but each individual citizen was gripped in the tightest dependency'.⁸⁸ The French attempted to institute a system that declared the people to be free while requiring them to be obedient pupils to their guardians. In Tocqueville's analysis, this incoherent combination was the source of political instability for over fifty years.⁸⁹ For the French, the establishment of popular sovereignty through representation was understood first and foremost as a national affair. They neglected the local and regional expressions of self-government favoured by the Americans. As Bryan Garsten explains, Tocqueville saw that the French 'had resorted to the alienated agency of the state to enact their effort at holding sovereignty. Americans, in contrast, did not need to create an artificial authority built upon an abstraction from concrete social life in order to free themselves from social inequality or find a kind of democratic agency'.⁹⁰ While the Americans gave life to democracy by participating in administration at the local level, the French remained 'passive and despot-prone', even though they mounted spasmodic efforts to realise the principle of popular sovereignty (whether through revolution, representation, an expanded franchise or national plebiscites). The ratification by plebiscite in 1852 of Louis Napoleon Bonaparte as emperor was the final *reductio ad absurdum* of the attempt to address the problem of centralised administration with the tools available to centralised administration. Under Louis Napoleon Bonaparte, crowned Emperor Napoleon III, the French relinquished their liberty and 'reduc[ed] themselves' to 'living as equals under a master'.⁹¹ France had failed to escape the legacy of the Ancien Régime.

A small window of promise preceded this disheartening denouement. When, in 1848, Tocqueville addressed himself to his fellow Frenchmen, drawing their attention to the successes of American government, he hoped that the French might finally succeed at grounding a sustainable popular sovereignty.⁹² He wrote to them observing that the country in which popular sovereignty had been instituted in the most 'absolute' and

‘unlimited’ way – the United States – had been the most prosperous, most stable and most respectful of rights of any country in the world.⁹³ Without suggesting that the French should copy American laws and institutions, he recommended that they emulate America’s successful legal and institutional principles.⁹⁴ Although 1848 brought a short period of hope, French attempts to institute popular sovereignty amounted in the end to a litany of failures and disappointments.

Conclusion

Tocqueville’s teaching presents us with a paradox: in America, popular sovereignty was instituted in the most absolute way and yet was checked, divided and limited in decisive respects. Resolving the paradox requires recognising that if instantiated in a simple, direct and unmediated manner, popular sovereignty will prove self-undermining both in theory and in practice. For the direct application of the principle of popular sovereignty is majority tyranny and centralised authority, the practical outcome of which is democratic dictatorship. The absolute sovereignty of the American people operated within the institutional constraints of checks and balances, federalism, constitutionalism and representation, within the moral constraints of justice and reason, and within the political constraints of legally protected rights – a very different conception of ‘absolute’ sovereignty than that of Bodin, Hobbes, Rousseau, or the French revolutionaries.⁹⁵ Popular sovereignty is not only compatible with but requires political liberty and individual rights.

By contrast, in the plebiscite of the early 1850s that legitimated the coup of Louis Napoleon Bonaparte, the French ‘employed the outward forms of popular election only to establish a more absolute despotism than’ any that had ‘ever appeared in France’.⁹⁶ The United States and France thereby illustrate the promise and the perils of popular rule – its potential for protecting rights and sustaining liberty, or for crushing them. Under Louis Napoleon, the French were deprived of public liberties such as the freedom of speech and the right of assembly that would have been necessary for them to make good on the promise of popular sovereignty – the promise of allowing the people to ‘enlighten ... themselves’ and to speak and act in common on the basis of mutual understanding.⁹⁷

Popular sovereignty is desirable, in Tocqueville’s eyes, as a way to give reality and dignity to the people – to acknowledge each as equal and to incorporate all into the political body. Tocqueville regarded the United States as the best place to evaluate the dogma of the sovereignty of the people, for the United States exemplified its advantages and its dangers.⁹⁸

Tocqueville presents an idealised version of American democracy as a model for other countries to emulate in the coming democratic age:

Republicans in the United States prize mores, respect beliefs, recognize rights. They profess that a people ought to be moral, religious, and moderate to the degree it is free. What one calls a republic in the United States is the tranquil reign of the majority. The majority, after it has had the time to recognize itself and to certify its existence, is the common source of powers. But the majority itself is not all-powerful. Above it in the moral world are humanity, justice, and reason; in the political world, acquired rights. The majority recognizes these two barriers, and if it happens to cross them, it is because it has passions, like each man, and because like him, it can do evil while discerning good.⁹⁹

Tocqueville thus believed that to secure a democracy with liberty, a people must respect the sovereign and trust in its powers, on the one hand, and, on the other, exercise self-restraint in light of higher principles – especially respect for individuals and individual rights. In addition to institutional arrangements, strong mores are required to prevent the people from idolising itself and lapsing into tyranny. Moreover, and contrary to long-held French assumptions, a fragmented sovereignty – one distributed across a federal system or dispersed amid local authorities and institutions – is the truest expression of popular sovereignty because it fosters civil association and preserves local self-government.¹⁰⁰ Popular sovereignty is fully realised not so much when all the separate scattered voices of the nation invest a ruler with power, but rather when, in decentralised, bottom-up acts of deliberation and decision, the people show themselves to be enlightened, to be worthy of their rights and privileges. Popular sovereignty will endure in America so long as the people possess such democratic virtue.

Notes

- 1 'Preface to the Twelfth Edition of *Democracy in America* (1848)' in A. de Tocqueville, *Tocqueville on America After 1840: Letters and Other Writings*, eds and trans. A. Craiutu and J. Jennings (Cambridge, 2009), 375–376. Tocqueville warns, however, that racial strife threatens to undermine this relatively successful experiment in popular sovereignty (Tocqueville, *Democracy*, 302–384).
- 2 Tocqueville, *Democracy*, 53, 381. When citing *Democracy in America*, translations are occasionally modified.
- 3 Ibid., 54, 55.
- 4 Tocqueville, 'Preface', 376.
- 5 Tocqueville, *Democracy*, 154.
- 6 Tocqueville, 'Preface', 374–376.

- 7 Tocqueville to Francis Lieber, 4 August 1852: Tocqueville, *Tocqueville on America*, 133.
- 8 Tocqueville, *Democracy*, 116. Both Hobbes and Rousseau describe the sovereign as the absolute and sole legislative authority; all civil laws are legitimate and authoritative only by virtue of the will and consent of the sovereign (T. Hobbes, *Leviathan*, ed. E. Curley [Indianapolis, 1994], II.xxvi; J.-J. Rousseau, *On the Social Contract*, ed. R.D. Masters, trans. J.R. Masters [New York, 1978], II.ii, vi). Tocqueville echoes this tradition but deliberately eschews its formal rigour. By avoiding the strict logic of authority and legitimacy advanced by these earlier social contract thinkers, he attempts to craft a political science that is more sensitive to the actual operations of political and social authority and thereby one that is friendlier to human liberty.
- 9 Tocqueville, *Democracy*, 37. Tocqueville's understanding of sovereignty is quite broad by comparison with Rousseau's; the latter draws a strict distinction between sovereignty and government (*Social Contract*, II.ii, iv, vi; III.i–ii) – a distinction with parallels in Hobbes (*Leviathan*, II.xxii–xxiii). For a contrasting assessment, see D. Selby, *Tocqueville, Jansenism, and the Necessity of the Political in a Democratic Age: Building a Republic for the Moderns* (Amsterdam, 2015). Selby argues that Tocqueville 'embraced Rousseau's notion of sovereignty', while reworking the distinction 'between sovereign and government into a distinction between the government and the administration' (138–139). Bryan Garsten persuasively portrays Tocqueville's political science as a response to the dangers of Hobbesian accounts of democratic sovereignty, which invite 'despotism and docility' ('From Popular Sovereignty to Civil Society in Post-Revolutionary France' in R. Bourke and Q. Skinner (eds), *Popular Sovereignty in Historical Perspective* [Cambridge, 2016], 269). For another perspective on sovereignty in Rousseau and Hobbes, see R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2015).
- 10 Tocqueville, *Democracy*, 55.
- 11 Ibid.
- 12 Ibid., 261.
- 13 Ibid., 61.
- 14 Ibid. On the 'complex subtleties' of Tocqueville's analysis of equality, see L. Jaume, *Tocqueville: The Aristocratic Sources of Liberty*, trans. A. Goldhammer (Princeton, 2013), 18, 82–87, 104, 177. See also P. Manent, *Tocqueville and the Nature of Democracy*, trans. J. Waggoner (Lanham, MD, 1996).
- 15 Tocqueville, *Democracy*, 381.
- 16 Ibid., 61. Compare the judgement of François Guizot, who was an early influence on Tocqueville and a dominant intellectual and political figure during the July Monarchy (1830–1848). Guizot thought such equality a preposterous proposition and rejected popular sovereignty on the grounds of its falsehood. Sovereignty could rest only in 'reason, justice, and right'. (M. Richter, 'Tocqueville and Guizot on Democracy: From a Type of Society to a Political Regime', *HEI* 30 (2004), 70, quoting Guizot, *Histoire des origines du gouvernement représentatif*). For more on Guizot, see also J. Jennings, 'Constitutional Liberalism in France: From Benjamin Constant to Alexis de

Tocqueville', in G. Stedman Jones and G. Claeys (eds), *Cambridge History of Nineteenth-Century Political Thought* (Cambridge, 2011), 349–373.

- 17 Tocqueville, *Democracy*, 381.
- 18 Ibid., 407–408.
- 19 Ibid., 62.
- 20 If the sovereignty of the people is founded on certain capacities of the individual (Tocqueville, *Democracy*, 236–237), it is not founded in the coherence or unity of a people, *Volk*, nation, on the needs of 'society', or on any other basis that would from the outset empower the people as a whole to the detriment or at the cost of the individual.
- 21 Tocqueville, *Democracy*, 55. For additional reflections on this statement see H. Mansfield, 'Tocqueville on Religion and Liberty', in M. Rolf (ed.), *The Modern Turn* (Washington, DC, 2017), 267 and Jaume, *Tocqueville*, 21, 53.
- 22 Consider Rousseau, *Social Contract*, I.vi, II.ii.
- 23 Tocqueville, *Democracy*, 165. For this reason Guizot argued that popular sovereignty is but 'the despotism of number' (Richter, 'Tocqueville and Guizot', 71).
- 24 Locke, *TT*, 330–333.
- 25 A democratic country only hangs together insofar as this dogmatic belief remains in place, and it is a condition of maintaining the belief that the divisions within society are not so great as to render belief in the unity of the people impossible.
- 26 Tocqueville, *Democracy*, 641.
- 27 Ibid., 672.
- 28 Ibid. Tocqueville thereby tries to avoid the problems afflicting the institution of republican government in France that stem from embracing Rousseau's vision of the social compact as 'the total alienation of each associate, with all his rights, to the whole community' (*Social Contract*, I.vi). Accordingly, Tocqueville is as much a 'liberal' as he is a 'republican'. Compare Selby, *Tocqueville, Jansenism, and the Necessity of the Political in a Democratic Age*, 232–237.
- 29 Tocqueville, *Democracy*, 236.
- 30 Ibid., 84.
- 31 Ibid., 410.
- 32 Ibid., 246, 248.
- 33 Ibid., 245. See also *ibid.*, 237.
- 34 One way to strike a salutary balance is by revering the Constitution, which, while an expression of the popular will, is a set of principles and institutional structures independent of any particular human beings. See *Federalist No. 49*, in R. Scigliano (ed.), *The Federalist: A Commentary on the Constitution of the United States* (New York, 2001). But not all countries enjoy the conditions that make this possible; in this regard the Americans are much better situated than the French. J.-C. Lamberti, *Tocqueville and the Two Democracies*, trans. A. Goldhammer (Cambridge, MA, 1989), 92.
- 35 Tocqueville, *Democracy*, 407–408, 411.
- 36 Ibid., 235. As Pierre Manent observes, 'The omnipotence of the majority in America is only the political and juridical expression of the omnipotence of society, characteristic of democratic nations': Manent, *Tocqueville*, 41–42.

- 37 Tocqueville, *Democracy*, 243.
- 38 Ibid., 641; see also *ibid.*, 84.
- 39 Ibid., 241.
- 40 Ibid., 183.
- 41 Ibid., 237–238, 146. Tocqueville notes that a power that can ‘do everything’ often tends toward imprudence and error (*ibid.*, 85).
- 42 Ibid., 249.
- 43 Ibid., 237, 243–245, 409–410, 495.
- 44 Ibid., 237.
- 45 Ibid., 409. See also *ibid.*, 244: ‘Princes had so to speak made violence material; democratic republics in our day have rendered it just as intellectual as the human will that it wants to constrain. Under the absolute government of one alone, despotism struck the body crudely, so as to reach the soul; and the soul escaping from those blows, rose gloriously above it; but in democratic republics, tyranny does not proceed in this way; it leaves the body and goes straight for the soul’.
- 46 Ibid., 240.
- 47 Ibid. Lamberti, *Tocqueville and the Two Democracies*, 73 argues that Tocqueville is not entirely consistent in his thinking about sovereignty and that these comments reflect a confusion: a precarious intermingling of an endorsement of popular sovereignty with the doctrinaire position that only reason and justice can be sovereign. But there is nothing logically contradictory about endorsing popular power as the source of legitimacy for a democratic republic while also arguing that the people ought to see their power as limited by principles of justice, since in a democratic age the principle of popular sovereignty and the principle of individual rights are derived from the same principle of human equality. Accordingly, the principle of individual rights justifiably limits the authority of the people. For Tocqueville, popular sovereignty proves to be self-undermining unless it is limited by individual rights.
- 48 Ibid., 279. See also *ibid.*, 43–44.
- 49 Ibid., 279.
- 50 Ibid., 280. For a comparative treatment of the relation between religion, freedom and popular sovereignty in the thinking of Tocqueville and Rousseau, see P. Knee, ‘Religion et souveraineté du peuple: de Rousseau à Tocqueville’, *Canadian Journal of Political Science/Revue canadienne de science politique* 23 (1990), 211–232.
- 51 Jennings, ‘Constitutional Liberalism’, 369; H. Mansfield and D. Winthrop, ‘Tocqueville’s New Political Science’, in C. Welch (ed.), *Cambridge Companion to Tocqueville* (Cambridge, 2006), 90.
- 52 Tocqueville, *Democracy*, 281–282. Mansfield, ‘Tocqueville on Religion and Liberty’, 267–268, observes, ‘A people, like an individual person, makes itself more powerful with self-restraint, not less’.
- 53 Tocqueville appropriates a feature of Jean Bodin’s account of sovereignty: ‘he is absolutely sovereign who recognises nothing, after God, that is greater than himself’. J. Bodin, *On Sovereignty*, ed. and trans. J. Franklin (Cambridge, 1992), 4; see also 8, 10.

- 54 Tocqueville, *Democracy*, 674–675.
- 55 Ibid., 37.
- 56 Ibid., 261. For discussion of the various forms of ‘informal social authority’ Tocqueville recognised as important for combatting the tyranny of the majority, see Garsten, ‘From Popular Sovereignty’, 262–265. See also Jennings, ‘Constitutional Liberalism’, 368–369.
- 57 Tocqueville, *Democracy*, 129.
- 58 Ibid., 242, 274.
- 59 Ibid., 242. This statement requires substantial caveats. Either Tocqueville is exaggerating the effectiveness of institutional solutions for preventing tyranny, or he is referring to only one type of tyranny – legislative tyranny or political tyranny – under which there are no legal checks on the majority’s whim. This is distinct from the tyranny of the majority over thought as well as from the administrative despotism described in the second volume of *Democracy in America*, neither of which are adequately addressed solely by the correct configuration of the branches of government, but rather require the bulwarks of certain mores nourished by such sources as the freedom of association, administrative decentralisation, a free press, jury duty and the spirit of lawyers. While the second explanation is more likely, Tocqueville also appears to be slipping into the first for the pedagogic purpose (directed in particular at his French audience) of underscoring the benefits of American institutional arrangements.
- 60 Although they nevertheless still fall short: *ibid.*, 241–242.
- 61 Ibid., 129.
- 62 Ibid.
- 63 Ibid., 80–81.
- 64 Ibid., 141–142.
- 65 Ibid., 153, 154.
- 66 Ibid., 274.
- 67 Garsten, ‘From Popular Sovereignty’, 268.
- 68 Tocqueville, *Democracy in America*, 155.
- 69 Ibid., 156.
- 70 Ibid., 156–157.
- 71 Ibid., 158. Cf. Montesquieu, *Spirit*, 131–133.
- 72 Ibid., 159.
- 73 Ibid., 155.
- 74 Ibid., 158–159.
- 75 On the debate over how to reconcile popular sovereignty and representation – whether the people can meaningfully be sovereign without all participating in government, see Garsten, ‘From Popular Sovereignty’.
- 76 Tocqueville, *Tocqueville on America*, 362.
- 77 Ibid.
- 78 Ibid., 363.
- 79 Ibid.
- 80 Ibid. Contrast Tocqueville’s position with Rousseau’s more exacting requirements in the *Social Contract*, in particular Rousseau’s opposition to representation (III.xv; see also II.vi, III.xiii, xviii). Rousseau would agree that New Yorkers

exercise sovereignty for one day only, but he would deny that such an arrangement is compatible with freedom and democracy.

- 81 While my focus is on conceptions of popular sovereignty and institutional arrangements, it is important to remember that the French Revolution was a repudiation of priestly authority over morals, and by extension, of theological authority over politics, as it was a rebellion against a corrupt monarchical regime. In the French Revolution, therefore, in deposing the monarch, the people not only appropriated the king's authority but also deprived the Catholic Church of its privileged place in society, and thereby weakened its hold over citizens' moral imaginations. Thus whereas in America, God remained sovereign over the people even as they held and exercised political sovereignty, in France the revolutionary spirit became a kind of secular religion. See A. de Tocqueville, *The Ancien Régime and the French Revolution*, ed. Jon Elster, trans. A. Goldhammer (Cambridge, 2011), 13; see also Bk. III, Ch. 2.
- 82 Ibid., 147.
- 83 Ibid.
- 84 Ibid., 147, 148.
- 85 Ibid., 143–144, 149–150. Tocqueville argues that the 'true nature' of the revolution can be found in the Economists' writings (143). On democratic despotism as the cousin of free democracy, see Tocqueville, *Democracy in America*, 52–53 and Jaume, *Tocqueville*, 18–19.
- 86 Tocqueville, *Ancien Régime*, 181.
- 87 Ibid., 4.
- 88 Ibid., 150. Understanding and addressing this problem was one of Tocqueville's primary motivations for writing *Democracy in America*. In describing the organisation and practice of popular sovereignty in America, especially at the level of the town, Tocqueville, in the words of Lucien Jaume, 'was attacking with muffled vehemence ... the French conception of the state, which had confiscated the popular sovereignty so often proclaimed since 1789' (*Tocqueville*, 20. See also *ibid.*, 21–64).
- 89 On the unfolding of this dynamic, see R.H. Soltau, *French Political Thought in the Nineteenth Century* (New Haven, 1931).
- 90 Garsten, 'From Popular Sovereignty', 267. See also 268–269, as well as Lamberti, *Tocqueville*, 98–99 and Jaume, *Tocqueville*, 22–24, 57–58.
- 91 Garsten, 'From Popular Sovereignty', 267; Tocqueville, *Ancien Régime*, 150–151.
- 92 These hopes and their swift demise are described by Tocqueville in his account of the Revolution of 1848 and its aftermath in *Recollections*, ed. O. Zunz, trans. A. Goldhammer (Charlottesville, 2016), 76–77.
- 93 *TA*, 376.
- 94 See Jaume, *Tocqueville*, 27–28.
- 95 Tocqueville, *Democracy*, 379–380. Jennings, 'Constitutional Liberalism in France'.

- 96 Tocqueville to Francis Lieber, 4 August 1852; Tocqueville, *Tocqueville on America*, 133.
- 97 Ibid.
- 98 Tocqueville, *Democracy*, 53.
- 99 Ibid., 379–380.
- 100 Jaume, *Tocqueville*, 24–25, 58, 68.

Plural voting and popular government in Victorian Britain

Greg Conti

In any discussion of popular sovereignty, there are two obvious points of entry. We might inquire into the nature of *sovereignty*. What does it mean to possess or exercise supreme power? Is the sovereign identical with the state? Can sovereignty be divided? These are some of the most vexed questions in the history of political philosophy. But we might also ask about the nature of the *people*. What kind of entity is the people? What is the appropriate way to conceive of the people, especially for the purposes of – if we are in a modern state where the need for representation is taken for granted¹ – *representing* it so that political power might be legitimately exercised? And which institutional forms correspond to this proper conception of the people? It is on the latter set of questions that this chapter will concentrate, although in so doing we inevitably touch, if mostly implicitly, on the former set as well. In particular, in service to this volume's broad historical mission, this chapter will take up an important strand of *Victorian* political thought on these questions, one centred on John Stuart Mill (1806–1873) and some of his interlocutors.²

Mill's *Considerations on Representative Government* (1861) noted that 'the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community'. One way to read this is as a classical definition of popular sovereignty.³ For those who have read Mill closely, however, a conundrum quickly arises. For, notoriously, Mill advocated plural voting, that is, the granting of greater weight to the electoral choices of some parts of the electorate over others⁴ – and he did so not merely casually or *en passant*, as some commentators who regard this endorsement as inconvenient have tried to suggest.⁵ This combination strikes many of us as odd today, when popular sovereignty is supposed to involve democracy,⁶ which in public discourse and political culture is in turn supposed to require one-man one-vote, or at least a close approximation to it. At the least, most self-declared popular-sovereignists of today would look askance at positively building the inequality of voting power right into the centre of one's picture

of representative government, as Mill did. Is Mill's theory not, thus, quite a strange one?

I believe that, from the perspective of a significant and sophisticated segment of Mill's contemporaries, *yes*, it was strange – but perhaps not quite for the reasons which we might imagine today. Mill's theory was out of step with much mid-Victorian thinking about popular sovereignty and representative government, but not because he supported plural voting *simpliciter*. Rather, it was the *specific way* in which he justified, and wished to implement, plural voting that set him at odds with many of his fellows. Plural voting rightly understood, they thought, was perfectly consistent with, even demanded by, a proper understanding of popular sovereignty.

This chapter sketches a set of such 'popular sovereignty-friendly' Victorian proposals for plural voting – which can stand in for a broader school of Victorian political thought – and explores why the creators of such schemes often felt that Mill's theory did not fit in with theirs. It then discusses Mill's rejoinders to these competing projects of plural voting, in particular his critique of the Scottish legal and political theorist James Lorimer (1818–1890). In particular, this chapter shows that major currents of mid-Victorian liberalism and liberal-conservatism sanctioned plural voting *not* in the hope of restoring a lost aristocracy or erecting a cloistered meritocratic elite, but instead from the belief that plural voting was a necessary instrument for accurately representing the nation in its many facets. Further, it argues that Mill's programme of plural voting contrasted with these contemporaneous conceptions in that it foregrounded a set of egalitarian normative judgements about the kinds of people who deserved more say in the political process based on their abilities and attainments. It was this departure, much more than his comfort with plural voting *per se*, that marked Mill's notions of popular self-government as distinct from most of his Victorian associates'. Finally, the chapter concludes by briefly relating the views of Mill and his milieu on the organisation of the suffrage to the second major theme of this volume, populism.

Before we begin, though, a disclaimer is in order. This is that 'popular sovereignty' was not really a term for which these authors had any affection. Strikingly, the term hardly appears in Mill's gigantic corpus.⁷ Nor is this peculiar to Mill: mid-Victorian political theory was not saturated with the language of popular sovereignty as epochs both before and after have been. Despite the influence of Tocqueville, who did bandy about the term and frequently use it as synonymous with 'democracy',⁸ Victorians were obsessed with debating the merits and demerits of *democracy*, with the notion of popular sovereignty or the sovereignty of the people remaining marginal. For some (such as Mill, in most of his moods), it would have been because it violated a sound Austinian-Hobbesian notion of sovereignty, according to

which all polities possessed somewhere an ultimate, legally unbound power and which, given the legal-political facts of nineteenth-century British politics, told in favour of identifying Britain as a land of *parliamentary* sovereignty.⁹ These thinkers understood themselves to be discussing the question not of whether popular or some other kind of sovereignty was desirable, but of whether their system of parliamentary supremacy should be undergirded by a *democratic* suffrage or by some other franchise regime. Others steered clear of such language as tainted with the excesses of French Revolutionary tradition, with the idea of an absolute and unlimited power – often incarnated directly by a mob – against which individuals, in the last account, had no rights.¹⁰ But in part the marginalisation of this concept stemmed from the fact that the broad Victorian mainstream – even its ‘advanced’ or ‘radical’ wings for which Mill claimed to speak – just did not contain a lot of Rousseauians. Few studied Rousseau with any care; many regarded him with horror; and all generally operated without the benefit of the clear distinction which he had drawn between *sovereignty* and *government*.¹¹ Apart from its use in the traditional designation for the monarch, the deployment of the language of sovereignty in the era was most frequent in certain technical legal discourses and especially in the domain of international relations.¹²

Hence, participants in public debate (like Abraham Lincoln did in the American context) were happy to employ a whole litany of phrases that mixed up the ideas of popular government, self-government, the rule of public opinion, national self-determination, *und so weiter*, in ways that conveyed the core of a kind of common-sensical, non-technical notion of popular sovereignty: that ultimately public affairs were conducted in accord with the resolutions of the ‘national mind’.¹³ As the ‘greatest Victorian’, Walter Bagehot (1826–1877) said, Britain enjoyed ‘self-government – government of the people by the people’; indeed, its form of government was ‘in every true sense [more] popular’ than the American.¹⁴ Popular sovereignty in this loose, undertheorised sense of governance in accord with public opinion or the national will was a dominant value of mainstream mid-Victorian political thought.¹⁵

Those qualifications being made, let us return to the main question: if Bagehot and his cohort were committed to national self-rule via parliamentarism, what kind of electoral system followed from this commitment?

The first thing to note is that Bagehot’s bullish proclamations of the popular and self-governing character of the British state were made at a time not only when the suffrage remained highly constricted, but also when plural voting existed.¹⁶ (Indeed, plural voting would persist until after the Second World War.¹⁷) This plural voting did not take the form, to which theorists today are accustomed from Mill, of *weighted* voting, that is, of graduating the number of votes that an elector possessed within a specific

constituency according to some metric (property, wealth, education, intelligence being the leading ones advocated in the history of political thought). Rather, plural voting took place insofar as the citizen could exercise *one* vote in *each* constituency for which he qualified for the suffrage. On this non-weighted genre of plural voting, owners of property could vote both in their district of primary residence and the districts in which their other property lay, and university alumni could vote both for their university seats and in the appropriate territorial constituencies. As Charles Lutwidge Dodgson (1832–1898), a.k.a. Lewis Carroll of *Alice in Wonderland* fame, put it with typical literary zest, punning here on the ecclesiastical meaning of pluralism, the infamous practice of bishops holding multiple benefices: ‘certain “pluralists” are now able to vote in several different Districts. ... But the justice of allowing one Elector to vote as if he were, “like Cerberus, three gentlemen at once”, seems quite doubtful’.¹⁸ However, many of his fellow Victorians across the ideological spectrum, including Bagehot, did not share his doubts.

Bagehot was not entirely satisfied with the status quo of the Reformed Parliament, as it was called. But for Bagehot the existence of this kind of plural voting was no cause of his discontent. Instead, Bagehot’s chief complaint was that the franchise at that time was *too uniform*. Traditionally, the electoral law of Britain’s ‘immemorial constitution’ – what had come by the mid-century, when Bagehot and Mill were writing, to be known as the ‘unreformed parliament’ – had consisted of (what one scholar describes as) a ‘crazy-quilt pattern’ of local regulations for the suffrage.¹⁹ In a few places nearly manhood suffrage prevailed; in others a high property qualification existed; and there were many gradations in between. Combined with the extreme dissimilarity in the sizes and demographics of the constituencies, a remarkable electoral variegation resulted, which was often not castigated for its asymmetry and arbitrariness, but instead celebrated for allowing an inlet to all ‘classes, interests, and opinions’. As one philosophic supporter of the system had written, ‘by annexing the right of voting for members of the House of Commons to different qualifications in different places, each order and profession of men in the community become virtually represented’; in this way ‘the irregularity in the popular representation’, however much it may have offended against the instinct for symmetry and order, guaranteed that ‘the condition, wants, and occasions of the people ... [in] every quarter’.²⁰

This system was disrupted, however, by the ‘reform’ which gave the mid-Victorian system its name. ‘The First Reform Act’ of 1832 expanded the electorate in overall terms; reallocated districts to compensate for some of the most glaring eyesores in the preceding hodgepodge (Manchester, for instance, a rising industrial city, having had no members in parliament, while boroughs of eight inhabitants or so had them); and made efforts to crack down on corruption and ‘royal influence’ in the electoral system. But

in so doing ‘The Representation of the People Act’, as it was officially titled, curtailed the local variation in the suffrage, instituted a single censitary threshold in all boroughs, and did much to standardise electoral regulation. Thus, though 1832 increased the total number of electors, it disenfranchised the working-class voters who had previously possessed the vote in the assortment of boroughs with low property thresholds or with idiosyncratic franchises based on membership in guilds, corporations, etc., and it thereby decreased the diversity and range of types of electors.²¹

For Whiggish liberals like Bagehot, the Reform Act was justified, both for ridding the unreformed system of abuses and injustices that had accreted over time, and as a kind of emergency measure that preserved a fragile peace.²² Nevertheless, Bagehot judged unequivocally that the move towards a more ‘uniform “right of suffrage”’ had been a great loss.²³ In abandoning the true ‘liberal doctrine’ of ‘varying qualification’ – that all ‘really organic interests and ideas’ be brought ‘together in the representative assembly’ via an arrangement of unlike constituencies and suffrage rules – the Reform Act had put the Commons in disharmony with the condition of the nation.²⁴ Consequently, Bagehot proposed lowering the property threshold in the great urban boroughs to permit the working classes to return members of their own, and thus to restore the accord between assembly and nation.²⁵ On this plan of reform plural voting would persist, not so much from a well-theorised affirmation of its value, but simply because there was no reason to get rid of it; it did not interfere with the goal of *representativeness* as Bagehot understood it.

Other would-be redesigners of representative institutions latched onto the principle of electoral diversity but attempted to apply it in a more radical way. One such was the eccentric Tory legal reformer George Harris (1809–1890), who sought to make the legislature ‘an epitome or abridgment of the whole civil body or community’.²⁶ He would effect this aim by, first, defining ‘the essential and real interests of the State [which] ought to be represented in its legislative assembly ... in due proportion to [their] relative importance’, and, then, carving up the electorate into an series of constituencies based on the amount of property owned and on membership in various associations and corporate bodies.²⁷ Out of this ambition to craft an assembly that would be sociologically true he developed a fascinating scheme technically, but alas we can only gesture at its broad strokes: he would reserve one-quarter of seats each to the upper, middle and lower classes, and the final quarter to a kaleidoscopic array of corporations and (what we would call now) civil society organisations.²⁸

For our purposes, Harris’s scheme had two important characteristics. First, it contained universal suffrage: all (male) citizens would vote at least in an appropriate class-based constituency (since the set of lower-class

districts included no criteria of eligibility; hence their title of constituencies for ‘personal voters’). Indeed, unlike most Victorians who were allergic to any hint of the dreaded ‘rights of man’ which had been discredited both by Bentham’s polemic and by the horrors of the Revolution itself,²⁹ Harris believed in something like a natural right to vote.³⁰ However, no more than Bagehot did he consider himself a ‘democrat’, since for Harris democracy meant a *uniform, undifferentiated* form of *universal enfranchisement* – it meant, in the parlance of the time, the *rule of numbers*, that is, a lack of protections against a majority class (the working class, the poor, Catholics in Ireland, etc.) from claiming a (near-)monopoly in the legislature against all the other groups and classes in society.³¹ Democracy thus involved the dominance of a part over the whole, rather than a true representation of the nation. Popular sovereignty demanded the representation of ‘interests’ rather than of ‘individuals’ or ‘numbers’, which would be secured by a (very intricate) schedule of differentiated constituencies and suffrage rules.³²

The second important feature was that it contained plural voting – and not in the undertheorised way that Bagehot’s plan did. Quite the opposite: it was intrinsic to Harris’s notion of what was involved in creating an accurate reflection of interests that all those who belonged to a relevant interest be enabled to have a say in the way in which the interest was represented, regardless of how many other ‘interests’ they might be determined to partake of, and thus in how many other constituencies they might be accorded the franchise. In other words, to Harris it just followed from the commitment to mirror the ‘various great interests’ of society that the person who was more multifarious in his social participation, so to speak, would be more multiply enfranchised.³³ Plural voting in the form of possessing a single vote ‘at multiple hustings’ was therefore an ineluctable by-product of the electoral mechanisms required for producing a sociologically accurate Commons.

Although Harris had a rather idiosyncratic manner of expression, the substance of his proposal was far from an oddity. Several other mid-Victorians, of different partisan stripes, expounded schemes of reform that hovered between Bagehot’s moderate tinkering and Harris’s aggressive refashioning, but which contained the consequence of granting several votes to some citizens across different constituencies. With this kind of plural voting being a relatively uncontroversial aspect of the status quo in a political culture that was hardly imbued with the democratic spirit, it should not be surprising that such a form of electoral inequality was very much on the agenda for reformers. Nor, indeed, did such schemes vanish as ‘democracy’ became a more universal watchword in the twentieth century,³⁴ and it is even arguable that similar intuitions lay behind various forms of ‘corporatism’ in modern welfare states whereby workers and managers not only possess a vote in the conventional electoral-parliamentary sphere but are

also ‘represented’ by unions, industrial associations and so forth which play a more or less official role in much economic regulation and policymaking.³⁵

Worth special consideration in this chapter, however, is another mid-Victorian who strove to mirror social diversity through plural voting: the Scotsman James Lorimer, who later in life would become a leading philosopher of international law.³⁶ Before that, in the 1850s–1860s, he offered a reform plan that, like Mill’s, was grounded in plural voting as *a single weighted suffrage*, rather than – as with Harris, Bagehot and the existent electoral regime – as the possession of a multiplicity of individual votes across several constituencies. On Lorimer’s proposal, a citizen’s voting power would be graduated to reflect the elements of ‘organic social power’ which he possessed – such things as age, intelligence, possession of property, political experience, education and profession.³⁷ By calibrating the electoral weight of each citizen to match the truth about the various fissures within society and the range of sources of influence and distinction that existed in the nation, we would arrive at ‘a perfect representative system ... one which, so to speak, photographed society – the function of the suffrage corresponding to that of the camera’.³⁸ Parliament would constitute, what it always should be, ‘a mirror of the nation’, and thus the nation could finally be truthfully said to rule itself via its representative system.³⁹ United in his principle or end with Bagehot, Harris and company, Lorimer nonetheless differed significantly in technique.

To sum up: the mid-Victorian era played host to a school of writers who advocated electoral systems of which plural voting was an important part but which still promised to realise something like popular sovereignty, still assured that the nation would rule itself via a rightly constituted assembly. The basic philosophical underpinning that made this possible was that they had a communal or corporatist, and not an individualistic or aggregative, understanding of the *nation*; the units which were to be represented in pursuing a government that guaranteed national self-government were not *persons* but *groups*.⁴⁰ To quote just one striking paragraph to this effect:

For what is a Nation? Not a mere aggregation of millions; not a homogeneous mass of units; but a congress of ranks and classes ... having, it is true, one common real ultimate interest, but varying in their characters, occupations, and immediate aims; called to special duties, discharging separate functions, guided by peculiar tastes and desires, representing different phases of intellect and opinion, and considering questions of government and social policy from widely divergent points of view.⁴¹

In other words, representative government and national self-government had nothing to do with reproducing the views ‘at the top of the head’ of an assortment of individuals considered in isolation from their social position;

the task of properly constructing parliamentary representation was akin not to the mathematical task of adding up individual expressions of belief but to the work of the cartographer; the designer of representative institutions had to map 'the area of public opinion', the surface of which was made of 'the various interests and opinions of a nation'.⁴² And indeed, this points to an important political-theoretical truth: that if one does not have an individualistic conception of society, but rather sees society as what used to be called a *communitas communitatum* – the original meaning behind the 'Commons'⁴³ – then the aspiration to reflect society accurately in political institutions, and to achieve something like national self-rule thereby, will not have any particular connection to equal voting weight for individuals.

To writers of the sensibility we have just canvassed, Mill's idea of plural voting was alien. Mill's proposal, they thought, fit with a quite other conception of the purpose or end of plural voting. For these thinkers – who understood themselves to be engaged in a project of sociological accuracy, of designing mechanisms that would allow social facts to be accurately *re-presented* in the assembly – Mill's approach appeared not to belong to the realm of *representative* government at all but instead to constitute an explicit endeavour at normative engineering.

To see why they thought so, let us recall that Mill advocated plural voting solely based on *education*, and that he did so explicitly on the basis that *education* was the *only* justifiable ground on which one could draw distinctions between citizens. The technique of graduating vote weight, he thought, should only be used to reflect true 'personal superiority', which in the context of political power could only, he judged, attach to 'individual mental superiority'.⁴⁴ The good of the system lay partly in its achievement of justice understood as a kind of Aristotelian proportional equality: it was a wrong to the 'higher and moral intellectual being', to the 'better and wiser' person, to treat his opinion as of 'exactly equal value' to the uneducated person's.⁴⁵ But it consisted also of the moral lesson which it imparted to the citizenry. The weighting of votes by education combated facile messages (all too prevalent in a democratising world) to the effect that 'any one man ... is as good as any other'; it demonstrated that the state would recognise and reward moral-intellectual achievement in a way that every citizen 'can comprehend and of which he is able to perceive the justice', thereby spurring the improvement of the body politic by showing that the state values 'knowledge', 'intelligence' and 'virtue' and teaching that the 'ignorant' are not as deserving as the 'wise' to determine 'joint concern[s]'.⁴⁶ Thus plural voting was a tool at the state's disposal for propelling a broader intellectual transformation.

For the likes of Lorimer, Mill was committing a kind of category mistake here. By selecting only the one source of distinction which fit his moral

sympathies for special treatment by the suffrage regime, rather than recognising that education was merely ‘a ground of political power’ among the many of which an ‘organic’ electoral system would have to take account, Mill had actually abandoned the terrain of *representation* altogether.⁴⁷ Because Mill recommended greater voting weight solely for those differences between citizens which he himself judged normatively salient, ‘in place of devising a scheme to represent, he has devised one to reconstruct society’.⁴⁸ In contrast, Lorimer saw himself as upholding the ‘strictly representative character of the suffrage’ against the attempts of ‘Mr. Mill’ to exploit the regulation of the franchise to advance their own theory of the good (what Lorimer called a ‘standard of rectitude’), instead of accepting that it was inappropriate to build into a representative system discriminations between ‘the good and the evil’ in society.⁴⁹ Hence, Mill’s version of plural voting, to this mindset, did not properly qualify as a representative device at all but was instead a tool of a sort of quiet revolution to make the state conform to Mill’s own elitist predilections.

From this perspective, Mill’s proposal had some unlikely bedfellows. One such proposal was that of Robert Cecil (later Lord Salisbury), the future Tory Prime Minister who was in many ways Mill’s opposite number politically,⁵⁰ and indeed Cecil was part of a broader line of thought on this point.⁵¹ Cecil saw the state as ‘a joint-stock company’ and thus wished to graduate voting power solely along the dimension of riches, so that every man would vote according to his ‘share’ of the national wealth.⁵² Mill strongly dissented. Yet to the more ‘mirroring’ style of plural-vote advocates, Cecil and Mill had something important in common: neither appeared to care about trying to carry an accurate image of the nation’s constituent parts into the Commons, but instead each alighted on the aspect of social experience which they considered of special normative relevance and sought to bend the electoral system to it. Lorimer in particular was clear on the kinship he perceived: both Mill and Cecil adhered to ‘systems of the graduated suffrage’ which rested ‘exclusively’ on one ground – they just chose a different ground.⁵³ As noted, Mill opposed Cecil, and did so on two grounds: that the state was not at all the same kind of thing as a company, as its concerns went well beyond the narrowly economic; and that wealth was not connected with any virtue which could legitimate greater political power than one’s fellows.⁵⁴ These were certainly not the sociological grounds of objection that Lorimer put forward. And of course Lorimer thought that the question of virtue or personal meritoriousness was out of place in the realm of representation, where the enterprise of adequately reflecting social facts was not to be subordinated to any selective conception of moral worthiness.

Similarly, Bagehot made plain his discomfort with Mill’s approach, although his concern focused more on his expectation of the likely effects of

Mill's scheme than on fundamental philosophical disagreements about the meaning of representation. Bagehot criticised Mill's plan for being insufficiently empowering of the working classes. Even in conjunction with his proposed extension of the suffrage to all who could 'read, write, and ... perform the common operations of arithmetic' and who were not receiving 'parish relief'⁵⁵ – Mill's wish to weight the votes of the educated would deprive the working class of adequate 'power' and presence in the Commons:

By the adoption of [Mill's] scheme, you would give to the working classes no characteristic expression in the legislature; you would give them an influence in every constituency in appearance considerable, but which would be of no practical avail to them as a class, because on all characteristic points their voice would be neutralized ... by the more numerous votes given for that very purpose to the more educated classes.⁵⁶

In other words, Bagehot accused Mill of brandishing democratic rhetoric but really being content with the parliamentary hegemony of the educated, a category which overlapped heavily with the upper class. Thus plural voting à la Mill was not, as it ought to have been, a technique in service of the accurate reflection of diverse 'classes, interests, and opinions'. Bagehot, then, inched up to but stopped just shy of accusing Mill of something like the cynicism that the virulently aristocratic Cecil was willing to announce openly: that 'the best form of Government ... is one where the masses have little power, and seem to have a great deal'.⁵⁷

It is a testament to the foreignness of Victorian political culture to twenty-first-century readers, and to the difficulty of trying to break it down into a left-right spectrum, that there existed a powerful critique of Mill, supposedly the 'patron saint of liberalism' and a thinker from whose well democratic theorists continue to draw today, on the grounds that his proposed gradation of electoral power was antithetical to *true liberalism* and inconsistent with the conditions under which the nation, correctly understood, could be represented in the Commons and could rule itself.

How did Mill respond to these charges? We have to see his response as occurring at a couple of different levels.

For one, he could straightforwardly reject Bagehot's attack as a mischaracterisation of his view. Mill explicitly and vehemently denounced class rule, either by the rich or the poor, and shortly after Bagehot's lament Mill would find a mechanism for guaranteeing the fair representation of classes and interests to which he could subscribe: Thomas Hare's innovation of the single-transferable vote, for which he became an extremely 'zealous apostle'.⁵⁸ Mill even occasionally ruminated that an ideal legislature would involve a 50–50% split of seats between capital and labour, and he set as a constraint on the implementation of vote weighting that 'those who are

privileged by it, or the class (if any) to which they mainly belong, shall [not] outweigh by means of it all the rest of the community'.⁵⁹ Despite Bagehot's charge, it was not easy to portray Mill, who celebrated 'diversity' and 'antagonism' as the engines of progress,⁶⁰ as indifferent to the value of variety in the composition of the Commons. Nonetheless, Bagehot was pressing on some sensitive points in Mill's rationale for plural voting. What, for instance, was to guide one in the calibration of vote weight so as to offer the proper boost to education without veering into class legislation, since 'intellect' or 'education' is quite different from the class or 'community of interest' groupings as typically understood? How would one know if intellect was being exercised for the sake of a class or sectional interest? And was not education supposed to make one less susceptible to advancing a partial or sectional good at the expense of the good of the whole, such that the rationale for other groups needing protection against the intellects privileged by plural voting seemed to vanish?⁶¹

It was true, though, that even if this line of critique did not really land, Mill was engaged in a rather different enterprise than Bagehot and company were. For even if egalitarians today (and egalitarians in the mid-nineteenth century, for that matter⁶²) have trouble accepting that the sociological components – the convictions about the nature of the nation or the people – of the electoral projects of Lorimer, Harris, *et al.* were simply neutral or empirical accountings of social facts, it was still the case that this is how they understood, and theorised, their desired reforms. They were providing, they claimed, the electoral engineering that would enable the Commons to *re-present* or track the true state of social forces. Mill, on the other hand, did not just mix normatively laden premises into the purportedly sociological underpinnings of his representation programme, but overtly stated that his electoral system ran together two different logics, balanced two discrete goods: a *mirroring* logic through the single-transferable vote, and a *moral* logic of doing justice to 'personal superiority' through the graduated suffrage. Which brings us to investigate the arguments which Mill himself lodged against these purely mirroring or sociological strands of plural voting.

First, Mill inveighed against that 'intelligent writer, Mr. Bagehot' for proffering too 'violent a remedy'.⁶³ The violence of Bagehot's scheme lay in that it would 'giv[e] up the representation of the large towns to day-labourers ... thereby disfranchising the higher and middle classes of those places, who comprise the majority of the most intellectual persons in the kingdom'.⁶⁴ The best minds of England were concentrated among the educated and professional strata of precisely those major urban constituencies in which Bagehot would institute manhood suffrage. Yet the establishment of manhood suffrage in them would mean that these lights of the realm would be consistently outvoted by the working classes and consequently

lose their presence in the Commons. There was a distinctly elitist accent to Mill's counterargument here, and one could see it as of a piece with the extra solicitude for the 'highly-cultivated members of the community' encapsulated in his plural-voting programme;⁶⁵ but it could also be squared with a more sociological rationale on the grounds that this urban-educated demographic was too special, too unique in its contributions to the nation and to public opinion, for the inclusion of its spokesmen in the organ of popular representation not to be afforded firmer guarantees.

More theoretically incisive was Mill's rejoinder to Lorimer. It commingled several distinct lines of reproof, of which I want to detach and focus on just one here. It is worth quoting Mill in full (recall that Lorimer understood constituting the 'Legislature [to] be an exact mirror of the existing constitution of society' as a matter of translating social *force, power, influence, position* into appropriately unequal shares of electoral power):

If by the social influence of *A* we are to understand (as is the most obvious interpretation) the power he exercises over the convictions and inclinations of others through the affection with which he inspires them, or the high opinion they entertain of him, all this influence he will possess under equal and universal suffrage. Indeed, under no suffrage *but* that which is equal and universal, *can* his political influence be exactly co-extensive with his moral influence, measured by the number of persons who look up to his judgment, and are willing to accept him as their leader. If besides this influence, supposed to be ten times that of *B*, he has also ten votes of his own to *B*'s one, the effect is not, as Mr. Lorimer professes, to recognise, but to double, *A*'s superiority of importance. It is for the very opposite reason to Mr. Lorimer's, that the third writer to whom we have referred [Mill is talking about himself here] made the suggestion of giving a number of votes proportional to degree of education, as indicated by whatever tests, other than that of wealth, may be the most truly discriminative. He proposed it, not because educated persons have already a greater influence, but because, though they ought to have that influence, yet without some such provision they possibly might *not* Under a limited suffrage, indeed, it is within possibility that persons or classes may possess a social influence not represented by any corresponding political one: but under equal and universal suffrage this is impossible; all social influences tell politically at their full value.⁶⁶

In short, Mill was charging Lorimer with *double-counting*. There was a fatal paradox in Lorimer's view, according to Mill. Age, property, education and all the other characteristics were picked out for additional electoral weight by Lorimer for the sake of accurately reflecting the *influence* or *power* that came with them in social life; but if they carried such influence or power, then they precisely should *not* need any additional electoral weight in order to have their due effect on the course of legislation. What else could influence in politics be, after all, but the capacity to bring others over to one's way of

looking at public affairs? Far from being engaged in an enterprise ‘simply to *represent* society as it exists’,⁶⁷ Mill concluded that Lorimer was engaged in exactly the opposite enterprise – that he was manipulating the electoral system to ensure that those qualities which he himself valorised would be ensured the parliamentary prominence which he hoped them to have.

Mill’s argument here resonates with and participates in a broader tradition of thought about the value of democracy or extended suffrage. The seventeenth and eighteenth centuries had already seen defences of ‘republican’ elections on the grounds that these procedures ratified deserving social elites.⁶⁸ Such ideas featured prominently in the debate over the First Reform Act. Tory opponents argued that expanding the electoral rolls would destroy the present system in which the ‘House of Commons’ benefitted from that ‘natural authority, which, in a rich country like Britain, admits not of separation from the possession of property’.⁶⁹ To which the response of the Whig proponents of the bill was that they had no influence in diminishing the ‘legitimate’ influence of property, but wanted solely to weed out ‘illegitimate’ influence based on corruption or intimidation.⁷⁰ And such Whigs had every confidence that, improper influence weeded out, the ‘natural authority’ wielded by those at the top of the socioeconomic hierarchy would prevail even as the electorate took on a more middle-class hue.⁷¹ Around the same time, Mill’s own father was mounting a similar argument in favour of a more radical extension of the franchise,⁷² and such assurances that expansion of the electoral rolls was ‘safe’ due to the deferential character of the lower classes remained common in the 1860 and 1870s.⁷³ As a radical French physician-cum-political theorist had put it a few years before Mill *père*, raging around the (restrictive to the point of oligarchical) electoral regime of the Bourbon Restoration: ‘the only legitimate prerogative’ which could exist in a free state was ‘that which existed by virtue of opinion’.⁷⁴ To say that age, property, intelligence or wealth are bearers of *social influence and power* only made sense if one had an implicit theory of deference towards those attributes. And so the reformer who wished that the legislature would accurately reflect these societal forces had to adopt democracy or something like it – for only then, and not by stacking the electoral deck in any particular direction, could the prerogatives of legislative power match the conditions of rightful influence in society at large.

Mill’s own version of this thinking was taken up by several writers, including by one of the most unjustly neglected minds of nineteenth-century liberalism: the journalist, politician, historian and *littérateur* Prosper Duvergier de Hauranne (1798–1881). Duvergier was an especially sophisticated commenter on issues of representation (perhaps his country’s greatest thinker after Constant on the subject). And in one of his most brilliant pieces – itself formally a review of Mill’s and Lorimer’s books, as well as two

other British tomes – he treated the kernel of Mill's counterblast to Lorimer as a foundational insight of democratic theory:

All natural and legitimate influences exert themselves freely on the level terrain of democracy when they are not imprisoned by the artificial barriers erected by a jealous power. ... There is no need of intimidation or violence for legitimate influences to make themselves felt in society: the moral force of persuasion and example suffices on its own. ... No, it is not necessary to confirm these natural superiorities by attaching to them some privilege, which is always more or less arbitrary, and which exposes them to the jealousy of the people. Intelligence, wealth, will, conviction, patriotism, all the moral and material powers to which we must attribute a legitimate influence – all these will be respected and recognized without the aid of any privileges ... It's in this sense that universal suffrage, as false and bad as it can appear in principle, must be definitively considered as the most natural and the most equitable form of suffrage. For even as it contains a pretension of correcting the inequalities which exist naturally among men, on the contrary it respects them better than any other [electoral system], precisely because it does not undertake to classify them, nor to direct them, but lets them express themselves freely. It does not risk to diminish or embellish them, nor to protect them beyond measure, nor to unjustly harm them. ... It is in the interest of the ideas of order and of conservative principles that electoral competition must be liberated from every obstacle.⁷⁵

Duvergier was far from the only author in Mill's orbit to give expression to this Millian sentiment,⁷⁶ and it remained an important element of democratic apologetics well into the twentieth century.⁷⁷ Students of the Mill–Lorimer exchange should not be surprised that it had such staying power in democratic thought, since it clearly discomfited Lorimer. Indeed, despite Lorimer's considerable sharpness as a critic both of democracy and of Mill's programme of representation, the ham-handedness of his response showed what difficulties it caused for him. The lower classes

are most anxious to imitate [the cultivated classes'] manners, their habits, their modes of dress ... but this adulation does not go the length of accepting their opinions, or even of allowing a reasonable weight to them, on subjects of government. There the demos follows its own instincts, grasps at what seems to it to be its immediate interest, and, if you entrust it with absolute power, will govern as an exclusive class. The deference for the upper classes, which is so marked socially, thus counts politically for nothing.⁷⁸

This admission was truly damaging to Lorimer's case. For it made clear that his scheme could not be accepted as simply *reflecting the facts out there about society*, but had to be grasped as an endeavour to ensure that the qualities and attainments which Lorimer himself valued would be accorded the legislative power which he judged appropriate to them. And yet, of course, this was precisely what he had castigated Mill for doing.

The great irony is that, although Mill put with great cogency the argument that democracy was capable of accurately reflecting social forces, including legitimate inequalities, he himself did not advocate equal universal suffrage. He showed the falsity of Lorimer's self-understanding as the architect of a system for merely 'mirroring the nation' in its diversities and inequalities in order to realise popular self-rule. But then Mill turned away from any project of defending equal universal suffrage. There was not exactly logical inconsistency here. Recall that Mill believed that, even if 'the natural influence of truth and reason' would win out under an extended suffrage so long as proportional representation was enacted, it was *still* right to adopt plural voting in order to convey the proper moral lesson to the citizenry through 'the *spirit* of the institutions of the country'.⁷⁹ Although he exposed a fatal flaw in Lorimer's logic, Mill's own advocacy of overt moral engineering through electoral design left him outside this important camp of mid-Victorian 'liberal' thought, which conceived of popular sovereignty or national self-rule as wrapped up in the enterprise to faithfully *re-present* the state of society in the legislature.⁸⁰ Instead, the composition of Mill's Commons was not intended to constitute a reproduction of the shape of society or the people or the nation, but rather to accord with a fundamental truth about the differential entitlements to political power that flowed from the moral-intellectual superiority of the educated over the uneducated.

To conclude, a word is in order about the second theme of this volume: populism. This term was not, it should be said, in the mid-Victorian lexicon. Further muddying the waters is that populism has been a prime example of 'conceptual creep' – even if there is a broad family resemblance among them, the term seems to encompass quite a number of distinct meanings. But there were aspects of the debates in which these mid-Victorian plural-vote proponents participated which resonate with a particularly salient understanding of populism today: namely, as a kind of anti-pluralist identity politics in which one demographic group, usually spurred on by a charismatic leader, comes to identify itself as the true people, shutting out dissenters and becoming deaf to minorities and especially to more 'expert' voices.⁸¹ The authors whom we have investigated here, as well as a broader swathe of anti-democratic liberal thinkers in the mid-century, resisted electoral democracy because they prophesied that it would mark the end of the kind of deliberative politics among enlightened spokesmen of different groups and interests that they championed; 'government by discussion' would succumb to a kind of lower-class 'identity politics' where the clear perception of interests and the discussion of policy and principle would take a backseat to questions of personality and group membership.⁸² The working class, or Irish Catholics, unguided by anything that could properly be called 'political sentiments' but spurred on by 'demagogues'

and exultant at being liberated from having to ‘acknowledge their superiors’, would fill Westminster only with their ‘single class’.⁸³ These fears fed on Victorians’ interpretations of politics across the Channel: they believed that a kind of ‘peasant populism’ – the ‘ruralocracy’ which Mill and others decried – underpinned the Caesarism that prevailed in France under the Second Empire of Louis Napoleon.⁸⁴ This regime, with which parallels have often been drawn to modern populist governments, was an *authoritarian democracy*. Victorian commenters took the latter part of that equation seriously,⁸⁵ and hence were filled with foreboding that a democratic suffrage would yield personal rule, violative of individual liberty and respect for law, and grounded in the near-unanimous assent of the least-educated stratum of society. Thus the theorists of plural voting at which this chapter has looked were antidemocrats in significant part because they fretted about outcomes which we would now be inclined to call populist.

But the label of populism might also, surprisingly, be applied to Lorimer, Bagehot and their ilk. For many scholars also understand populism to include a confidence that one can know, and act on the knowledge of, a *true people* and of what it requires. This is often likened to the *anti-pluralist* dimension of populism – a ‘real America’ or *la vraie France* is asserted to be the rightful object of national concern, against minority groups who do not fit this model.⁸⁶ Now, the authors at which we looked here were not anti-pluralist in the sense in which modern scholars of populism mean – they aimed to be inclusive of different *communities* and to find space for a range of *perspectives*. But to achieve this, they had to assert that the particular way in which they grasped the different parts of this constellation was the right one, and that electoral systems could thereby be moulded to fit the true condition of the *people* or the *nation*. Undergirding their projects of electoral reform was, then, a highly contestable notion of *what the people was* which they did not wish to subject to democratic contestation.⁸⁷ Hence, depending on the angle from which one looks, mid-Victorian plural voting was both targeted against, and itself partook of, ingredients of ‘populism’ as the term has come to be used in the twenty-first century.

Notes

- 1 See, for example, B. Constant, ‘The Liberty of the Ancients Compared with That of the Moderns’, in Constant, *Political Writings*, ed. B. Fontana (Cambridge, 1988), 308–327; H. Brougham, *The British Constitution: Its History, Structure and Working* (Glasgow, 1861), 29–55.
- 2 Some of the ideas in this chapter have appeared, in rather different form, in G. Conti, *Parliament the Mirror of the Nation: Representation, Deliberation, and Democracy in Victorian Britain* (Cambridge, 2019), esp. 13–76.

- 3 'There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community'; J.S. Mill, *Considerations on Representative Government*, CWJSM, XIX, 403.
- 4 For a historically thin but useful overview of Mill's proposal in *Considerations*, see J. Miller, 'J.S. Mill on Plural Voting, Competence, and Participation', *HPT* 24 (2003), 647–667.
- 5 To my mind, Dale Miller successfully refutes the many scholars who have attempted to downplay the significance of plural voting to Mill: D. Miller, 'The Place of Plural Voting in Mill's Conception of Representative Government', *RP* 77 (2015), 399–423.
- 6 As some scholars have noted, the connection between popular sovereignty and democracy has been quite weak historically, at least until the twentieth century; see, for example, A. Vincent, *Theories of the State* (Oxford, 1987), ch. 3.
- 7 See, for example, D. Kelly, 'Popular Sovereignty as State Theory in the Nineteenth Century', in R. Bourke and Q. Skinner (eds), *Popular Sovereignty in Historical Perspective* (Cambridge, 2016), 270–296. Where the 'sovereignty of the people' does appear, it is almost always in reflecting on French affairs; and he seldom uses the phrase, even when ventriloquising others, without expressing reservations about the ways in which the term is commonly used. This is true, for example, in his most extended handling of the concept, which came in attempting to vindicate the 1830 revolutionaries from charges of inconsistency with their principles. See esp. Mill, 'Prospects of France [IV–V], 10 and 17 Oct. 1830', CWJSM, XXII, 149–163; 'Comparison of the Tendencies of the French and English Intellect', CWJSM, XXIII, 445; *Auguste Comte and Positivism*, in CWJSM, X, 304.
 That popular sovereignty – and indeed sovereignty *simpliciter* – was not a guiding concept for Mill is made the more striking by the fact that it was one of the leaders of philosophic radicalism, the milieu in which he grew up, who produced what would for a long time be the standard edition of the greatest of all sovereignty theorists, Hobbes. See H. Grote, *The Philosophic Radicals of 1832, Comprising the Life of Sir W. Molesworth, and Some Incidents Connected with the Reform Movement from 1832 to 1842* (London, 1866).
- 8 For example, Tocqueville, *Democracy*, I, 53–55.
- 9 J. Austin, *The Province of Jurisprudence Determined*, ed. W. Rumble (Cambridge, 1995), esp. lecture six. And see J. Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford, 1999).
- 10 For a conventional assertion of the absence of 'sovereignty of the people' in the English political tradition, see, for example, C. Dawson, *Religion and the Modern State* (London, 1935), 32.
- 11 The *locus classicus* of this distinction is of course at *The Social Contract*, book III, part 1. Hence it is not a coincidence that Richard Tuck had more or less to skip the Victorians in his recent study of the sovereignty-government distinction: R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2016). On the neglect of and contempt for Rousseau among the mid-Victorians, see F. Knickerbocker, *Free Minds: John Morley and His Friends* (Cambridge, MA, 1943).

- 12 For more on the language of sovereignty in this period, see D. Boucher, *Appropriating Hobbes: Legacies in Political, Legal, and International Thought* (Oxford, 2018).
- 13 See, for example, J. Thompson, *British Political Culture and Idea of Public Opinion, 1867–1914* (Cambridge, 2013).
- 14 W. Bagehot, *English Constitution*, CWWB, V, 306; ‘The Present Crisis in America’, CWWB, VI, 173.
- 15 It is not really until advocacy for the referendum gets going in earnest in the *fin-de-siècle* period of Home Rule Crisis that a more conceptually sophisticated discourse of popular sovereignty – distinguished not only to various kinds of tyranny or unaccountable state forms but also to parliamentary *sovereignty* and parliamentary *government*, and complete with such important distinctions as between legal and political sovereignty – comes into prominence, above all in the hands of Albert Venn Dicey. (See A.V. Dicey, *Lectures Introductory to the Study of the Law of the Constitution* [London, 1885]). But that is a story for another essay.
- 16 On the Reformed electoral system, see, for example, M. Smith, ‘Parliamentary Reform and the Electorate’, in C. Williams (ed.), *A Companion to Nineteenth-Century Britain* (Oxford, 2004), 156–173.
- 17 A. Carstairs, *A Short History of Electoral Systems in Western Europe* (London, 1980), 189–199.
- 18 C.L. Dodgson, *The Principles of Parliamentary Representation*, in *The Pamphlets of Lewis Carroll, Volume Three: The Political Pamphlets and Letters of Charles Lutwidge Dodgson* (New York, 2001), 195.
- 19 V. Starzinger, *The Politics of the Center, France and England, 1815–1848* (London, 1991), 64.
- 20 W. Paley, *The Principles of Moral and Political Philosophy*, ed. D. Le Mahieu (Indianapolis, 2002), 332–333, 342.
- 21 P. Salmon, ‘The English Reform Legislation’, in D. Fisher (ed.), *The History of Parliament, Vol. 1: The House of Commons, 1820–1832* (Cambridge, 2009), 374–412.
- 22 Bagehot, ‘Parliamentary Reform’, CWWB, VI, 220–221.
- 23 Bagehot, ‘Lord Althorp and the Reform Act of 1832’, CWWB, III, 220–223; ‘Parliamentary Reform’, 220–221.
- 24 Bagehot, ‘“True Liberalism” and Reform’, CWWB, VI, 360.
- 25 Bagehot, ‘English Constitution’, CWWB, V, 407; Bagehot, ‘Parliamentary Reform’, 191–3.
- 26 G. Harris, *The True Theory of Representation in a State* (London, 1857), 23.
- 27 *Ibid.*, 21.
- 28 *Ibid.*, 59–64.
- 29 See, for example, P. Schofield, ‘Jeremy Bentham’s “Nonsense upon Stilts”’, *Utilitas* 15 (2003), 1–26; U. Henriques, *Religious Toleration in England, 1787–1833* (Toronto, 1961), 21, 164.
- 30 Harris, *True Theory*, 20.
- 31 See, for example, R. Saunders, *Democracy and the Vote in British Politics, 1848–1867* (Farnham, 2011).

- 32 See, for example, G. Conti, 'Democracy Confronts Diversity: Descriptive Representation in Victorian Britain', *PT* 47 (2019), 230–257.
- 33 Harris, *True Theory*, 64.
- 34 The parallels between Harris and G.D.H. Cole, the influential pluralist/guild-socialist of the first half of the twentieth century, are suggestive. As a pluralist, Cole rejected unitary parliamentary sovereignty, but he went further than most of his peers in proposing to supplement the traditional legislature based on territorial electorates with councils the units of membership for which were corporatist and functional. This led him to a kind of Harris-style plural voting, except with the several votes of the elector spread across different assemblies rather than different constituencies for the Commons. Plural voting à la Cole would take place insofar as the citizen could exercise *one* vote for *each* association in which he belonged, since these associations were to possess seats in their own right in the councils newly devised alongside parliament: 'This does not mean that, in a functional democracy, each person will count for one and no person for more than one. That is the cant of false democracy. The essence of functional democracy is that a man should count as many times over as there are functions in which he is interested. To count once is to count about nothing in particular: what men want is to count on the particular issues in which they are interested. Instead of "One man, one vote", we must say "One man as many votes as interests, but only one vote in relation to each interest"': G.D.H. Cole, *Social Theory* (New York, 1920), 115.
- 35 See, for example, P. Schmitter, 'Democratic Theory and Neocorporatist Practice', *Social Research* 50 (1983), 885–928; P. Schmitter, 'Still the Century of Corporatism?', in Schmitter and G. Lehmbruch (eds), *Trends toward Corporatist Intermediation* (Beverly Hills, 1979), 9–52.
- 36 J. Lorimer, *The Institutes of Law: A Treatise of the Principles of Jurisprudence as Determined by the Nature* (Edinburgh, 1880); J. Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (Edinburgh, 1883).
- 37 J. Lorimer, 'Mr. Mill on Representative Government', *North British Review* 35 (1861), 557; J. Lorimer, *Constitutionalism of the Future, or Parliament the Mirror of the Nation* (Edinburgh, 1865), 123, 155, 164–73.
- 38 Lorimer, *Constitutionalism*, 122–123.
- 39 J. Lorimer, *Political Progress Not Necessarily Democratic: or Relative Equality the True Foundation of Liberty* (Edinburgh, 1857), 8–9, 16–17. Lorimer was even willing to speak the language of the 'general will' here.
- 40 On the misleadingness of the cliché of the hyper-individualism of Victorian political thought, see E. Biagini (ed.), 'Introduction: Citizenship, Liberty, and Community', in *Citizenship and Community: Liberals, Radicals, and Collective Identities in the British Isles, 1865–1931* (Cambridge, 1996), 1–17. In the electoral domain, a communitarian theory and practice clearly predominated in the English constitutional tradition. For a typical contemporaneous expression, see, for example, W. Hearn, *The Government of England: Its Structure and Its Development* (London, 1867), 501–571.

- 41 W.R. Greg, 'The Expected Reform Bill', *Edinburgh Review* 95 (1852), 250.
- 42 W. Lecky, *Democracy and Liberty* (London, 1896), I, 21. Lecky was among the last thinkers to have maintained fidelity to the antidemocratic mirroring sensibility. On the cartographic imagery, see A. Kahan, *Liberalism in Nineteenth-Century Europe: The Political Culture of Limited Suffrage* (Houndmills, 2003), 33.
- 43 J. Figgis, *Churches in the Modern State* (London, 1914), 80; J. Heinberg, 'History of the Majority Principle', *APSR* 20 (1926), 52–68.
- 44 Mill, *Considerations*, 474–475. See also Mill, 'Recent Writers on Reform', 356.
- 45 Mill, *Considerations*, 473–474. Mill's programme of plural voting was the sole system to avoid both the 'personal injustice' of 'withhold[ing] from any one ... the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other people' and the 'injustice' to the wise man if his 'better judgment' should be considered no more worthwhile than another's 'worse' judgement; *ibid.*, 469, 474.
- 46 *Ibid.*, 478, 474.
- 47 Lorimer, *Constitutionalism*, 129, 164. Emphasis in the original.
- 48 Lorimer, 'Mill on Representative Government', 560–561.
- 49 Lorimer, *Constitutionalism*, 114, 109–110.
- 50 On Salisbury's political thought, see P. Smith (ed.), 'Introduction', to *Lord Salisbury on Politics, A Selection of His Articles in the Quarterly Review, 1860–1883* (Cambridge, 1972).
- 51 An interesting version of this proposal, developed in a style different from Salisbury's, is J. Stodart, *Manhood Suffrage, Combined with Relative Equality in Representation* (London, 1859).
- 52 R. Cecil, 'Theories of Parliamentary Reform', in *Oxford Essays, Contributed by Members of the University* (London, 1858), 52–79 and R. Cecil, 'The House of Commons', *Quarterly Review* 116 (1864), 245–281.
- 53 Lorimer, 'Mr. Mill on Representative Government', 556. See also Lorimer's treatment of the scheme of Sidney Smith to weight the suffrage solely on the basis of taxation, which he ultimately dismisses; *Constitutionalism*, 140.
- 54 Mill, 'Recent Writers on Reform', *CWJSM*, XIX, 354–355; Mill, *Considerations*, 474–475.
- 55 Mill, *Considerations*, chs 7–8.
- 56 Bagehot, 'Note of 18 Feb. 1859, to "Parliamentary Reform"', in R. Barington (ed.), *The Works and Life of Walter Bagehot* (London, 1915), III, 174.
- 57 Cecil, 'Theories', 66.
- 58 Mill, 'Letter to Thomas Hare, 3 March 1859', *CWJSM*, XV, 599.
- 59 Mill, *Considerations*, 476. He continued: 'The distinction in favour of education, right in itself, is further and strongly recommended by its preserving the educated from the class legislation of the uneducated; but it must stop short of enabling them to practise class legislation on their own account'.
- 60 See, for example, Mill, *Considerations*, 397, 458; Mill, 'De Tocqueville on Democracy in America [II]', 188, 200.
- 61 Similar concerns were raised by R. Aris, 'Proportional Representation in Germany', *Politica* 2 (1937), 433–445.

- 62 For an 1860s critique of these modes of thought from a democratic perspective, see A.V. Dicey, 'The Balance of Classes', in *Essays on Reform*, 67–84.
- 63 Mill, 'Recent Writers on Reform', 364.
- 64 Ibid.
- 65 Mill, *Considerations*, 457.
- 66 Mill, 'Recent Writers on Reform', 356. Emphasis in the original.
- 67 Lorimer, 'Mill on Representative Government', 557.
- 68 Or, put in a more aggressively moral language, that elections generated a 'natural aristocracy'. See, for example, Bernard Manin's discussion of this line of thought in Harrington, Montesquieu, and the American founders: B. Manin, *The Principles of Representative Government* (Cambridge, 1997), esp. 42–131.
- 69 Anon., *Observations on the British Constitution, and on the Proposed Improvement of Our Parliamentary Representation* (Edinburgh, 1831), 32.
- 70 See D. Southgate, *The Passing of the Whigs, 1832–1886* (London, 1962); A. Heesom, "'Legitimate" versus "Illegitimate" Influences: Aristocratic Engineering in Mid-Victorian Britain', *Parliamentary History* 7 (1988), 282–305.
- 71 D. Moore, 'Concession or Cure: The Sociological Premises of the First Reform Act', *HJ* 9 (1966), 39–59.
- 72 'It is altogether futile with regard to the foundation of good government to say that this or the other portion of the people may, at this, or the other time, depart from the wisdom of the middle rank. It is enough that the great majority of the people never cease to be guided by that rank; and we may, with some confidence, challenge the adversaries of the people to produce a single instance to the contrary in the history of the world'; J. Mill, 'Government', in Mill, *Political Writings*, ed. T. Ball (Cambridge, 1992), 1–42. The most extended treatment of this idea in the period remains D. Moore, *The Politics of Deference: A Study of the Mid-Nineteenth-Century English Political System* (Hassocks, 1976).
- 73 See, for example, B. Cracroft, *Essays, Political and Miscellaneous* (London, 1868), I, 23, 78; L. Stephen, 'Reform', *Macmillan's* 15 (1867), 534–535.
- 74 G. Masuyer, *Considérations sur l'état actuel des sociétés en Europe* (Paris, 1818), 255.
- 75 D. de Hauranne, 'La démocratie et le droit de suffrage', *Revue des deux mondes*, 74 (1868), 790–792. My translation. He explicitly quoted Mill in the midst of this passage.
- 76 In the same year as Mill's clash with Lorimer, Thomas Hare, who would soon be among Mill's closest companions, would make a similar argument in favour of his single-transferable-vote-based plan: 'In the place of a fatal policy, which seeks – through geographical limits and arbitrary distinctions, by unequal apportionments of political power, and by creating or adhering to unreasonable and invidious inequalities of capacity and franchise – to secure some remnants of their preponderance, the landowners and the agricultural interest might safely rely, under a free and equal system of representation, on the elements of their just, and legitimate, and unquestionable strength': T. Hare, *A Treatise on the Election of Representatives, Parliamentary and Municipal* (London, 1859), 40.
- 77 For instance, the great Idealist philosopher A. Lindsay, *The Essentials of Democracy* (London, 1929), 44–45: 'The democratic opponents of such devices

[to weight votes] would say that they do not deny the difference between men's political capacities, but would maintain that wealth or wisdom or leadership will have their natural effect in the discussion that precedes the voting, and no doubt therefore on the voting. But in the voting itself, they would maintain, each is to count for one and no one for more than one. Votes are not really all of equal value, but they are all to be counted as equal. That is the real paradox of democratic government which continually provokes the scorn of non-democratic critics, and yet it is, I think, a paradox which the democrat must somehow defend at all costs'.

- 78 Lorimer, 'Mr. Mill on Representative Government', 558.
- 79 Mill, *Considerations*, 478. Emphasis in the original. And also: 'It is not useful, but hurtful, that the constitution of the country should declare ignorance to be entitled to as much political power as knowledge. The national institutions should place all things that they are concerned with, before the mind of the citizen in the light in which it is for his good that he should regard them: and as it is for his good that he should think that every one is entitled to some influence, but the better and wiser to more than others, it is important that this conviction should be professed by the State'.
- 80 It was Lorimer who stood for 'wise and liberal theory', as one French commentator put it; L.-A. Prévost-Paradol, 'Review of *Constitutionalism of the Future* par James Lorimer', *Journal des débats*, 2 March 1867, 3–4.
- 81 See, for instance, J.-W. Müller, *What Is Populism?* (Philadelphia, 2016).
- 82 See, for instance, G. Conti and W. Selinger, 'Reappraising Walter Bagehot's Liberalism: Discussion, Public Opinion, and the Meaning of Parliamentary Government', *HEI* 41 (2015), 264–291.
- 83 Bagehot, 'Parliamentary Reform', 205; Bagehot, 'The Defeat of the Ministry and the Prospects of Reform', *CWWB*, VI, 307.
- 84 See, for instance, J. Mill, 'Thoughts on Parliamentary Reform', *CWJSM*, IX, 326.
- 85 Bagehot, 'Caesarism as It Now Exists', *CWWB*, IV, 112–113. For other such impressions, see J.P. Parry, 'The Impact of Napoleon III on British Politics, 1851–1880', *TRHS* 51 (2001), 147–175.
- 86 See, for instance, P. Rosanvallon, 'A Reflection on Populism', <https://booksaandideas.net/A-Reflection-on-Populism.html>, 10 November 2011. Accessed 22 January 2022.
- 87 For a contemporaneous version of the complaint that these antidemocratic liberals sought to impose an arbitrary image of the people on the political process, see G. Brodrick, 'The Principles of Parliamentary Reform', *PS* (1879), 145–147.

Modern representation and the popular will

Susan Shell and Paul T. Wilford

Whether they take the ‘trustee’ or the ‘delegate’ (or some combination) as their primary model, contemporary theoretical treatments of political representation generally take for granted the basic legitimacy of what the American Federalists called ‘the new science of politics’. That science made heterogeneous and large-scale democracies viable for the first time by addressing in a new way the problem of faction that made the ancient republics so unstable. In doing so, however, they also introduced new sources of potential instability – tensions that today’s populist movements across the Western world have made newly evident.

It is helpful, for purposes of understanding the peculiarity of modern theories of representation and their complex relation to notions of ‘popular sovereignty’, along with the peculiar tensions that accompany that notion, to consider the rival understandings of political legitimacy that modern theories of representation were intended to supplant. To speak crudely but not altogether misleadingly: all modern theories of representation, from Hobbes to Montesquieu, from Rousseau to Schmitt, share an underlying presumption that no human being has a natural right to rule another – or, to state the presumption positively – that all government derives its ultimate authority from the consent of the governed. (Schmitt’s apparent exception to this rule is a subject we shall return to.) Despite evident and obvious differences between Hobbes’s theory of representation, which gives nearly absolute authority to the sovereign and those (like that of Locke and Montesquieu) in which representative government means limited government, and despite a related contrast between those for which the function of representation is mainly to produce unity and those for which it is mainly to accommodate diversity, all share a basic opposition to the traditional understanding of political authority as founded either on the will of God or on superior virtue and insight.¹

Modern representation: Hobbes to Kant

Modern theories of representation were developed mainly to combat two rival principles of legitimacy that had to be weakened, if not destroyed,

before lesser differences of emphasis in rival modern theories of representation could arise. As long as competing religious claims posed serious challenges to civil peace and aristocratic privilege had not been sufficiently tamed to allow for the efficient conduct of commerce and war, the two major branches of representative theory coincided in their dual emphasis on promoting political unity in a novel way: namely, by transforming the rival claims about justice that had animated traditional political life into competing individual interests that could be accommodated peacefully so long as men conceded both the natural equality of all and the secondary nature of all obligations that do not arise from individual consent.

This is as true of Hobbes, for whom representation was mainly about sovereign authorisation,² as for Locke and Montesquieu, for whom it was mainly about giving peaceful, mutually accommodating expression – through the separation of governmental powers and in the name of ‘liberty’ – to the competing interests of the wealthy few and the poorer many. Locke, for example, describes the legislative power as consisting of representatives ‘chosen by the people’, proportionate to both numbers and wealth,³ but Locke also calls the executive power (in cases of parliamentary monarchy) ‘the image, phantom, or representative of the commonwealth’ at least so long it does not exceed the law.⁴ And although Hobbes famously identifies the public will with that of the ruling sovereign, he is careful to derive this public will from rational consent in service to each individual’s private desire for security and comfort.⁵

Montesquieu sought to temper that power through other institutions, consistent with the peculiar constitution of each nation, while also allowing that ‘in a free state ... the people as a body [*en corps*] should have the legislative power’ via their elected representatives.⁶ Generally favourable, where climate and custom made it possible, to commercial republics along the English model, Montesquieu also held that political liberty (or the ‘opinion that one has of one’s security’⁷) could best be secured by balancing popular legislative power with both an hereditary executive and an independent judiciary. Montesquieu thereby not only both revived and radically transformed the ancient ‘mixed regime’ (as understood by Aristotle and Polybius); he also introduced a new emphasis on the particularity of individual nations, based ultimately in the differing ‘humors’ and ‘dispositions’ of their people, themselves a function of such varied factors as geography and ancient custom.⁸ At the same time, like Hobbes and Locke, he sought to maximise ‘liberty’ consistent with what the constitution of a particular nation could bear. And like Hobbes and Locke, his analytic starting point remained a ‘state of nature’ in which individuals were free of all natural obligations, it being necessary, if one is to have ‘perfect knowledge of the laws of nature’, to ‘consider a man before the establishment of societies’.⁹

Although Rousseau seated popular sovereignty not in a representative legislature but in a legislative ‘general will’ that cannot be represented at all (for that would destroy law’s generality), his peculiar hostility to a representative legislature (in the Lockean and Montesquieuan sense) is not rooted in a blanket hostility to representation in the modern sense (for the government, on his account, may represent the general will in particular actions),¹⁰ let alone in a desire to return to a medieval, corporatist understanding of representation.¹¹ It is rooted, rather, in a more demanding understanding of what individual ‘consent’ requires if it is to be deemed rational and hence justly ground authority. Drawing upon Hobbesian and Lockean premises – namely, that no man can do himself a wrong and that only reasonable consent is binding – Rousseau reaches the conclusion, based on his own more radical understanding of man’s natural a-sociality and accompanying freedom, that the social contract à la Hobbes and Locke is a bad bargain, from the standpoint of rational self-interest, and therefore fundamentally fraudulent.¹²

At the same time, however, Rousseau also drew on Montesquieu’s claim that ‘individual strengths cannot be united unless all wills are united’, and on the latter’s insight that the laws and mores consistent with such union necessarily vary with ‘the disposition of the people’.¹³ Only passionate identification with the whole, or civic virtue, according to Rousseau, makes it possible for men to enjoy, within the limits of society, the independence from the arbitrary will of others that is man’s natural birthright. Only by thus getting back in its entirety the freedom they each give up can human beings legitimately bind themselves to obeying the orders of another. It follows that the life of the civic body lies in the general will. Modifying Hobbes’s extended analogy between the Leviathan and a natural man (wherein ‘*sovereignty* is an artificial *soul* giving life and motion to the whole body’ and ‘*concord* [is] *health*; *sedition* *sickness*; and *civil war*, *death*’), Rousseau thinks a civic body sickens and ultimately dies whenever the general will ceases to be operative.¹⁴

Abbé Sieyès adapts the Rousseauan insight – that the basic law can only be authorised by the general will – to the conditions of modern revolutionary France by proposing that the general will can operate effectively through what he calls his ‘representative system’. The elective national assembly ‘represents’ the general will and thereby the nation as a whole both by formulating basic law and by authorising delegates to execute the laws.¹⁵ The accompanying distinction between active and passive citizens (only the former of whom may vote) and between constituting and constituted power is taken up, in turn, by Kant, for whom it provides a convenient mediating stage between the pure republic, which exists only in the idea, and actual rulers whose way of governing may or may not conform to the

former's 'spirit'. Kant's appropriation of something like this 'representative system' provides him with a realistic alternative to absolute monarchy – an alternative that rulers can be pressed to progressively adopt through peaceful reform. Kant's adaptation of this representative system – developed in his post-revolutionary writings, especially *Theory and Practice* (1793), *Toward Perpetual Peace* (1795) and the *Metaphysics of Morals* (1797) – laid the foundation for what comes to be called the *Rechtsstaat* in German socio-political philosophy, constitutional theory and jurisprudence.¹⁶

Kant's version of the representative system retains the Lockean distinction, both *de jure* and *de facto*, between the legislative and executive powers, while also distinguishing the authorising normative idea of a general will – conceived as the united will of a wholly rational body of citizens, and giving rise to the basic laws by which all states ought to operate and which can be determined *a priori* – from *actual*, empirical power. Without the latter power, by which particular positive laws are enacted and enforced, rights, according to Kant, lack real, that is, 'effectual', existence.

Concerning the latter, Kant urges gradual transformation of the extant monarchies of Europe into civic bodies whose positive laws are given by legislative power consisting of representatives elected by all active citizens, that is, all those capable of living independently in concert with others.¹⁷ At the same time, and in recognition of Montesquieu's and Rousseau's claims as to the unsuitability of republican government for every region and clime, Kant allowed that political progress elsewhere might be more gradual or take a more tutelary form.¹⁸

Kant's peculiar assimilation of the varying claims and insights of his proto-liberal and liberal predecessors, from Hobbes through Sieyès, is neatly summarised in his definition of the state, or alternatively, the general will, as containing three *authorities* or persons:

the *sovereign authority* (sovereignty) in the person of the legislator; the *executive authority* in the person of the ruler (in conformity with law), the *judicial authority* (to award to each what is his in accordance with law) in the person of the judge (*potestas legislatoria, rectoria et iudiciaria*).¹⁹

While the laws of such a state are necessarily just (inasmuch as no one can do himself an injury),²⁰ their execution nevertheless depends on the existence of a ruler before whom the people, though 'sovereign', are also 'subject'. Such subjection, however, is limited in application in accordance with the principle that 'only the *people* can give a judgment upon one of its members'. Hence, the 'judgment of the people', which is exercised 'indirectly' by means 'of representatives (the jury) whom it has delegated' for 'pronouncing a verdict of *guilty* or *not guilty* upon a fellow citizen', determines the application of a general law to particular circumstances.²¹

Popular representation thus enters Kant's ideal state in two distinct ways: both through the legislature (whose members 'active' citizens alone elect), and through the courts (whose representative juries are 'delegated' by the people without similar [stated] restriction). Kant combines the fundamental insight, shared by Hobbes, Montesquieu and Rousseau alike, that the state's strength consists in a 'united will'²² – an insight epitomised in Rousseau's notion of the 'general will' – with the realistic tempering of popular sovereignty by an insistence, absent in Rousseau, on divided government.²³ Without such separation, the Kantian state, though originally authorised by the 'general will', is, as Kant dramatically states, '*without form [Unform]*'.²⁴

In sum: from Hobbes through Kant theories of representation as a vehicle and expression of 'popular sovereignty' can be understood as a series of attempts to resolve an original tension between the individual, on whose free consent all legitimate government is founded, and 'the people' understood as a collective whole. That strain is reflected in the various meanings that can be extracted from the phrase 'we the people of the United States' in the Preamble to the U.S. Constitution, which can be alternatively read as referring to already juridically constituted 'peoples' of the various states, or to people in their natural capacity as individuals endowed with inalienable rights to life, liberty and the pursuit of happiness.²⁵ Kant's own attempt to address this tension is particularly evident in a curious footnote in which Kant seeks to justify his claim that the dethroning (as distinguished from the decapitation) of Louis XVI of France resulted from an act of abdication rather than rebellion and was therefore not technically illegal:

A mighty ruler in our time therefore committed a gross misstep when, wishing to help himself out of the embarrassment of large public debts, he transmitted this burden to the people to take upon themselves and distribute as they pleased; for then there naturally came into the people's hands legislative authority not only with respect to the taxation of subjects but also with regard to governing, namely to prevent its incurring of new debts through wasteful spending [*Verschwendung*] or war; so that the sovereignty [*Herrschergewalt*] of the monarch entirely disappeared [*verschwindt*] and passed to the people, to whose lawgiving will the 'mine' and 'yours' of each subject became subjected.²⁶

The crucial role of representation for Kant in this transition from the less perfect constitution represented by the regime of Louis XVI (in which the monarch remained titular sovereign) to the more perfect Constitution of 1790 (with sovereignty officially resting in an elective legislature) is born out in an unpublished note, in which Kant deems the 'people' as a whole to have been literally 'present' once Parliament was called together:

In France the National Assembly was able to alter the constitution even though it was called together, to be sure, only in order to bring order to the

credit system [*Creditwesen*] of the nation. For they were representatives of the entire people, whom the king had allowed to decree in accordance with indeterminate plenary power. The king otherwise represented the people; here he was thus negated [*vernichtet*], because the people themselves were present [*gegenwärtig*]. ... Thus the misfortune of the king comes directly from his own sovereignty; after he had once allowed the people's deputies to assemble, then he was nothing; for his entire lawgiving authority was founded only on his representing the whole people; this also illuminates the injustice of a single person as sovereign. He cannot admit that that which he represents [*repräsentirt*] presents itself [*sich selbst darstelle*]. Because he represents [*vorstellt*] the whole, he becomes nothing when this whole, of which he is not a part but merely the proxy/place holder [*Stellvertreter*], is allowed to present itself [*sich selbst stellen lässt*].²⁷

According to Kant, for the king to 'represent' the people is to make it present (again) as a whole, a usage that brings out the crucial ambiguity inherent in the term 'representation', which in Latin, French and English means both 'to make present' and 'to make present again'.

Unlike earlier, pre-Hobbesian notions of political representation, in which the prior (natural) unity of the represented was assumed, modern representation creates unity as much as, if not more, than it reproduces or reflects it.²⁸ Representation, in short, is the mechanism by which modern states make *e pluribus unum*. As Henry Parker (1604–1652), perhaps the most prominent of the early proponents of parliamentary sovereignty, argued, the people without parliament are a 'moliminous body', incapable of self-government.²⁹ Notwithstanding the efforts of Montesquieu and Rousseau to complement the formality of modern representation with a more historically concrete account of peoplehood, the tensions arising from the claim to ground the state's justice on man's primordial individual freedom remained unresolved.

One source of the tension implicit in these various theories of representation follows from starting with the presumption that human beings are by nature free and equal, and hence subject to the rule of others only through their own consent. For if this is so, then all social and communal bonds are either artificial constructs (as with Hobbes and Locke), or rooted in the religious conscience of the individual (as with Levellers like John Lilburne³⁰), or the product of sub-rational forces (as with Montesquieu and Rousseau), or otherwise dependent on historical traditions that are by their nature vague (as with Herder) and thereby easily manipulated for propagandistic purposes (as with later nationalists like Fichte).³¹

In this crucial regard, the modern understanding of political community differs sharply from its pre-modern predecessors, from Aristotle to Aquinas. According to Aristotle and those who followed in his path, political communities derive their primary identity, and hence their unity, neither from their

ethnic composition, nor the voluntary agreement of their individual members, but from a ruling principle or claim as to the right way of life, whether it be virtue, conquest or adherence to the will of God and/or his ministers – a view exemplified by Augustine’s statement in *The City of God* that a people is what it loves.³² Given the inherent contestability of such claims about the best way of life or what one should love, political life, as Aristotle was the first to note, is often, and perhaps necessarily, subject to conflict, sometimes violent. But the modern solution, though it may well have stabilised political life by making it more peaceful (at least in the short run), also made the basis of communal life – the ties that bind citizens together – newly tenuous, in ways that we have sketched.

The doctrine of ‘popular sovereignty’ in its various forms, including its latest ‘populist’ expressions, exemplifies this weakness by emphasising the legitimating importance of ‘the people’ and their ‘will’ while also failing to specify who gets to be included (and why). When Lewis Cass (1782–1866) and Stephen Douglas (1813–1861) made ‘popular sovereignty’ their term for the pro-slavery cause, they exposed this difficulty in its most brutal form. Peoplehood, in such a view, meant ‘whites’, unrelieved by any mitigating doctrine of natural rights, or a deeper or more informed sense of who or what makes one a citizen. In thus divorcing ‘we the people’ from the principles of the Declaration by which separation from Britain had originally been justified, they undercut the only plausible basis on which the legitimacy of such a slogan might be reasonably affirmed.

Hegel’s *Rechtsstaat* as the actualisation of freedom

As we have seen in the foregoing discussion, the problem of representation is interwoven with the question of self-determination – or, in Hobbes’s language, the possibility that the individual is sovereign over himself is the condition for the possibility of the formation of the Leviathan and the granting of supreme corporate sovereignty to the state. Only naturally free and independent beings can so contract with one another as to create collectively that artificial man which is greater than any natural being and which in turn shelters natural man from all that threatens to make his life nasty, brutish and short, thereby granting him the security that enables him to pursue those goods that render life somewhat less incommodious. Though explicitly critical of Hobbes, Montesquieu provides a helpful formulation of the achievement of this line of thought in his definition of political liberty as ‘that tranquility of spirit which comes from the opinion each one has of his security, and in order for him to have this liberty the government must be such that one citizen cannot fear another citizen’.³³ The goods of political liberty – achieved

through and justified by the mechanism of representation – are conferred on an individual seeking his or her own satisfaction. The sovereign individual is thus political in the moment of contract or representation, but this political moment serves as a means for securing a domain of freedom, independent of public interference, in which to pursue private ends.

But what if the mechanism of representation that undergirds the legitimacy of the sovereign power rests on a mistaken understanding of the conditions of the possibility of self-determination? That is, what if the determination of the will which receives canonical form in Kantian accounts of autonomy is not the beginning but the *telos* of socio-political life? If that were the case, then it would appear that the whole idea of sovereign individuals contracting themselves out of the state of nature would rest on a *fata morgana* – who or where is this sovereign individual and how does he or she come into the world?

Hegel's *Philosophy of Right* begins with such questions, examining the fundamental anthropological presuppositions of modern representation. In particular, Hegel thinks that modern political thought has for the most part employed an abstract and partial understanding of freedom.³⁴ Even the most sophisticated version of modern freedom, as elaborated by Kant, suffers from intractable problems – above all, a disjunction between the interior freedom of the individual moral agent and the concrete institutions in which such freedom is exercised and finds expression. Hegel's attempt to recover a richer understanding of human agency rests on seeing right (*Recht*) as the existence of free will in reality. According to Hegel, previous conceptions of freedom, as something limited by right in order that the freedom of each may be compatible with the freedom of all, is a negative understanding of freedom that unwittingly equates freedom with caprice (*Willkür*).³⁵ Insofar as the content of one's private activity is immaterial to older conceptions of freedom, rationality does not play an essential role in determining whether the activity of the individual is indeed free. Hegel begins his principal work on politics, therefore, with a thorough investigation of the will, practical reason, freedom and morality. Before delineating any political institutions, Hegel ascends through the different conceptions of freedom operative in abstract or formal right, morality and *Sittlichkeit* (or ethical life).³⁶ Moving from abstract conceptions of the will – and so of right or justice – to more concrete and therefore more fully adequate but also more complex, more mediated, more conditioned conceptions of the will, Hegel develops a truer account of freedom.³⁷ In the course of this ascent, we discover that the autonomous individual capable of rational self-determination in accordance with a universal idea, which appears at the beginning of Kant's account of politics, is in fact a highly developed form of subjective freedom, fully possible only in the modern state.³⁸ Moreover,

Hegel's argument demonstrates that the unencumbered self, which the contract theorists from Hobbes to Rawls presuppose, can never lie at the foundation of the state – even in a thought experiment intended to reveal the structure and institutions of a just society. In fact, any attempt to justify a constitutional order (*Staatsverfassung*) on such solitary, monadic individuals obscures the dyadic interdependence of self-conscious beings and therefore perpetuates a mistaken understanding of freedom as arbitrary willfulness or caprice (*Willkür*) rather than as rational self-determination by a rights-bearing agent embedded in a political community.³⁹

What Rousseau observed as the central problem of the relation of the individual to the whole, encapsulated in the discrepancy between the bourgeois and the citizen, and that Kant attempted to remedy by having the general will transformed into the rational will, still depends on the prior existence of the autonomous individual who is conceived of as freely embracing his or her commitments. But this conception of freedom (and the implicit conception of the will underlying this model of agency) proves to be either vacuous, insofar as it can only generate the empty formalism of the categorical imperative, or it proves so expansive that no way of life could ever actually live up to or constitute a satisfying expression (and therefore objectification) of this understanding of subjective freedom.⁴⁰

One might reformulate the problem this way: while Hegel recognises that 'the system of representation is the system of all modern European states', the liberal conception of political right as posterior to the individual's authorisation of the state's sovereignty cannot be the basis of any actual political order.⁴¹ Accordingly, the liberal conception of right cannot be a guide to actuality, and it is actuality that is the measure of the genuinely scientific, that is, truly rational, conception of right. The problem of the particularity of the political body that Rousseau recognises and devotes considerable attention to in, for example, the contrasting constitutions for Poland and Corsica, when taken in conjunction with the problem of the historical mediation of universal principles described by Burke in his rhetorical assault on the sophisticated mathematisers of the French Revolution, is for Hegel the problem of the relation of the rational idea of right to historical actuality.⁴² The form of agency presupposed in liberal contract theory and in theories of representation prior to Hegel rests on a philosophical dualism that precludes the instantiation in a particular community of the rational idea of right and thus prevents the formation of a political order adequate to the actualisation of true freedom.⁴³ The philosophical problem of the relation between logic and existence (or thought and being) finds its political corollary in the tension between the universal and the individual will, a tension diagnosed so trenchantly by Rousseau.⁴⁴

To address the apparently insoluble problems of modern theories of agency, freedom and responsibility, Hegel returns to a presupposition of Aristotelian political thought that Hobbes thoroughly rejected, namely, that man is by nature a political animal and that the polis is prior to the individual.⁴⁵ Hegel reappropriates these Aristotelian conceptions for the sake of carrying out the intention of modern political thought: the promotion of freedom. In recovering aspects of the Aristotelian anthropology, Hegel develops a social ontology that is intended to account for how historically formed and historically conscious particular communities, emphasised by Burke, can serve as the substratum for the self-directed activity of Kant's autonomous individual. Confronted with two antithetical accounts of political order, Hegel appears to attempt the impossible, namely to combine Burke's sensitivity to the temporally conditioned character of all human institutions and forms of reflection with Kant's a-temporal, *a priori* account of human reason. Hegel's recovery of Aristotelian principles is integral to the sublation of Kantian idealism and Burkean empiricism into a self-mediating systematic whole.⁴⁶

Hegel's attempted synthesis rests on making Kant's idealised rational model of representation, which provides a standard for evaluating the justice of political institutions and laws, immanent to the historical process. That is, the kind of agency which Kant seeks to promote is only fully possible on the collective level in the post-revolutionary *Rechtsstaat* Hegel envisions and describes. It is here that the relation between external freedom and internal freedom receives its adequate grounding in *Sittlichkeit*, which always already undergirds both the subjective and objective moments of freedom, but which can do so self-consciously only in modernity. The modern state rests upon the recognition of the infinite freedom of the individual, and thus the substantial ground of modern European *Sittlichkeit* is what Hegel calls the Protestant principle – independently existing thought freed from authority.⁴⁷ In modernity, the rationally justifiable provides the standard of political legitimacy. One might formulate this either logically or historically, but in either perspective the spirit of the individual and the spirit of the whole are animated by the same principle of freedom. On this view, representation in the fullest sense – including the sense proposed by Hobbes – is possible only once the principle that 'all are free' has been worked out in historical time. In other words, Hegel's interpretation of 'world history [as] the progress of the consciousness of freedom' – culminating in modernity's knowledge 'that *all* human beings are intrinsically free, that the *human being as human* is free'⁴⁸ – shapes both his understanding of representation and his understanding of sovereignty: of representation as a mechanism to secure legitimacy and as a means by which the individual

can see himself as part of the whole, and of sovereignty as the independence of conscience, which implies the self-determining powers of the sovereign individual presupposed by Hobbes, and as the authority appropriate to the *Rechtsstaat* – the only political order by which the principle of freedom can be realised.⁴⁹ The sovereign individual and popular sovereignty arrive in tandem; each is possible only once the legitimacy of both is recognised and each finds its fulfilment in the modern state, insofar as the state is intended to secure individual freedom and the individual identifies with the state in recognising the state as the ground of his freedom.⁵⁰ Accordingly, the free associational activity of civil society or *bürgerliche Gesellschaft* is dependent upon the state, but, concomitantly, the state's purpose is the preservation of that sphere of associational activity.

Yet this self-conscious form of *Sittlichkeit* implies a different model of the human being; he is not Hobbes's atomistic individual, dreaming on things yet to come, who voluntarily grants to the state the use of his power, but an individual already dependent upon the state as the condition of his existence. As noted, Hegel revives the old Aristotelian claim of the priority of the *polis* to address problems that emerge when understanding political life from within the framework of modern subjectivity. Hegel thus recovers an important dimension of pre-modern political theory for the sake of advancing the principal goal of modern political life, namely individual freedom. Hegel thus also implicitly recovers the pre-modern belief that political communities derive their primary identity, and hence their unity, from a ruling principle.⁵¹

For Hegel, therefore, representation serves the purpose of making explicit the principle of political legitimacy that has already been at work transforming European civilisation in a process stretching from the Renaissance and the Reformation to the French Revolution.⁵² In the modern era, the justification of the state and its activity must take a self-consciously reflexive form. The rational affirmation of the state by its citizens is made explicit through representation.⁵³ This conception of representation operates on several levels, from the corporation and cooperative structure of economic activity and professional association in civil society, to the universal class of administrative officials that forms part of the executive branch, to the reflection of estates, orders and interests in the legislature – even in the acknowledgement of the distinct claims of town and country (*Stadt und Land*) as embodying not only different economic interests but distinct ways of life.⁵⁴ The underlying logic at work in each of these forms of representation is paradoxically clearest in the role of the monarch, who, as the figurehead of the state, embodying in a single individual the personality of the whole, presents an objectification of the universal will and of the nation's unity. Through the monarch's symbolic representation of the whole, the sovereignty and the unity of the state is rendered explicit, thereby enabling a citizen's affirmation

of the national whole as the ground of the more proximate mediating institutions of which he is a member. A citizen can thus recognise himself in the state and thereby recognise the legitimacy of the state's claim on his allegiance – a claim expressed most clearly in war.⁵⁵

From Hegel's perspective, the inability of Hobbes or Locke to offer a compelling account of why it would be moral and rational to fight for one's community is a grave defect in their socio-political theory. Whereas Hobbes asserted that man never loses his right to self-preservation because such a right cannot be alienated, that is, it cannot be willed to another, Hegel will claim that the state can be justified in demanding that the individual sacrifice his life for the state's universal ends, since the state is the condition of his very individuality to begin with. In this claim, we see how far we have travelled from Hobbes's notion of the sovereign contracting individual. This does not make citizens slaves of the state, as Hegel's critics often suggest, but it does mean that there is a realm of human concern higher than that of civil society, more important and substantial than the activities of the marketplace. Hegel affirms modern liberalism's commitment to freedom, but this highest value receives a new political foundation and rests on a new conception of the human – one wherein a citizen's duties are always correlative to her rights. There is, in short, no unencumbered self who, absent all prior obligations and history, freely contracts with his neighbour, divests himself of his powers, and establishes a sovereign in order to claim his rights, whether natural or civil.⁵⁶ Nevertheless, the same basic logic first announced by Hobbes remains in effect, namely, that there is 'no obligation on any man which ariseth not from some act of his own'.⁵⁷ Hegel simply expands the meaning of 'man', 'act', and 'his own'. In other words, the Hegelian citizen is obligated because he can in principle identify with the state and recognise the state's claims upon him as his own claims upon himself; affirming the legitimacy of the state is integral to his self-affirmation, but this is only possible when the state is in fact rational, that is, when it exhibits the structure of the modern *Rechtsstaat* as articulated in Hegel's *Philosophy of Right*.

Conclusion: from Hegel to Schmitt, the enduring tensions in modern representation

Despite Hegel's conceptual sophistication and subtlety in articulating the rational structure of *Sittlichkeit* and thereby justifying reciprocally mediating and interlocking institutions as the means by which modern nations could stabilise, integrate and harmonise different factions or interests within the political order and so establish a state that is representative of and responsive to the popular will, his vision of the *Rechtsstaat* soon came under attack

from both progressive socialists and reactionary traditionalists. His grand synthesis, so elegant in theory, was never fully realised in practice – at least not in Germany or on the continent. As a student of Montesquieu's political thought, however, perhaps Hegel would not have been entirely surprised by this outcome, for as Montesquieu reminds us, 'in order to form a moderate government, one must combine powers, regulate them, temper them, make them act; one must give one power a ballast, so to speak, to put it in a position to resist another; this is a masterpiece of legislation that chance rarely produces and prudence is rarely allowed to produce'.⁵⁸ Rather than being remembered as the author of the blueprint by which judicious statesmen could realise the modern principle of self-determination that justifies the theory of representative government, Hegel instead became in the eyes of his detractors a mere functionary of the Prussian state, whose self-serving political conservatism was masked by the pompous, sophistical and ultimately vacuous jargon of his philosophical system.⁵⁹ Such critics charge that Hegel legitimised the most authoritarian instincts of the Prussian monarchy and lent the ideology of nationalism, which sought to make the nation-state an object of reverence, a theoretical respectability with his oracular pronouncements on the state's divinity and on the state as 'the march of God in the world'.⁶⁰ Worst of all, according to his detractors, his divinisation of history and his aphoristic declaration that '*Die Weltgeschichte ist das Weltgericht*'⁶¹ seemed to justify the doctrine that might makes right.⁶² In its focus on the development of absolute spirit through conflict, Hegel's speculative world history appeared to render success or failure in international conflict the measure of a nation's spiritual vitality and to justify the comprehensive subordination of the particularity of the individual to the universal will of the state, thereby undermining the sanctity of individual rights and the citizen's autonomy.⁶³

Hegel's philosophical system would in the course of the nineteenth century be ransacked for ideas by political actors as diverse as internationalist revolutionaries, liberal nationalists, diehard reactionaries and social welfare statist.⁶⁴ Hegel could be deployed in a bowdlerised form to advance almost any doctrine. Turning Hegel on his head, Marx argued that history would lead to communism – the true solution to the political problem which representation originally sought to resolve, but a solution that effects such an achievement by annulling politics altogether. If the state withers away with the advent of communism, so too do the problems of legitimacy, authority and sovereignty that Hobbes's original theory of authorisation sought to address. If mankind recovers his species-being (*Gattungswesen*), what need is there for a sovereign to transform a multitude into a people or a nation?⁶⁵ After all, in such a society, the fundamental source of antagonism – the discrepancy between individual will and general will – is not overcome so much as dissolved. *Pace* Rousseau's political solution in

The Social Contract, the only justification for wearing the shackles of membership in society is a radical collective autonomy predicated on the transcendence of alienation that does not dissolve human individuality within the collective whole but which constitutes in fact the truest emancipation of the individual.⁶⁶ Such fervent eschatological visions found their antagonists in those defenders of hereditary privilege, apologists for empire and advocates of religious authority that Marx and Engels ironically dubbed the 'holy alliance' in the *Communist Manifesto* of 1848. With the outbreak of revolutions throughout Europe in 1848 the millenarian moment seemed at hand; revolution would sweep away capitalist modes of production, bourgeois notions of private property, the ideology of individual rights, and the Hegelian distinction between the family, civil society and the state.

The failure of 1848 revolutionaries left an enduring mark on both revolutionary ambitions and conservative apprehensions, particularly in Germany, where preventing revolution and strengthening state sovereignty would be the twin aims of Otto von Bismarck (1815–1898).⁶⁷ For almost forty years, the Iron Chancellor sought to forestall revolution by directing, harnessing and channelling the claims of popular sovereignty towards the goals of national unification, economic modernisation and political integration. In order to further such ends while safeguarding the state's authority and circumscribing the effects of a vastly expanded franchise, Bismarck pursued one of the principal aims of modern representation, namely, to secure a principle of political unity strong enough to oppose centrifugal forces (originally those unleashed by the Protestant Reformation). Since political authority rests on citizens' allegiance to the state taking priority over other commitments, governments ought to reflect and to promote a unity more fundamental than the pluralism praised by nineteenth-century liberals. Accordingly, once Bismarck's *realpolitik* machinations succeeded in making Prussia the hegemonic power of a new German Reich, he sought to consolidate the increased political integration through a programme of domestic policies intended to promote greater cultural uniformity.⁶⁸ In his *Kulturkampf* of 1872–1878, Bismarck was true to the original Hobbesian script: the sovereign promotes stability and unity, the pillars of the commonwealth, through control of religion, education and the press.⁶⁹ From Bismarck's perspective, Germany would be ungovernable without greater intellectual and spiritual homogeneity and, like Hobbes, Bismarck judged Catholicism – that universal trans-national faith – to be the preeminent obstacle to further socio-political and cultural integration.⁷⁰ Though the *Kulturkampf* proved unsuccessful, Bismarck's next move in his efforts to consolidate state power and unify the German Empire drew on another facet of modern representation. If the authorisation of sovereign power repeats the logic of the contracting parties in the state of nature, it is possible

to see representation in purely transactional terms: the subject or citizen authorises the sovereign to act on his behalf in return for some good. In the Hobbesian original, representation secures the primary good of peace (though as Hobbes notes, ‘commodious living’, which is just peace with relishes, quickly supplants mere cessation of hostility as the central preoccupation of citizens). In Bismarck, this transactional view of the citizen–state (subject–monarch) relationship issues in the first modern welfare state: allegiance to the sovereign in exchange for social insurance. The original formulation of representative government rested on a specific philosophical anthropology; it presupposed free, independent and self-determining agents. Subsequent iterations of the contractual view of the source of political order reveal that the *homo economicus* of contract theory can opt as easily for state socialism as for the night-watchman ideal of Victorian Britain.⁷¹

Even such a brief survey of post-Hegelian German political thought serves to illustrate the tensions inherent in the modern idea of representation. Whether the tensions are sufficiently great to render the theory not only useless but pernicious, due to obscuring of what is in fact most important about political life, appears to turn on the fate of those liberal democratic regimes that emerged in the nineteenth and twentieth centuries (primarily in Britain and her various progeny), but which in the second decade of the twenty-first century appear threatened by representation’s shadowy doppelganger, populism.

In closing, it is therefore worth returning to one of the preminent critics of liberal political theory, who enthusiastically declared that the ascension of Adolf Hitler to Chancellor on 30 January 1933 marked the death of Hegel in Germany.⁷² According to Carl Schmitt (1888–1985), the tradition of the *Deutsche Staatsphilosophen*, which concerned itself with the old bureaucratic-administrative state (*Beamtenstaat*) of the nineteenth century, had been displaced by a new state construction (*Staatskonstruktion*) effecting ‘the unity of the German people’ that could ‘be comprehended (*begreifen*) only with the help of the triad of state, movement, people (*Staat, Bewegung, Volk*)’.⁷³ The new German Reich, according to Schmitt, supplants the Hegelian *Rechtsstaat* by being more encompassing and comprehensive, on the one hand, and more authentically rooted in and representative of the totality that is *das Volk*, on the other. It provides a new ground for political wholeness and the substantial unity of individual interest and the general will. It replaces Hegel’s account of the rational mediation of the three distinct realms of *Sittlichkeit*, namely, family, civil society and the state, with the triarchic order of state, party and people.⁷⁴ And thus, in the name of a more authentic representation of the popular will, was born the National Socialist totalitarian state.

Whereas Rousseau, Sieyès and Kant derived the authority of the general will as the basic principle of political life from its unique ability to meet the dual demands of liberty and community – that is to say, in a rational norm above the fray of politics – Schmitt rests it in an irrational political theology of which modern representative government in his favoured sense is merely a secular form. But Schmitt's decisionism, itself a barely disguised attempt to resume the personalist Catholic battle against Calvin and Luther, cannot escape its own modern presumptions, including the assumption that political life is basically a battle against nature, including (in his case) the nature that leads us to prefer peace and comfort to death and misery.

We close with two quotations: one from Rousseau, the other from Abbé Sieyès, each of whom stresses, from apparently opposing points of view, the peculiarity of representation in its now current political sense:

First, Rousseau: 'The idea of representation is modern. ... Among the ancient republics and even among monarchies, never did the people have representatives. That very word was unknown'.⁷⁵

Now Sieyès: 'Outside [the representative system] we find nothing but arrogance, superstition and stupidity'.⁷⁶

Liberal democratic constitutionalists have mainly gone with Sieyès as a moderating blend of the general will à la Rousseau (and the U.S. Constitution's 'we the people') and limited government in the name of individual rights à la Montesquieu and Locke (and our own 'Bill of Rights'). But it would be unwise to forget the decidedly illiberal interpretation of Carl Schmitt, whose accompanying denial of rational norms arguably paved the way for today's democratic authoritarianism, not to speak of earlier political catastrophes.

Notes

- 1 Compare Hobbes's critique of Aristotle (*Leviathan*, ed. R. Tuck [Cambridge, 1996], 107 [ch. 15, par. 21]) with Jefferson's statement that 'the mass of mankind has not been born with saddles on their backs, nor a favored few, booted and spurred, ready to ride them legitimately, by the grace of God' (Jefferson to Roger Weightman, 24 June 1826 in *The Writings of Thomas Jefferson* [New York, 1899], 391–392). This principle can also be applied diachronically to argue that the past should have no binding claim on the present: compare Paine's denunciation of 'the vanity and presumption of governing beyond the grave [as] the most ridiculous and insolent of all tyrannies' (R. Roberts [ed.], *The Rights of Man in Selected Writings of Thomas Paine* [New York, 1945], 257) with Kant's objections to traditional authority binding the free use of reason by subsequent generations in 'What is Enlightenment?' (in I. Kant,

- Practical Philosophy*, ed. and trans. M. Gregor, [Cambridge, 1996], 20–21 [gesammelte Schriften ['gS'] (Berlin, 1901–), VIII, 39–40]).
- 2 For a particularly cogent account, see H. Mansfield, 'Hobbes and the Science of Indirect Government', *APSR*, 65:1 (1971), 97–110.
 - 3 Locke, *TT*, 372 [ch. 13, §157].
 - 4 *Ibid.*, 368 [13.151].
 - 5 See Hobbes's account of authorisation (*Leviathan*, 111–115 [16.1–9, 16.13–16]). For Hobbes, authorisation, i.e. the mechanism of representation, is the sole means by which we can exit the state of nature (*Leviathan*, 117–119, 120–121 [17.1–4, 17.12–15]).
 - 6 Montesquieu, *Spirit*, 159.
 - 7 *Ibid.*, 188: 'Philosophical liberty consists in the exercise of the will; or at least (if all systems must be mentioned), in one's opinion that one exerts one's will. Political liberty consists in security or, at least, in the opinion one has of one's security'.
 - 8 *Ibid.*, 310: 'Many things govern men: climate, religion, laws, the maxims of the government, examples of past things, mores, and manners; a general spirit is formed as a result'. See also *ibid.*, 314–315.
 - 9 *Ibid.*, 6. Montesquieu's account of despotism plays an analogous role to Hobbes's state of nature, insofar as it provides a negatively determined principle of orientation by identifying the *summum malum* that we wish to escape. For the connection between the state of nature and 'the idea of despotism', see *ibid.*, 59.
 - 10 J.-J. Rousseau, *The Social Contract*, in J. Scott (ed. and trans.), *The Major Political Writings of Jean-Jacques Rousseau* (Chicago, 2012), 234–237 [bk. 3, ch.15]; note especially: 'sovereignty cannot be represented for the same reason it cannot be alienated. It consists of its essence of the general will, and the will cannot be represented'.
 - 11 For an informed discussion of this complex topic, see B. Roest, 'Representative Bodies in Medieval Religious Orders: A Discarded Legacy?', in H. Kaal and D. Slootjes (eds), *New Perspectives on Power and Political Representation from Ancient Times to the Present Day* (Leiden, 2019), 37–55. Corporations were normally considered 'fictive' bodies, but they generally corresponded to communities whose underlying reality, natural or otherwise (as with the 'church' itself as a *corpus mysticum*), was presupposed (unlike the specifically modern understanding of representation on which our discussion is here focused).
 - 12 See Rousseau, 'Discourse on Inequality', in *Major Political Writings*, 92–99, 102–104, 109–110.
 - 13 Montesquieu, *Spirit*, 8.
 - 14 Hobbes, *Leviathan*, 9 [Introduction]; Rousseau, *Social Contract*, 231–232, 243–245 [3.11, 4.1]. Emphasis in the original.
 - 15 A. Sieyès, *Political Writings*, ed. M. Sonenscher (Indianapolis, 2003), 48–49, 134–140. Cf. I. Nakhimovsky, *The Closed Commercial State* (Princeton, 2011), 28–34.
 - 16 For an account of the Kant's *Staatstheorie*, see W. Kersting, 'Kant's Concept of the State', in H. Williams (ed.), *Essays on Kant's Political Philosophy*

- (Chicago, 1992), 143–165. For an overview of the multifaceted intellectual history lying behind the emergence of the idea of the *Rechtsstaat* in nineteenth century German thought, see D. Kelly, *The Human Measure: Social Thought in the Western Legal Tradition* (Cambridge, MA 1990), 219–257. For Hegel’s appropriation and adaptation of the Kantian foundation, see S. Smith, *Hegel’s Critique of Liberalism: Rights in Context* (Chicago, 1991), 145–148.
- 17 Kant, *Metaphysics of Morals*, 456–469 [gS 6: 313–315].
 - 18 For a nuanced discussion of Kant’s attempt to integrate contingent, empirical conditions into his theory of political progress, see D. Huseinzadegan, *Kant’s Nonideal Theory of Politics* (Evanston, 2019), 7–10, 110–134, 156–168.
 - 19 Kant, *Metaphysics of Morals*, 457 [gS 6: 313]. Emphasis in the original.
 - 20 Masculine pronouns are used in this chapter to accord with the period in which the referenced texts were written.
 - 21 Ibid., 461 [gS 6: 317].
 - 22 Kant, *Metaphysics of Morals*, 457 [gS 6: 313].
 - 23 Although Rousseau distinguishes the general will from the government, the latter does not ideally consist, as with Kant, of separate ‘authorities’ or ‘powers’.
 - 24 Kant, *Toward Perpetual Peace*, in *Practical Philosophy*, 324–325 [gS 8: 352–353]. Emphasis in the original.
 - 25 For an informed treatment of some of the political and legal complexities, see A.G.I. Kilberg, ‘We the People: The Original Meaning of Popular Sovereignty’, *Virginia Law Review* 100 (2014), 1061–1109.
 - 26 Kant, *Metaphysics of Morals*, 481 [gS 6: 341]), translation modified.
 - 27 Kant, [gS 19: 595–596; #8055].
 - 28 See for example Henry Parker, for whom the ‘power of the people’ is the ‘might and vigor’ of the society that individuals freely establish by their ‘common consent’. *Observations upon some of his Majesties late Answers and Expresses* (1642). The first general use of political representatives in England seems to date to the 1265 Parliament, which consisted of representatives of the nobility and of the ‘communauté de terre’. (C. Morris, *Parliamentary Elections, Representation and the Law* [Oxford, 2012], 29). In the latter case, such representatives were to be ‘good men’, drawn from the ‘better, richer, more discrete and more powerful sort’. There was no suggestion of an equal ‘right’ to representation, nor that the bodies thus represented had no coherent existence prior to or apart from their being represented. See Morris, *Parliamentary Elections*, 29–34.
 - 29 See H. Parker, *Observations*, 14, also cited in M.B. Viera, *Representation in Hobbes* (Leiden, 2009), 150.
 - 30 On Lilburne’s position in this regard, see R. Foxley, ‘Varieties of Parliamentarianism’, in M. Braddick (ed.), *Oxford Handbook of the English Revolution* (Oxford, 2015), 414–429.
 - 31 On Fichte’s nationalism, see R. Velkley, ‘Language, Embodiment, and the Supersensuous in Fichte’s *Addresses to the German Nation*’, in P. Wilford and S. Stoner (eds), *Kant and the Possibility of Progress* (Philadelphia, 2020), 153–164.
 - 32 See Augustine: ‘let us say that a “people” [*populus*] is an assembled multitude of rational creatures bound together by a common agreement as to the objects of their love. In this case, if we are to discover the character of any people,

we have only to examine what it loves. If it is an assembled multitude, not of animals but of rational creatures, and is united by a common agreement as to what it loves, then it is not absurd to call it a “people”, no matter what the objects of its love may be. ... According to this definition of ours, the Roman people is indeed a people, and its “property” [*res*] is without doubt a commonwealth [*res publica*]. As to the objects of that people’s love – both in the earliest days and in the times which followed – and the morals of that people as it fell into bloody seditions and thence into social and civil wars, and so ruptured or corrupted that bond of concord which is, as it were, the health of a people: we have the testimony of history for all this, and I have presented many illustrations in the preceding books. ... It must be understood ... that what I have said of the Roman people and commonwealth I also say and think of the Athenians and any other Greeks, of the Egyptians, of the ancient Babylon of the Assyrians, and of every other nation, great or small’. (Augustine, *The City of God against the Pagans*, ed. and trans. R.W. Dyson [Cambridge, 1998], 960 [Bk. 19, sec. 24]).

- 33 Montesquieu, *Spirit*, 157. Note that representation is not emphasised by Montesquieu in the discussion of political liberty, though the theme does appear in his account of the source of English liberty in the German forest, i.e. the exit from the state of nature still occurs by way of contract and representation. It also appears in the crucial chapter distinguishing ancient from modern conceptions of monarchy – ‘Why the ancients had no clear idea of Monarchy’ (ibid., 167–168). Following Montesquieu’s lead, Hegel will trace the origins of representative government to the ‘forest of Germany’, arguing that the modern state emerges out of an originally feudal form of socio-political organisation: ‘in modern countries, a state has been developed in which each individual no longer has a direct voice himself in any national affair; on the contrary all obey a whole founded by themselves, i.e. a state, and its branches and particularizations (the laws), an abiding fixed centre to which each individual has a mediate relation derived from representation’. (Hegel, ‘The German Constitution’, in T. Knox (trans.), *Hegel’s Political Writings* [Oxford, 1964], 206).
- 34 *PhR*, 46–47 [§29].
- 35 *PhR*, 37–40 [§§15–17].
- 36 For a reconstruction of the sublation of abstract right and morality in *Sittlichkeit* see M. Alznauer, *Hegel’s Theory of Responsibility* (Cambridge, 2015), 126–169.
- 37 *PhR*, 47–48, 50–52 [§30, §33].
- 38 This possibility is interwoven with Hegel’s treatment of the problem of Socrates. See R. Velkley, ‘Infinite Personality and Finite Custom: Hegel, Socrates’ Daimon, and the Modern State’, in L. Trepanier and K. Habib (eds), *Cosmopolitanism in the Age of Globalization: Citizens Without States* (Lexington, 2011), 139–160.
- 39 For Hegel’s account of why the achievement of self-sufficiency (*Selbstständigkeit*) requires recognition of dependence on the other, see P. Wilford, ‘The Theological Dimension of Agency: Forgiveness, Recognition, and Responsibility in Hegel’s *Phenomenology of Spirit*’, *Review of Metaphysics* 72 (2019), 497–527.

- 40 An adequate objectification or substantial universal is necessary for the individual to affirm his or her political order, and such affirmation is integral to actual freedom.
- 41 Hegel, 'The German Constitution', 203.
- 42 On the relation of the actual and the rational in Hegel's *Philosophy of Right*, see R. Stern, 'Hegel's Doppelsatz: A Neutral Reading', *Journal of the History of Philosophy* 44 (2006), 235–266. See also J.-F. Kervégan, *The Actual and the Rational: Hegel and Objective Spirit*, trans. D. Ginsburg and M. Shuster (Chicago, 2018), xvii–xxxiii.
- 43 According to Hegel, the French Revolution's descent into Terror illustrates the political ramifications of absolutising an abstract and one-sided conception of freedom. See *PhR*, 228–234 [§258R]. Cf. Hegel, 'Absolute Freedom and Terror', in *The Phenomenology of Spirit*, trans. T. Pinkard (Cambridge, 2018), 339–345 [§§582–595].
- 44 Consider another manifestation of this problem in the tension between law and statesmanship, expressed in Rousseau's observation that 'to put law over man is a problem in politics which I compare to that of squaring the circle in geometry' (*Considerations on the Government of Poland and Its Planned Reformation* in *The Plan for Perpetual Peace, On the Government of Poland, and Other Writings on History and Politics*, trans. and ed. by C. Kelly [Lebanon, NH, 2005], 170). Compare Kant's *Sixth Thesis* in 'Idea for a Universal History with a Cosmopolitan Aim' (in G. Zoeller and R. Louden [eds] and A. Wood [trans], *Anthropology, History, and Education* [Cambridge, 1996], 113–114 [gS 8: 23]).
- 45 Hegel's recovery of these two aspects of Aristotle's political philosophy also commits him, necessarily, to a form of teleological thinking about part-whole relationships that Hobbes rejected. That is, the whole can only be prior to the parts if the whole is logically prior. Whereas Hobbes's nominalism cannot countenance any such logic, for Hegel, parts only express their true essence when they are parts of a whole (cf. Aristotle, *Politics*, ed. and trans. C. Lorde [Chicago, 2013], 4–5 [1253a]).
- 46 Cf. J. Green, 'Fiat Iustitia, Pereat Mundus: Immanuel Kant, Friedrich Gentz, and the Possibility of Prudential Enlightenment', *MIH* 14 (2017), 35–65. On Hegel's relation to Burke and their respective judgements of the French Revolution see J.-F. Suter, 'Burke, Hegel, and the French Revolution', in Z.A. Pelczynski (ed.), *Hegel's Political Philosophy: Problems and Perspectives* (Cambridge, 1971), 52–72.
- 47 Hegel, *Lectures on the Philosophy of World History*, trans. R. Brown and P. Hodgson (Oxford, 2011), 505–506.
- 48 *Ibid.*, 88. Emphasis in the original.
- 49 Cf. Smith, *Hegel's Critique of Liberalism*, 132–164. For a nuanced consideration of the complexities entailed in considering Hegel's account of the modern state in *PhR* under the rubric of the *Rechtsstaat*, see Kervégan, *Actual and the Rational*, 147–181.
- 50 This is what Hegel means for the subjective will to coincide with the objective will or the individual will to converge with the universal will – both affirm the

same ground of right and therefore are justified in terms of the same principle of right. Conflict between irreconcilable conceptions of right is the spiritual ground of all significant world-historical change. For an analysis of an exemplary instance of such a conflict see P.T. Wilford, 'Hegel on the Trial of Socrates and the end of Aesthetic Democracy', in G. Magee (ed.), *Hegel and Ancient Philosophy: A Re-Examination* (New York, 2018), 39–56.

- 51 *PhR*, 228–235 [§258, §260]; NB: 'The principle of modern states has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the self-sufficient extreme of personal particularity, and yet at the same time brings it back to the substantial unity and so maintains this unity in the principle of subjectivity itself' (p. 235 [§260]).
- 52 Hegel, *Lectures on the Philosophy of World History*, 519–520.
- 53 That is, justification has to be explicit; or in Hegel's language, it has to be not only in-itself but also for-itself.
- 54 *PhR*, 226–228 [§255, §256 Anmerkung]; cf. 222–224 [§247, §250]. Cf. Kervégan, *Actual and the Rational*, 231–250.
- 55 Although the same Hobbesian formulation of legitimation could be applied here – no man is obligated save to what he has obligated himself – Hobbes can't have a coherent account of treason.
- 56 Cf. Montesquieu's description: 'Hobbes says that, since natural right is merely the freedom we have to do everything that serves our preservation, man's natural state is the war of all against all. But aside from the fact that it is false that defense necessarily entails the necessity of attacking, one must not imagine men, as he does, as if fallen from the sky or arising fully armed from the earth, a little like Cadmus's soldiers, to destroy each other; this is not the condition of men'. (*My Thoughts*, ed. and trans. H. Clark, [Indianapolis, 2012], 343 [Pensée 1266]).
- 57 Hobbes, *Leviathan*, 150 [21.10].
- 58 Montesquieu, *Spirit*, 63. Hegel does not subscribe, however, to the standard American interpretation of Montesquieu's teaching as proving the need for checks and balances that are resolutely antithetical to one another. For Hegel, this view places an excessive emphasis on the image of the state as a carefully calibrated Newtonian force parallelogram that exaggerates the mechanistic over the part-whole logic of organic metaphors for understanding political life. In Hegel, the opposition is predicated on a prior identification and unity (*PhR*, 256–263, 265–267, 287 [§§272–273, §278, §300 Zusatz]). Any form of antagonism internal to the state that becomes the fundamental principle of the state will ultimately lead to the disintegration of the state. (Consider, for example, the American Civil War and Lincoln's defence of the priority of the Union which could endure as a single nation if and only if all citizens were committed to the same first principle, namely that all men are created equal.) For Hegel, all difference is posterior to this shared commitment which is the ground of political identity; lacking such basic agreement about the first principles of right renders a state weak, unstable and prone to civil war.
- 59 See Arthur Schopenhauer's scathing criticism of Hegel's philosophical language in *Die Welt als Wille und Vorstellung* (1819, 1844, 1859). The charge of mystifying obscurantism would be repeated a century later by Bertrand Russell, who

effectively discredited Hegel in the eyes of Anglo-Analytic philosophy for two generations. The political counterpart to this charge of philosophical charlatanism is found in Rudolf Heim's *Hegel und Seine Zeit* (Gaernter, 1857) and K. Popper, *The Open Society and its Enemies* (Princeton, 2020, [1945]). Contrast, however, Nietzsche's rebuke of Schopenhauer for discrediting Hegel's philosophy (F. Nietzsche, *Beyond Good and Evil: Prelude to a Philosophy of the Future*, in *Basic Writings of Nietzsche*, ed. and trans. W. Kaufmann [New York, 2000], 311–314 [§204]).

- 60 *PhR*, 232–234 [§258 Zusatz]. Cf. E. Kedourie, *Nationalism* (Oxford, 1993) for the connection between the ethical principle of self-determination and the development of nationalism as a political ideology. Though nationalism often took crude forms, the idea of the spiritual significance of the nation-state (especially the *Deutsches Kaiserreich*) is evident in the writings of prominent German intellectuals such as Friedrich Meinecke, *Weltbürgertum und Nationalstaat* (1907), and Thomas Mann, *Betrachtungen eines Unpolitischen* (1918). Cf. A.J.P. Taylor, *Bismarck: The Man and the Statesman* (New York, 1967 [1955]), 267–273.
- 61 *PhR*, §340.
- 62 For Hegel's explicit rejection of this view see his scathing and detailed criticism of Karl Ludwig von Haller (*PhR*, 232–233[§258n.]). Nevertheless, the view that Hegel conceives of the state really as a *Machtstaat* rather than *Rechtsstaat* was central to Meinecke's reading in his 1924 *Die Idee der Staatsräson in der neuen Geschichte*. Cf. H. Heller, *Hegel und der nationale Machtstaatsgedanke in Deutschland* (Leipzig-Berlin, 1921).
- 63 On this tension, see Alznauer, *Hegel's Theory*, 170–197.
- 64 On the dissolution of Hegel's system and its fragmentation in the nineteenth century, see K. Löwith, *From Hegel to Nietzsche: The Revolution in Nineteenth-Century Thought*, trans. D. Green (New York, 1964).
- 65 On the role of the sovereign in making the people into a unity, consider Hobbes's distinction in *De Cive* [ch. 12, par. 8] between a people and a multitude (or crowd): 'The *People* is a *single* entity, with a *single will*; you can attribute *an act* to it. None of these can properly be said of a multitude. In every commonwealth the *People* Reigns; for even in *Monarchies* the *People* Commands [*imperat*]; for the *People* wills by the will of *one man*; but the citizens, i.e. the subjects, are a *multitude* [Thus] in a *Monarchy* the subjects are the *multitude*, and (paradoxically) the *King is the people*'. (*On the Citizen*, ed. and trans. R. Tuck and M. Silverthorne [Cambridge, 1998], 137, translation modified; emphasis in the original). On the connection between 'people' and 'nation' in eighteenth-century political thought and its expression in the French Revolution, especially in the pamphlets of Abbé Sieyès, see Istvan Hont's critique of Hannah Arendt in *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA, 2005), 464–489.
- 66 See K. Marx, *Economic and Philosophic Manuscripts of 1844*, in R. Tucker (ed.), *The Marx-Engels Reader* (New York, 1978), 70–93.
- 67 Marx would come to despise Bismarck, especially following the fall of the Paris Commune (1871) – the one example of revolutionary activity in over twenty

years of activism that had succeeded, according to Marx and Engels, in establishing 'the dictatorship of the proletariat'. See Marx, *The Civil War in France*, in *Marx-Engels Reader*, esp. 651–652.

- 68 Though Bismarck would change his tactics throughout his career he was remarkably consistent on the end sought – a strong centralised government and administration that would unify Germany under Prussian leadership – and perfectly clear-eyed about the means. In June 1862 he reportedly informed Disraeli that: 'I shall declare war on Austria, dissolve the German confederation, subjugate the middle and smaller states, and give Germany national unity under the control of Prussia' (quoted in Taylor, *Bismarck*, 49). According to Taylor, the Imperial Germany that Bismarck created 'was a *Rechtsstaat*, secure from arbitrary government' and that 'Bismarck spoke truthfully when he said during the constitutional debates: "I too am convinced that it is the duty of any honest government always to strive for the greatest measure of popular and individual freedom which is compatible with the security and common welfare of the State" ... Bismarck [however], instead of ranking as a pioneer of constitutionalism, came later to be regarded as the precursor of a tyrannical demagoguery which he of all men would have found abhorrent' (Taylor, *Bismarck*, 98–99).
- 69 Hobbes, *Leviathan*, 121–129, 231–244 [chs 18, 30].
- 70 On the need for homogenous citizens, see the fifth law of nature, complaisance, in Hobbes, *Leviathan*, 106 [15.17]. For accounts of Bismarck's shifting domestic policy during this period, see Taylor, *Bismarck*, 138–139, 146–163, 172–175, 179–185, 200–206. For an insightful account of Bismarck's statesmanship, his understanding of politics and conception of history, see C. Clark, *Time and Power* (Princeton, 2019), 119–170.
- 71 The debate between John Rawls and Robert Nozick over the just distribution of goods in society is but a later iteration of this same alternative.
- 72 C. Schmitt, *Staat, Bewegung, Volk* (Hamburg, 1933), 31–32: 'An diesem 30. Januar ... an diesem tage ist demnach, so kann man sagen, "Hegel gestorben"'.
- 73 Ibid., 32.
- 74 Ibid., 11–14.
- 75 Rousseau, *Social Contract*, 236 [3.15].
- 76 E. Sieyès, 'Sieyès's Views Concerning Several Articles of Sections IV and V of the Draft Constitution [First Thermidorian Intervention]', in O. Lembcke and F. Weber (eds), *Emmanuel Joseph Sieyès: The Essential Political Writings* (Boston, 2014), 154.

Sovereignty, God and the historians

*Robert G. Ingram**

Quentin Skinner recently pointed out that his work builds on that of an earlier distinguished Cambridge historian of political thought, John Neville Figgis (1866–1919). ‘I tried to show that the relevant theories of authorization, limited government, and the right of political resistance had all been worked out in connection with longer-standing debates about the proper organization of the Catholic church’, Skinner explained. ‘I was chiefly indebted to the work of F.W. Maitland’s great pupil, J.N. Figgis, who had demonstrated in *From Gerson to Grotius* the deep influence of debates about conciliarism on the formation of the modern secular state’.¹ Figgis was a Cambridge scholar-priest who, with Maitland, was an early progenitor of the ‘Cambridge School’ of the history of political thought.² Figgis’s intellectual life centred on Cambridge, where he studied and taught on and off across nearly two decades and where he gave the 1900 Birkbeck Lectures which became *From Gerson to Grotius* (1907).³ Early twentieth-century pluralists like Harold Laski (1893–1950) followed in Figgis’s footsteps, and, more recently, ‘neo-Figgisites’ have revived and fleshed out his argument about modern constitutionalism’s origins.⁴

Unlike Figgis, Skinner (1940–) has been a professional academic his entire adult life, nearly five decades of which he spent at Cambridge, where he was Regius Professor of Modern History. He is particularly known for his contextualist methodology and for his account of the origins of the modern state.⁵ His two-volume *The Foundations of Modern Political Thought* (1978), in which he traced the modern state’s origins, ‘effectively reconfigured the field of late medieval and early modern thought, and a subsequent generation of scholars has gone to work within its outlines, inspired by his map and his method’.⁶ Skinner himself acknowledges, though, that his late twentieth century remapping owed much to Figgis’s turn-of-the-century surveying.

Others have noted the affinities between Figgis’s and Skinner’s work.⁷ Mark Goldie reckons that for Figgis and Skinner ‘a crucial purpose in writing their histories was to show that a doctrine that claims to be a universal truth turns out to be a contingent historical phenomenon. To show that the

idea of the state, and specifically of sovereignty, became normative within a particular context and vocabulary is implicitly to question its general applicability'.⁸ In both Figgis and Skinner, then, political thought is historicised and present lessons drawn from that history. And yet something fundamental distinguishes Figgis from Skinner: Figgis was an Anglo-Catholic, Skinner, an atheist. Figgis' adult life was a crescendo of religiosity, as he moved from Cambridge, where he initially studied and taught (1885–1902), to rural Dorset, where he served five years as a parish priest (1902–1907), and finally to the monastic Community of the Resurrection in Mirfield, Yorkshire (1907–1919). For Goldie, Figgis's deepening religious commitment had scholarly consequences, not all of them felicitous. He contends that Figgis 'became too preoccupied with theology and preaching to undertake serious scholarly work' and insists that '[s]ome historians, in particular the non-believers among them, have not forgiven Figgis for turning to the church, and it is true that his full potential as a historian was not fulfilled'.⁹ Geoffrey Elton was more pointed. Of Figgis's prize-winning *The Divine Right of Kings* (1896), Elton jibed that '[u]nlike his later work, it is unaffected by his conversion and the religious preoccupations which increasingly interfered with a clear view of the past'.¹⁰ Where Goldie lamented Figgis's religious turn as an unnecessary diversion from historical scholarship, then, Elton thought it seriously vitiated the value of his later work. If other Figgis scholars have been less pointed than Goldie or Elton, they nonetheless have highlighted a tension within his work between his historical scholarship and his religious apologetics.¹¹ By contrast, while some have queried Skinner's robust non-engagement with theology, they are outliers in the scholarly response to his work.¹² Certainly none have argued that Skinner's atheism in and of itself irreparably distorts his historical vision.¹³ And yet this chapter shows how Figgis's and Skinner's intellectual projects – at whose heart lie accounts of the origins and purposes of popular sovereignty – manifest their metaphysical priors and their conceptions of the good. Put most reductively, both have particular conceptions of the good and both have produced histories and political theories which aim to promote their particular conceptions of the good. Popular sovereignty, for both, is a means to an end, not the end itself.

This hardly surprises since while neither Figgis nor Skinner deny the possibility of objectivity, both recognise that the subject and conclusions of historical research necessarily bear the stamp of the author's values and views. As Skinner puts it, though he tries to adopt a Weberian stance which keeps party politics out of his scholarly conclusions, '[o]f course, the choice of topics that I talk about cannot fail to reflect my values – who else's values would they reflect?'¹⁴ Figgis would have gone further. He reckoned that when the historian 'comes to interpret facts or to trace their relation, his

views and even his temperament will affect the result. It is only the barest outline that can be objective'.¹⁵ This chapter, which focuses on Figgis's and Skinner's accounts of popular sovereignty, highlights the degree to which those accounts emerge from a particular set of metaphysical presuppositions. To make that case, the chapter considers Figgis 'as a specifically Christian historian' and Skinner as an avowedly a-religious historian.¹⁶ In tandem, it considers Figgis as a specifically Christian political theorist and Skinner as an avowedly a-religious political theorist, both of whom built their political theories atop their histories. Together their histories and political theories form coherent intellectual projects, projects with different ends, if shared features. At the heart of those intellectual projects is a concern about the origins and purposes of popular sovereignty.

Figgis's entire intellectual project had two connected aims – a defence of churches and a defence of liberty. A Christian and a liberal, but not a liberal Christian, Figgis first sought to define and defend a space for churches in modern society.¹⁷ For Figgis, churches were vehicles of 'Sacramental Christianity', which is 'natural piety sublimated, and ... has its special appeal and place for the man of ordinary, and no more than ordinary, spiritual endowment'. The Church is a community in which 'a purely self-centred individualism' is 'inherently alien'.¹⁸ Yet while he rejected a 'doctrine of absolute individualism', Figgis championed individual freedom, and he tried to reclaim an older, Christian conception of liberty as against an illiberal liberalism which he thought increasingly characterised both modern society and the modern state.

By Figgis's own accounting, three Cambridge historians – Mandell Creighton, F.W. Maitland and Lord Acton – particularly influenced his mature religious and political views.¹⁹ These three united in 'their strong belief in liberty and their perception of the hollowness of much that goes by that name nowadays'. In particular, a 'faith in freedom' undergirded their 'contributions towards the solution of one of the chief problems of our day – the relation between the modern omniscient State and the rights of smaller societies to exist and to govern themselves within it'.²⁰ That very same problem – the defence of smaller societies, and especially of churches, against the modern state's claims – runs like a red thread through Figgis's work.

Mandell Creighton (1843–1901) – who had 'almost a craze for liberty' – taught Figgis while Dixie Professor of Ecclesiastical History (1894–1891).²¹ In the conciliar movement Creighton located ideas which alone 'form the *raison d'être* of the Church of England, as against Ultramontanism on the one hand and the individualistic Protestant sectarianism on the other'.²² Figgis amplified that argument in his own work. Creighton's religious temperament and convictions – his High Churchmanship, his 'belief in the

sacramental system and the authority of the Church' and 'his hold on the Incarnation and its attendant miracles' – also sound a lot like Figgis's.²³

Frederic William Maitland (1850–1906) introduced Figgis to the work of the German jurist Otto Gierke (1841–1921).²⁴ Maitland, unlike Creighton, was 'not merely a non-Christian, but an anticlerical'; and yet, Figgis argued, 'few men have done more to elucidate Church history'. Maitland did that, first, by translating part of Gierke's *Das Deutsche Genossenschaftsrecht* (1868–1913) – a work Maitland claimed was 'the greatest book he had ever read' – and, second, by building on Gierke's ideas 'to demolish ... the old conception of the position of corporate bodies in the State'.²⁵ Gierke insisted that there was more than the individual and the state and, indeed, that between individuals and states were 'smaller but real social organisms, each with a living activity'.²⁶ Maitland pursued that theme in his own work on English constitutional history.²⁷ Maitland's and Gierke's arguments inform all of Figgis's post-1901 work, in which he argued that corporate bodies – especially churches – are 'beings with an inherent life of their own independent of the State'.²⁸

John Emerich Edward Dalberg Acton, Lord Acton (1834–1902) served as Regius Professor of History at Cambridge when Figgis taught there and chose Figgis as literary executor.²⁹ The Roman Catholic Acton was famous then and since for his robust defence of liberty. 'His ideal in the political world was ... securing *suum cuique* to every individual or association of human life, and to prevent any institution, however holy its aims, acquiring more', Figgis reckoned.³⁰ Acton's 'theory of liberty', though, was not 'identical with modern Liberalism in any of its forms', not least because he fetishised neither individualism nor democracy.³¹ Instead, Acton's commitment to liberty was the result of reasoning from 'human character' outwards, something which led him to 'the sense of the supreme worth of the individual conscience and the inalienable desire for liberty alike in church and state'.³² Figgis also prized the individual conscience. In politics, Acton's take on liberty informed his 'intense constitutionalism'.³³ In religion, it explains why he inveighed against ultramontanism in general and against papal infallibility in particular. And in historical scholarship, it undergirded his moral judgments about those he believed had behaved liberally or illiberally. A liberty-loving constitutionalist, Figgis also wrote morally infused histories: 'The lesson of history to the patient seeker after truth', he insisted, 'is when all is said, one and the same with the supreme message of the gospel'.³⁴

Fuelling Figgis's moralism was a sense – shared with Creighton, Maitland and Acton – that civilisation was collapsing; that modern liberalism was deformed; and that socialism was not the solution to liberalism's problems. Instead, popular sovereignty – properly understood – was the antidote to liberalism's deformation. The sense of civilisational collapse is everywhere

to be found in Figgis's work.³⁵ 'I do think the clock is running down, the civilization is revealing its own end times', he lamented to a friend in the early 1900s.³⁶ The 1910s only deepened his apocalypticism. 'Progress, with a capital P, was torpedoed by the man who sank the *Lusitania*', he assured a congregation in 1917.³⁷ Civilisation's seemingly imminent collapse had clear religious dimensions. '...[T]he position of the Church in regard to the world has in the last fifty years more and more closely approximated to the earlier days of its obscurity', Figgis argued in 1919. 'That is one reason why St. Paul is so modern and so helpful'.³⁸ Where some at the time cast the Great War as a clash between 'freedom and force', Figgis saw it as the logical culmination of two intertwined strands of Western thought. The first involved the rejection of Christian belief, something which, in Figgis's view, Friedrich Nietzsche (1844–1900) had articulated most clearly.³⁹ Indeed, Figgis described the war as 'Nietzsche's artistic creation' since the 'rejection of the platitudes of the last age ... which is so marked a feature of to-day and is infused in all ideals, Christian and Agnostic, Conservative and Radical, Socialist and Imperialist, and Little Englander; all that traces itself not obscurely to its origin in Nietzsche'.⁴⁰ The second strand of thought which had brought about civilisation's teetering ruin was the reigning alternative to Christianity – 'the religion of the State'.⁴¹ This new religion's emergence coincided with the emergence of the doctrine of unitary sovereignty, which denied the independent existence of any non-state group, especially churches. Figgis's historical scholarship explained how the West had come to accept that doctrine and detailed the consequences of its acceptance. To put it another way, Figgis's diagnosis of Western civilisation's twin disease – its steady abandonment of Christianity and its acceptance of the 'religion of the State' – was the impetus for, not the product of, his historical scholarship.⁴²

Figgis's historical account of the state and of popular sovereignty begins in the century of Christ's death and goes straight through to the early twentieth century. The climacteric in that long story was the stretch of time from the fourteenth century to the seventeenth, when the ancient framing of the relationship between state and Church gave way to the modern one. Figgis illuminates the tensions within popular sovereignty when discussing the *societas perfecta*, 'a society that contains within itself all means sufficient for its support' and that can 'exercise its own functions and needs no extraneous help'.⁴³ The notion originated in Roman and Latinate appropriations of Aristotle's thinking about the polis and got extended to the Church by Aquinas and others during the Middle Ages. As Figgis noted, '[t]he theory of Church and State, as two distinct societies, both "perfect", always tended to be emphasized by that power which, at the moment, finds itself in need of apology. Where the State is thoroughly powerful, it admits no "perfect" society; where the Church is so, or was so ... it makes the like refusal to the State'.⁴⁴

In the beginning, the Christian Church was thoroughly unpowerful. It emerged within the Roman Empire, a regime which demanded 'unlimited allegiance'. The Church, in turn, claimed 'a life underived from the State, with the consequent right to impose limits on civil allegiance'.⁴⁵ Predictably primitive Christians got persecuted since '[t]he conception of a religious society as distinct from the State had not dawned upon the unified civilisation of Greece and Rome. It was alien alike from the City-State and the Pagan Empire'.⁴⁶ With Constantine's conversion, the Church went from proscription to establishment. That change of legal status, though, left unchanged the ways in which people thought about the distribution of authority: the notion that there was really only *one* society remained, and Augustine's conception of the Church *as* a state only reinforced it.⁴⁷ With Christianity's establishment in the fourth century the ideal of a unitary Roman Empire gave way to that of a unitary *Holy* Roman Empire, 'a single Catholic Commonwealth of princes and lords and peoples, a unity of all culture'.⁴⁸ As Figgis put it, '[t]he Pagan State was also a Church, and the medieval Church was also a State; *the* Church and *the* State in theory. Each governs the whole of life and the problem is not whether you take power from one society and give it to the other, but where you tilt the balance of authority – on the side of the lay officials or to that of the clerics'.⁴⁹ The infamous medieval conflicts between the papacy and monarchs, then, were not conflicts between two different societies but between two departments within a single society, with authority during the Middle Ages tilting decisively towards the Church. For this reason medieval 'politics were conceived as essentially a branch of theology'.⁵⁰

The Great Schism (1378–1417) catalysed a fundamental rethinking of the one society. Faced with rival popes, conciliarists tried to explain why and how the Church could reform itself.⁵¹ For Figgis this was the axial moment in the development of the modern state. The conciliarist struggle, he argued, was 'a struggle within [the Church], which was the State par excellence of the Middle Ages, and no conflict as to the limits of its jurisdiction, or attempt after a scientific frontier, which should preserve it from the danger of secular invasion'.⁵² Conciliarists made a constitutional argument that sovereignty within the Church resided in councils, not in the papacy. This was a crucial step in conceiving of the Church not as *the* state but 'as one of a class, political societies'.⁵³ That conceptual disaggregation of Church from state fundamentally changed the terms of debate. As Figgis explained it, '[t]he habit of arguing about the Church as a political society and drawing inferences from the powers of other political societies and the constitution of civil States prepared the way for the new form in which all questions between the spiritual and lay authority could be discussed; the form of transaction between two societies distinct in origin and aim'.⁵⁴

Implicit in the conciliarist argument was that if a council could not remove a pope from office, the Church was not actually a *societas perfecta* capable of reforming itself. For Figgis, conciliarism split the atom of sovereignty, opening up the possibility for real political pluralism.⁵⁵

Conciliarism failed but paved the way for the Reformation, a reform movement which ‘destroyed the ancient unity of Western Christendom’.⁵⁶ The Reformation was a laicising movement, for in both Protestant and Catholic countries, it ‘transfer[red] the allegiance of the human spirit from clerical to civil authority’.⁵⁷ On Figgis’s reading, Calvinists held on to the old one-society theocratic ideal, believing that ‘the Church is a State, the State indeed’.⁵⁸ This view both reflected and shaped the way that they thought about God.⁵⁹ For Calvinists, according to Figgis, ‘rigid predestination is the theory of legal sovereignty applied to the actions of God’, while the ‘Deity of Calvinism is Hobbes’s Leviathan, with power unchecked by law, justice or conscience’.⁶⁰ To reclaim a realm in which the Roman Catholic Church might be a *societas perfecta*, though, the Jesuits built on conciliarist thought to develop a ‘purely secular theory of the civil state’, one in which Church and state were distinct, self-contained political societies.⁶¹ One of Figgis’s many counter-intuitive scholarly moves was to cast the Society of Jesus as one of modernity’s midwives.⁶²

Out of the Reformation emerged the modern state.⁶³ Where the Reformation had shattered the bonds *between* nations in Christendom, *within* nations it simultaneously ‘tightened ... those ties that made for a concentrated unitary state’.⁶⁴ The modern state claims ‘its absolute and exclusive competence to “hear and determine” all kinds of cases, wherein any matters of property or contract are concerned, and recognizes no limit beyond those of morality to its paramount regulation of life’.⁶⁵ Thomas Hobbes’s *Leviathan* (1651) gave the notion conceptual teeth, while later works like John Austin’s *The Province of Jurisprudence Determined* (1832) and Henry Sidgwick’s *Elements of Politics* (1891) asserted a secularised ‘state absolutism’ even more robust than Hobbesianism. On Figgis’s reading, though, both Hobbes’s thought and the nineteenth-century ‘theory of utilitarian obedience’ merely revived older one-society conceptions.⁶⁶ In his pungent formulation, ‘[t]he great Leviathan of Hobbes, the *plenitudo potestatis* of the canonists, the *arcana imperii*, the sovereignty of Austin, all are names of the same thing – the unlimited and illimitable power of the law-giver in the State, deduced from the notion of its unity. It makes no difference whether it is the State or the Church that is being considered’.⁶⁷ And yet, he insisted, unitary sovereignty at no time accorded either with the facts of lived existence or with the demands of liberty. By his reckoning, when late medieval conciliarists started ‘to think of the State and the Church as each of them a *societas perfecta*, they were on the way to a more reasonable theory of the

relations between the two'.⁶⁸ That conciliarist insight, though, had been forgotten. And it had potentially harmful consequences for liberty, which Figgis thought was an end, not a means, of politics.⁶⁹

That late Victorian and Edwardian England was increasingly democratic only intensified his concerns. Like many liberals of the era, Figgis fretted about democracy.⁷⁰ In Figgis's view, the only real democracy that ever has existed has been within the 'Catholic Church [which] is a religious democracy in the one sense in which the phrase has a value. It is a life for all, and not for some'.⁷¹ Otherwise, democratic government was not a good in and of itself. As he put it at one point, the danger was 'the all-devouring Leviathan of the whole – a Leviathan not less but more dangerous if its form be democratic'.⁷² The democratic danger stemmed not simply from the threat of tyrannous majorities but from the ultimate falsity of the very idea which undergirded democracy – popular sovereignty. To be sure, the conciliarist arguments were arguments for popular sovereignty. In those arguments '[t]he general will is law. And a majority of the Council is above all earthly power; it is, indeed, not the Council, but God himself speaking by its voice, that deposes the Papal tyrant'. In the councils which sought to resolve the Great Schism, Figgis concluded, '*vox populi* is in the truest sense *vox Dei*'.⁷³ In most other circumstances, though, he found the doctrine of popular sovereignty to be illogical and hollow. 'There are many who nowadays profess the doctrine *vox populi vox dei*', he noted. 'But it can hardly be maintained, that they are prompt to acknowledge an unfavourable verdict of the constituencies as of divine prompting'. Faced with this 'the worshippers of democracy are at times betrayed into reading *diaboli* for *deo*, or [in] employing anti-democratic institutions in order to maintain their position'.⁷⁴ For Figgis, popular sovereignty was a political tool, not a pre-political premise. It might be used to promote liberty, but just as often it might not. So he, like his mentor Acton, 'did not believe in the doctrine of numbers, and had no sympathy with the cry *Vox populi Vox Dei*'.⁷⁵

For Figgis popular sovereignty's fundamental flaw was its errant conception of authority and authorisation. Figgis's understanding of authorisation proceeded from twin convictions. First, he believed that 'the force of State action is a synthesis of living wills, no mere logical theory deduced from the notion of unity'.⁷⁶ Put another way, states were organisms, not artificial creations, which was why he thought that contract theory was a view 'as simple as it was unsound', marred as it was by 'its unhistorical assumptions, its legal contradictions and its artificial abstracts'.⁷⁷ Contract theory might once have reflected the facts of medieval life and might since have become a useful fiction.⁷⁸ But it was a fiction nonetheless, not something upon which authority could be grounded. Figgis's second conviction regarding authority and authorisation concerned the primacy of the individual conscience.

As he put it, 'no power ... is absolute ... but in the last resort [a person's] allegiance to his own conscience is final'.⁷⁹ Given the state's organic nature and conscience's primacy, Figgis insisted that legitimate authority comes neither from above nor from below but from *within* society. Authority, as he explained it, 'arises from the total complex of influences, personal, historical, spiritual, moral, aesthetic, which are greater than the individual, which mould men's minds and wills even if they are unaware of it'.⁸⁰ As such it expresses 'the social nature of man, and the true character of personality'.⁸¹ Man's social nature, though, was not experienced or expressed individually or in the total but through smaller social associations like families, clubs, unions and churches. And, indeed, it was the sum of those smaller associations that together formed the state. This is why Figgis, channelling Gierke, dubbed the state a '*communitas communitatum*', explaining that '[t]his is the true meaning of our word Commons; not the mass of the common people, but the community of communities'.⁸² Or, as he put it elsewhere, '[t]he true State is not an aggregate of individuals, but a society of social unions, which unions are not made by the State, but make it'.⁸³

At the turn of the twentieth century, though, Hobbesian and Austinian conceptions of the state – 'the State as essentially one, irresistible in theory and practice, with a uniform system of law and a certain government' – held sway over the Gierkeian one.⁸⁴ And yet, Figgis insisted, only conceiving of the state as the sum of all communities – rather than as an indivisible sovereign with 'illimitable omnipotence' – allowed for the flourishing both of liberty and of smaller communities since 'true liberty will be found by allowing full play to the uncounted forms of the sociative instinct'.⁸⁵ On this view, the state acts legitimately 'as the guardian of property and interpreter of contract', but has no right to direct smaller communities, including the Church, which 'is a life not a contrivance; an organism not an organisation'.⁸⁶ So, Figgis conceived of the Church and the state as two societies, each of them a *societas perfecta*. This is why he pointed to pluralism – the doctrine that government power should be limited through the distribution of authority across a number of institutions, none of which is itself sovereign – as the optimal governing theory.⁸⁷

But where was an actual polity to be found which embodied pluralism? Perhaps surprisingly, in America. Though Figgis disdained the encroaching influence of American culture ('Americanization'), he held American government in high regard. Alexander Hamilton (1757–1804) was for him the 'high-priest of Federalism' and the American Revolutionaries of the 1770s had achieved something which the English revolutions in 1688 had not.⁸⁸ As Figgis explained it, while the Glorious Revolution had 'shown how to combine State authority with individual liberty and the security of property', it had unfortunately led 'to an assertion of Parliamentary sovereignty which

was in essence a tyranny'.⁸⁹ The American Revolution had been a revolt against the tyrannous British Parliament, and the framers of the post-revolutionary American government had aimed to address the problems which had caused the revolution. On Figgis's reading, Hamilton had been instrumental in coming up with a constitution which guaranteed both individual liberty and communities' rights.

The genius of Hamilton lay in combining a due recognition of the relative *selbständigkeit* [sic] of the smaller society with the paramount supremacy of the central body. He solved, or helped towards the solution of, that profound problem of modern politics – What rights, if any, of its own has the single state in the Empire, the trade union in the whole industrial system, the religious body in the nation at large? All the main political (and economic) problems of the century will centre round this point – How are we to prevent the single unitary civil authority, whether democratic or autocratic in form, becoming in fact and deed a tyranny, and denying to the numerous social unions within it not privileges, but the power of internal self-development.⁹⁰

Figgis reckoned that the 'growth of federalism real' in the United States increasingly put the lie to the Hobbesian and Austinian claims about the state's unitary sovereignty. 'A conception of law and sovereignty which may fairly fit the facts in a unitary State', he insisted, 'becomes increasingly difficult of practical application to any developed federal community, and ceases to have any but a paper value'.⁹¹ Whether or not Figgis correctly read the distribution of authority in America, the United States nonetheless remained for him the nation which had most realised the commitment to the pluralism he hoped his own country would also embrace.⁹² Central to that commitment was the conciliarist recognition that the Church and the state are two societies, each a *societas perfecta*. In the post-Reformation world, no church could expect to command a legal monopoly on worship and had, instead, to accept legal toleration of any and all faiths. In turn, neither could the state expect the right to meddle in the internal affairs of churches. This was the premise Figgis defended in his non-historical work, but it was also the premise which his historical scholarship tried to prove. And under the historical conditions which Figgis charted, pluralism was his proposed governing solution.

Quentin Skinner grew up in a postwar Britain undergoing rapid social, economic and cultural change, not the least of which was vertiginous secularisation.⁹³ He self-describes as 'not myself primarily a first-order political theorist but merely (or at least mainly) an historian of the subject ... I have mainly confined myself to tracing some of the processes by which our contemporary political world came into being'.⁹⁴ Nonetheless, once Skinner, like Figgis, had settled on the broad outlines of his historical account, he turned his attention more concertedly to political theory and to fleshing

out the connection between that theory and his historical scholarship. His intellectual project has two central aims – explaining liberalism’s modern hegemony and offering up neo-Roman republicanism as an alternative to it. This has required him to cover much the same chronological ground as Figgis and to consider many of the same subjects, including the origins of the modern state.

Skinner’s account of the modern state’s emergence broadly follows Figgis’s. The differences, though, are telling; and the political-theoretical lessons drawn, profoundly different. Put most reductively, Figgis lamented unitary sovereignty; justified the autonomous life of non-state institutions; and insisted on the rightful place of churches in public life. Skinner, by contrast, praises the unitary modern state’s advent; lauds the subordination of the sacred to the secular; and hails religion’s privatisation. Skinner has often been accused of ignoring religion, an accusation which ‘strikes [him] as ignorant criticism’.⁹⁵ He retorts that *The Foundations of Modern Political Thought*, if not his subsequent work, focused concertedly on religion, so much so, indeed, that his wife became ‘seriously worried that [he] would become a convert’.⁹⁶ Moreover, he reckons ‘that much of our current political vocabulary is a secularisation of earlier religious ideals, which need to be understood if we are to understand ourselves’.⁹⁷ Perhaps, then, it would be more accurate to say that Skinner has treated religion as it relates to particular historical and theoretical problems and from a particular point of view.

The vantage from which Skinner considers religion is atheistic. By his reckoning, there are fundamentally two kinds of atheists. The first find religion wrong but historically interesting or socially useful. So, for instance, Ludwig Feuerbach (1804–1872) thought that ‘religion is the deformation of very deep human feelings and aspirations’, while someone like Thomas Hobbes believed ‘that although religion may be false, it may be very useful as a binding force in society’.⁹⁸ The second kind of atheist – Skinner’s kind – finds religion wrong and useless. ‘I just think that, as far as I can see, there is no good reason to espouse any of the tenets of the religious hypothesis in any of the forms that I know of it’, Skinner concludes. ‘For me, it’s nothing but nonsense’.⁹⁹ Theism of any sort is so ‘grossly irrational ... that anyone who continues to affirm it must be suffering from some serious form of psychological blockage or self-deceit’.¹⁰⁰ Perhaps unsurprisingly, Skinner acknowledges that ‘[w]hen I study Christian theology, it is very hard for me to take it seriously’.¹⁰¹

But if Skinner does not take Christianity’s metaphysical claims seriously, he certainly takes Christianity seriously as an especially noxious historical force. In a riposte to Charles Taylor, he lays out his charge sheet against Christianity.

During the centuries when this perspective was imposed on western Europe, ... the outcome in human terms was nothing less than catastrophic. The Medieval centuries were marked by unrelenting and barbarous persecutions, while the attempt to challenge the powers of the Catholic Church in the sixteenth century led to several generations of savage religious war. ... It is all too clear, however, that Christianity has often proved an intolerant religion, and that some at least of the wars and persecutions with which it has been associated have actually followed from its character as a creed. Nor can we even be confident that the church militant in the modern world has finally shed its ancient capacity for persecution and bigotry.¹⁰²

For Skinner, then, Christianity is pernicious not because it 'amounts to no more than whistling in the dark' but because it ineluctably incites bigoted, persecutory violence.¹⁰³ 'Friend of the mighty, persecutor of the unconventional, orthodox Christianity has at all times played a willing and crucial part in the maintenance of social control', Skinner asserts.¹⁰⁴ It comes as no surprise, then, that he wants Christianity neutered and out of public sight, and his historical scholarship has been about showing how the modern state developed to make that possible. His political theory grounded on that history has been that of an atheistical Calvinist for whom the modern godly-godless state is a not-theistical one in which the people are sovereign and may rightfully resist their rulers.¹⁰⁵

On Skinner's accounting, the concept of the modern state emerged from a long dialectic between various absolutist and populist theories of government.¹⁰⁶ The modern state itself has four preconditions. First, it is premised on the notion that 'the sphere of politics should be envisaged as a distinct branch of moral philosophy, a branch concerned with the art of government'.¹⁰⁷ To think like this meant escaping the long conceptual shadow cast by Augustine's *City of God*, a task made easier by the late medieval recovery of Aristotle's *Politics*. In the Italian authors of the thirteenth century, Skinner espies a new way of thinking about politics. 'Aristotle gave these writers a new confidence as well as a new armoury of concepts with which to challenge the orthodox Augustinian assumption that all governments are imposed by God's ordinance as a mere remedy for human sinfulness', he argues.¹⁰⁸ And that, in turn, encouraged a more robust civic-mindedness in Italian politics than had hitherto been the case.¹⁰⁹

That the new thinking about politics emerged from the late medieval Italian peninsula is unsurprising since that era witnessed the emergence of new political forms, which, in turn, inspired the second foundational notion on which the idea of the modern state rested – 'the independence of each *regnum* or *civitas* from any superior power'.¹¹⁰ Echoing an argument that Figgis himself had made, Skinner demonstrates that Azo of Bologna (d. c. 1229), Marsilius of Padua (c. 1275–1342), Bartolus of Saxoferrato

(1313–1357), Baldus de Ubaldis (1327–1400) and others deployed arguments from the Codex of Roman law and from ancient republicanism to defend the territorial state's independence.¹¹¹

Unitary sovereignty is the third foundation on which the modern state rests. An independent state cannot have any 'rivals within its own territories as a law-making power and an object of allegiance'. There were some significant barriers to realising this, though. As Skinner puts it, '[a]ny such unitary image of political sovereignty was precluded in medieval Europe, by the legal assumptions underpinning the feudal organization of society, and by the Church's claims to act as a law-making power coeval with rather than subordinate to the secular authorities'.¹¹² Here Skinner's indebtedness to Figgis also evidences itself. First, he showed that a variety of absolutists – divine right legists and Protestants, for instance – had made the case that sovereign authority resided only within the territorial state.¹¹³ Second, he showed that a variety of populists – conciliarists and monarchomachs, for instance – had made the case that sovereignty resided with the people.¹¹⁴

Skinner differs from Figgis, though, in his reading of the two most influential Reformation movements, Lutheranism and Calvinism. Skinner rejects Figgis's insistence that Lutherans had advocated for passive obedience and non-resistance, arguing, instead, that during the 1520s, they developed theories of active resistance. Calvinists, on this view, did not pioneer resistance theory, but followed in Lutheran footsteps.¹¹⁵ Skinner agrees with Figgis, however, that neither Lutherans nor Calvinists invented resistance theory but appropriated and reworked earlier populist arguments for resistance advocated by sixteenth-century scholastics like Jacques Almain (c. 1480–1515) and John Mair (1467–1550). Some of the ideas informing that scholastic resistance theory traced back to Roman lawyers; but conciliarism – which held that sovereignty resides with the ruled, not with the rulers – most decisively influenced later scholastic resistance theorists.¹¹⁶

While sixteenth-century resistance theories were propounded by those who justified revolt against rulers to achieve religious ends, seventeenth-century authors, including John Locke, secularised conciliarist and Protestant rationales for popular resistance.¹¹⁷ That secularisation was part of a larger process by which the state's purpose got reworked. As Skinner notes, 'the acceptance of the modern idea of the State presupposes that political society is held to exist solely for political purposes. The endorsement of this secularised viewpoint remained impossible as long as it was assumed that all temporal rulers had a duty to uphold godly as well as peaceable government'.¹¹⁸ Both Protestants and Catholics during the sixteenth century thought that the state's mission was to ensure 'true religion'. In the view of many at the time and since, the early modern wars were religious wars.¹¹⁹ For the sake of peace, *politiques* insisted that the state's aims had to be secular, not religious.

Skinner acknowledges that the conceptual secularisation of the state framed his account in *Foundations*: 'As I showed, Jean Bodin and other writers on sovereignty began to argue that, in the name of public peace, states must give up trying to impose religious uniformity. They must treat religion as a private matter distinct from politics and consequently as not incompatible with public peace. I saw this as a real intellectual advance, and it shaped the narrative of my book'.¹²⁰ The shadow of Max Weber (1864–1920) looms long over Skinner's account. 'If you were brought up on Weberian – to say nothing of Marxist – social philosophy, then the secularization image of modernity was absolutely central to *our* self-image', Skinner explains.¹²¹ That conviction formed his analysis of the state in *Foundations*: 'I was trying to tell the story of how, out of the destruction of feudal and Catholic Europe, a secularizing and purportedly neutralist and universalistic idea of the state emerged. That was recognizably an agenda set by Max Weber's idea of state formation'.¹²² The Weberian influence aside, there is little in Skinner's account of the foundations of the modern state between the fourteenth and early seventeenth centuries with which Figgis would likely have disagreed. There is, though, more daylight between their readings of post-Reformation thinking about freedom and about the state.

For both Figgis and Skinner, Thomas Hobbes (1588–1679) was a pivotal figure. Figgis's reading of Hobbes bears the stamp of Gierke, for whom Hobbes had 'boldly demolish[ed] what had hitherto been the foundation of all natural law systems' by replacing 'the two original contracts [with] a single contract, by which each pledges himself to each to submit to a common Ruler, who, on his side, takes no part in the making of the contract'. Gierke argued that Hobbes had marked a decisive break in thinking about the state, for he had conceived of it as a fictional person which embodied sovereignty. The resulting 'State-authority', on Gierke's telling, acted 'as a mortal god'.¹²³ Figgis similarly argued that in Hobbes 'the meanest of all ethical theories united with unhistorical contempt for religion to justify the most universal of absolutisms'.¹²⁴ Hobbes's Erastianism was the most important feature of his thought for Figgis. By his reckoning, 'Hobbes regards religion as under the absolute control of the State, which for its own ends may establish and prohibit what forms it pleases and demand not only loyalty but on moral grounds the obedience of every member. The conscience is in fact bound to any religion the State imposes'.¹²⁵ Moreover, Hobbes's one-society conception of the state was a bridge between the medieval and modern world.¹²⁶ Indeed, at one point Figgis claimed that the two great early modern proponents of unitary sovereignty – Hobbes and Bodin – together were the creators of the modern world.¹²⁷

Skinner also read Hobbes in the light of Geirke, and he credits his original plan to end the *Foundations* with a consideration of Hobbes to

Gierke's influence. 'Gierke was my Bible in those days', he recollects, 'and I had it on his authority that with Hobbes the struggle to articulate the idea of the state as the bearer of sovereignty was finally brought to a triumphant close'.¹²⁸ Two aspects of Hobbes's thought matter particularly to Skinner. To begin with, he thinks that Hobbes was the most forceful seventeenth-century counter-revolutionary thinker to oppose popular sovereignty. Instead of locating authority in the people, Hobbes had jibed in *Leviathan* that the citizen of Lucca, on whose turrets was inscribed *Libertas*, had no more nor less 'Liberty, or Immunitie from the service of the Commonwealth there, than in Constantinople. Whether a Commonwealth be Monarchicall, or Popular, the Freedome is still the same'.¹²⁹ The people of Lucca were not the ultimate source of their liberty – their state was. As Skinner put it, '[w]ith this famous sneer, Hobbes decisively repudiated the distinctive ideals of Renaissance political theory, burying them and writing their epitaph in the same breath'.¹³⁰ By this he meant that Hobbes's account of freedom – which holds 'that the antonym of freedom is coercion' – was a negative one. That matters to Skinner, first, because he believes that the negative conception of liberty is unnecessarily cramped; second, because negative liberty is a characteristic feature of liberalism; and, finally, because liberalism triumphed over the neo-Roman republicanism which Skinner takes to be characteristic of those late medieval and early moderns who argued that sovereignty resided with the people.¹³¹

The second thing about Hobbes's thought which mattered to Skinner was Hobbes's thoughts on the state. Though Skinner rejects Hobbes's conception of liberty, he at times seems to view the Hobbesian conception of the state more positively. Where some early moderns conflated *the rulers* with *the state*, Hobbes countered that the state is not the government but something else entirely, something more powerful and more profound.¹³² 'Hobbes enters to say, look the seat of sovereignty is not the king of it as head of state but it's also not the people', Skinner reckons. 'It is a completely separate entity and that's a revolutionary moment. That's *Leviathan*'.¹³³ On Skinner's reading, the virtue of thinking about the state as a fictional person with natural persons representing it is that it allows the people to hold the state accountable. The people have formed a political covenant with each other to form *Leviathan*, who is authorised to act in their name. This, as Skinner notes, is what all theories of representative democracy hold. Hobbes, though, pressed the issue, further noting that once the hitherto disaggregated people have authorised a representative to act in its name, they cease to be a multitude and, instead, become something. That something, Hobbes holds, is the state, which is also 'the people of the whole'.¹³⁴ *Leviathan*, then is the embodiment of the people, who, in turn, can hold its representatives to account. But there is no authority higher than *Leviathan* to whom

the people can appeal, since Leviathan is the people's fictional body.¹³⁵ Put another way, Leviathan is, simultaneously, the product, instantiation and instrument of popular sovereignty. While Figgis rejected Hobbes's account of authority and authorisation, then, Skinner fundamentally agrees with it.

By Skinner's reckoning, the Hobbesian conception of the state 'as a distinct *persona ficta*' became a commonplace of English and continental European legal thought by the mid-eighteenth century, 'but no sooner had Blackstone introduced the fictional theory to a broad English readership than it fell victim to an almost lethal attack' from utilitarianism.¹³⁶ So, where Figgis had blamed nineteenth-century liberals for having advocated an even more robust version of Hobbesianism, Skinner faults them for having repudiated the Hobbesian notion of legal fictions. Despite the attempts of early twentieth-century figures like Maitland and Bernard Bosanquet (1848–1923) to reassert the fictional theory, they failed. In the Anglophone world at least, the 'commonsensical' notion that the state was nothing more nor less than the government apparatus which could rightly command the allegiance of citizens held sway.¹³⁷

That particular vision of the state, Skinner has held, dovetails with the negative liberty so characteristic of liberalism. Many of the very same people – liberals – who had advocated thinking about the state not as a *persona ficta* but as the functioning organs of government had also advocated thinking about liberty as freedom from coercion.¹³⁸ Put another way, while liberals rejected Hobbesian thinking about the state, they adopted Hobbesian thinking about liberty. 'Hobbes's account of freedom is recognizably the modern one', Skinner insists, '... and he presents it in an especially stringent form. Freedom, for Hobbes, is absence of external constraint and nothing more. Free action for Hobbes is merely unimpeded action; it is never freely willed action'.¹³⁹ This notion of liberty as freedom *from* lies at the heart of all modern liberal accounts of liberty, accounts which Skinner finds thoroughly impoverished.¹⁴⁰ His political theory has been about offering an alternative to liberalism's account of liberty, something which he shared with Figgis.

And, yet where Figgis thought that reclaiming an older, pre-Reformation conception of the state would best secure liberty, Skinner saw the modern state not as a barrier to liberty, but, properly understood, as its proper vehicle. One can, he insists, 'perfectly well combine that "republican" view [of liberty] with a Hobbesian understanding of the character of the state'. The person who best fitted them together was, on Skinner's view, Jean-Jacques Rousseau (1712–1778) in *The Social Contract* (1762). 'There the state is treated as a fictional *personne morale*, and the freedom of the people is equated with their capacity to make the actions of the state answer to their own general will, thereby avoiding any submission to purely arbitrary

power', he explains in an interview. 'Freedom is construed as absences of dependence in true "republican" vein, but the upholding of this view of liberty is then taken to be one of the duties of the state. I see no difficulty, in short, about combining my two allegiances'.¹⁴¹ So, then, Skinner advocates rejecting neither unitary sovereignty nor the modern state. Instead, he has long pled for the readoption of an older – neo-Roman – conception of liberty, which he believes offers the truest vehicle for popular self-determination. As he puts it, '[l]iberals are democrats, as it were, in a secondary sense: what they care about is the extent of freedom, whoever provides it. Republicans are democrats first and foremost: they believe that freedom depends on self-government'.¹⁴²

The neo-Roman liberty Skinner has consistently advocated since at least the mid-1980s is, for him, the surest way of securing self-government. Much has been written about Skinner's work on neo-Roman liberty, but what needs emphasising here is that it was an avowedly secular project which aimed for a middle way between the liberal individualism of John Rawls (1921–2002) and Rawls's ideological forbears and the neo-Aristotelianism of modern political philosophers like Charles Taylor (1931–) and Alasdair MacIntyre (1929–).¹⁴³ While the later Skinner is a model of cool dispassion, his visceral aversion to the arguments of Taylor, MacIntyre and their like is palpable.¹⁴⁴ For where Rawlsians and other liberals are guilty of undue minimalism, neo-Aristotelians – who argue that 'citizenship is essentially a matter of shared moral purposes' and who believe that 'a healthy public life needs to be founded on some objective conception of the Good' – are guilty of gross unrealism.¹⁴⁵

There can be no realistic prospect of reincorporating the promise of theism into a genuinely pluralistic social philosophy. Too many of us have come to the painful conclusion that, even though it would be a fine thing to converse with angels, there are in truth no angels with whom to converse. It is this very fact, however, which seems to me to point the moral of the tale. Hume underlined it a long time ago, but it seems to stand in greater need of restatement than ever before. If we wish to be true to the range of feelings and beliefs that actually go to make up our modern age, we must somehow find the values to sustain social life within the practices of social life itself.¹⁴⁶

All there is this world and its contemporary concerns. The world in which we live obviously should be – and actually is increasingly – god-free. And, thus, the common good must necessarily be secular just as the state which pursues it must also be secular.

A commitment to defending the secular has always been at the heart of Skinner's intellectual project. In the mid-1960s, for instance, when he discovered a Hobbes manuscript at Chatsworth, Skinner wrote about it in both a scholarly journal and in the BBC's house journal, *The Listener*.

In the latter he explained that the fragment's chief importance lay in the way it undermined modern conceptions of political obligation which still bore the unfortunate traces of Christian influence. To Hobbes, Skinner argued, where political obligation is concerned 'the question of prior morality is ... finally irrelevant'. It, though,

has been supposed by all Christian moralists that to treat the moral basis of politics in this way must be the solvent of all loyalties. Hobbes's main work itself, the *Leviathan*, is still immensely worth reading as the most compelling presentation, it seems to me, of the opposite case. His central belief ... is that the grounding of political obligations on calculations made between competing interests provides the only possible state for rational men. And, to me, this type of rationalism still presents the essential challenge to any political moralist.¹⁴⁷

Skinner's evident commitment to challenging 'Christian moralists' helps to explain why he is increasingly bewildered by the recrudescence of religion in the twenty-first century and by its intrusion into the public square. 'One of the most extraordinary things to anyone of my age is the re-sacralising of the world', he admits.¹⁴⁸ Elsewhere he concedes 'that I would never have predicted the growing challenge to the assumption that modern societies are secularized and disenchanted places'.¹⁴⁹ He also notes that this has given him cause to rethink his own read of the past and present. 'The increasing prominence and fervent commitment of these religious confessions is changing the sensibility of us all. It is even changing the sensibility of those who, like myself, remain so much the children of the Enlightenment that, in our *Weltanschauung*, all the world religions appear more or less equally magical in character', he concedes. 'This in turn is having the effect of altering not merely how we think about our own political world, but also how as cultural historians we approach and write about the religious life of the past.'¹⁵⁰ Yet this acknowledgement notwithstanding, Skinner has doubled down on his dual commitment to neo-Roman republicanism and to the Hobbesian modern state, both of which are premised not just on their secularity but on being agents of secularisation. Neo-Roman republicanism insists that there is no higher authority than the self-governing people. By contrast, Hobbes himself reckoned that the modern state is 'that Mortall God' than which there can be no higher authority in this world.¹⁵¹ For Skinner, the modern state is the solution, not the problem. What needs changing is the prevailing political ideology of those who collectively comprise the modern state.

While Figgis would likely have countered that the modern state itself is disforming, he also would surely not have been bewildered by the stubborn persistence of religion. For he understood modernity not as secularisation but as the transfer of the religious impulse from ecclesiastical institutions

elsewhere. As he noted near the end of his life, ‘the world in which we live is going to have a religion. Religion is a fact. No argument can destroy that fact; and no apologetic entirely explains it’.¹⁵² What will change, though, is the way in which the religious impulse is manifested and the channels through which it flows. Sometimes derided as a figure in whom ‘[t]here was an element of nostalgia in his dismay at the shape of modernity’ and who, in response, ‘leaned toward a kind of communitarian medievalism’, Figgis might actually have been a more gimlet-eyed seer of the modern world than those historians who have followed in his stead.¹⁵³ There is certainly a case to be made that Figgis’s political theory is more fitted to the conditions of the modern world. For where Skinner anticipated a sort of aspirational homogenisation among the people that would accompany its inevitable secularisation, Figgis foresaw the hyper-pluralism that is characteristic of the modern world. The political theory he built in light of that offers a clearer sense of how authorisation might work in an increasingly fragmented world.

Those inspired by Figgis the historian have rejected Figgis the political theorist perhaps because they have mistook the lessons he drew from that history. Leviathan, for Figgis, was an historical accident, not the ineluctable outcome of history. Skinner would surely have agreed, as he himself has observed that ‘[o]ne effect of learning about the causal story is to loose the hold of our inherited values upon our emotional allegiances. Haunted by the sense of lost possibilities, historians are almost inevitably Laodicean in their attachment to the values of the present time’.¹⁵⁴ On Skinner’s and Figgis’s reasoning, the modern unitary state – no less than the liberalism which Skinner disdains – should be understood as something which can be questioned. Figgis did indeed question it. And he questioned it because he saw it as unsuited to the demands of a hyper-pluralistic world. For him, real popular sovereignty was to be secured not by bowing to Leviathan, which seeks to efface difference, but by rejecting it altogether.

Notes

* Alex Barber, Chris Barker, Greg Conti, Karl Gunther, Jason Peacey and Max Skjönsberg kindly read drafts. I need especially to thank Sam Zeitlin for his help.

1 Q. Skinner, ‘Interview’, in A. Bevilacqua and F. Clark (eds), *Thinking in the Past Tense: Eight Conversations* (Chicago, 2019), 202. Skinner had acknowledged his debts to Maitland and to J.R. Seeley (1834–1895) by naming the Cambridge University Press-funded lectures series after Seeley and through an epigraph from Maitland in *Liberty before Liberalism* (1998).

- 2 J. Alexander, 'The Cambridge School, c. 1875–c. 1975', *HPT* 37 (2016), 360–386; J. Alexander, 'Review of M. Thompson's *Michael Oakeshott and the Cambridge School on the History of Political Thought*', *Cosmos + Taxis* 8 (2020), 66–83.
- 3 M. Chapman, '(John) Neville Figgis (1866–1919)', ODNB.
- 4 H. Laski, 'The Discredited State', *Political Quarterly* 5 (1915), 109–110; H. Laski, *Studies in the Problem of Sovereignty* (New Haven, 1917), ix; C. Nederman, *Lineages of European Political Thought: Explorations along the Medieval/Modern Divide from John of Salisbury to Hegel* (Washington, DC, 2009), 29–48; F. Oakley, *The Conciliarist Tradition: Constitutionalism in the Catholic Church, 1300–1870* (Oxford, 2004), 220–242.
- 5 J.G.A. Pocock, 'Quentin Skinner: The History of Politics and the Politics of History', *Common Knowledge* 10 (2004), 532–550; D. Charette and M. Skjönsberg, 'The State of the Field: The History of Political Thought', *History* (2020), 470–483.
- 6 J. Tully and A. Brett (eds), 'Preface', in *Rethinking the Foundations of Modern Political Thought* (Cambridge, 2006), ix.
- 7 See, for example, *ibid.*, viii; K. Palonen, *Quentin Skinner: History, Politics, Rhetoric* (Cambridge, 2003), 63–65; D. Hay, 'Review of *The Foundations of Modern Political Thought*', *JEH* 31 (1980), 223–226; J.G.A. Pocock, 'Reconstructing the Traditions: Quentin Skinner's Historians' History of Political Thought', *Canadian Journal of Political and Social Theory* 3 (1979), 110; D. Kelly, 'The Foundations of Modern Political Thought by Quentin Skinner', *JHI* 40 (1979), 667, 673; K. Thomas, 'Politics Recaptured', *New York Review of Books* 26 (17 May 1979), 29. See also, M. Oakeshott, 'The Foundations of Modern Political Thought', *HJ* 23 (1980), 449–453.
- 8 M. Goldie, 'J.N. Figgis and the History of Political Thought at Cambridge', in R. Mason (ed.), *Cambridge Minds* (Cambridge, 1994), 192.
- 9 *Ibid.*, 179, 190. See also, M. Goldie, 'The Context of *The Foundations*', in *Rethinking the Foundations*, 18. For a similar judgement, see Anon., 'John Neville Figgis', *Cambridge Review* 43 (9 May 1919), 295–296.
- 10 G.R. Elton, 'The Divine Right of Kings', in Elton, *Studies in Tudor and Stuart Politics and Government. Papers and Reviews, 1946–1972* (Cambridge, 1974), 195–196. Figgis first drafted *The Divine Right of Kings* while an agnostic; it won the Prince Consort Prize (1892). However, he revised and published it after his ordination into the Anglican priesthood.
- 11 Cf. D. Runciman, *Pluralism and the Personality of the State* (Cambridge, 1997), 149; C. Laborde, *Pluralist Thought and the State in Britain and France, 1900–25* (Basingstoke, 2000), 67–68. Palonen, *Quentin Skinner*, 63 is idiosyncratic in describing Figgis as 'originally a theologian'.
- 12 R. Whatmore, 'Quentin Skinner and the Relevance of Intellectual History', in Whatmore and B. Young (eds), *A Companion to Intellectual History* (Oxford, 2016), 97–112.

- 13 C. Condren, 'The History of Political Thought as Secular Genealogy: The Case of Liberty in Early Modern England', *Intellectual History Review* 27 (2017), 115–133; J.R. Collins, 'Quentin Skinner's Hobbes and the Neo-Republican Project', *MIH* 6 (2009), 343–367; and E. Perreau-Saussine, 'Quentin Skinner in Context', *RP* 69 (2007), 106–122 most incisively examine Skinner's engagement with religion. M. Cowling, *Religion and Public Doctrine in Modern England. Volume III: Accommodations* (Cambridge, 2002), 619–621 is simultaneously dyspeptic and insightful on this subject.
- 14 T. Bejan, 'Quentin Skinner on Meaning and Method', *The Art of Theory-Conversations in Political Philosophy* (November–December 2014), www.artoftheory.com. See also, P. Koikkalainen and S. Syrjämäki, 'Interview with Quentin Skinner', *Finnish Yearbook of Political Thought* 6 (2002), 54; G. Giannakopoulos and F. Quijano, 'On Politics and History: A Discussion with Quentin Skinner', *Journal of Intellectual History and Political Thought* 1 (2012), 14.
- 15 J.N. Figgis and R.V. Laurence, 'Introduction', in John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays*, eds J.N. Figgis and R.V. Laurence (London, 1919), xxxiii. See also, J.N. Figgis, 'Sir John Emerich Edward Dalberg Acton, first Baron Acton (1834–1902)', *Dictionary of National Biography. Second Supplement* (London, 1912), I, 12. See also, R.G. Ingram, '"My Kingdom is not of this World": J.N. Figgis and the Politics of England's Religious Past', in P. Avis (ed.), *Churches in a Pluralist World: The Thought and Legacy of John Neville Figgis*, CR (Leiden, 2021), 93–119.
- 16 B.W. Young, 'Religious History and the Eighteenth-Century Historian', *HJ* 43 (2000), 868 n. 91. B.W. Young, 'J.G.A. Pocock's *Barbarism and Religion*', *Erudition and the Republic of Letters* 2 (2017), 433 characterises Figgis's (and Herbert Butterfield's) work as 'more or less explicit Christian apologetic'.
- 17 J.N. Figgis, *Religion and English Society* (1911), vii; J.N. Figgis, *Civilisation at the Crossroads* (1913), 191–192, 291 n. 3. While his father was a minister in a church in the Countess of Huntingdon's Connexion, Figgis's undergraduate attitude towards Christianity was a 'position ... of pure agnosticism'. Not long after graduation, though, he changed his mind and got ordained as an Anglican priest: Tucker, *Figgis*, 8.
- 18 J.N. Figgis, *Hopes for English Religion* (London, 1919), 33, 37.
- 19 J.N. Figgis, *Churches in the Modern State* (London, 1914), 227–265. Cf. F. Oakley, '"Anxieties of Influence": Skinner, Figgis, Conciliarism and Early Modern Constitutionalism', *Past and Present* 151 (1996), 60–110 on the issue of 'influence'.
- 20 Figgis, *Churches*, 230. See also, M. Creighton, *Persecution and Tolerance* (London, 1895); F.W. Maitland, *A Historical Sketch of Liberty and Equality* (Indianapolis, 2000); J.R. Fears (ed.), *Selected Writings of Lord Acton* (Indianapolis, 1988).
- 21 Creighton to Mary Creighton, 10 August 1898 (L. Creighton [ed.], *Life and Letters of Mandell Creighton* [1906], II, 1898). See also, C.M.D. Crowder, 'Mandell Creighton (1843–1901)', *ODNB*.

- 22 Figgis, *Churches*, 236.
- 23 J.N. Figgis, 'Mandell Creighton (1843–1901)', in S.L. Ollard and G. Crosse (eds), *Dictionary of English Church History* (1912), 167. See also J.N. Figgis, 'Mandell Creighton', *Independent Review* 4 (1904), 470–474.
- 24 S.F.C. Milsom, 'Frederic William Maitland (1850–1906)', ODNB.
- 25 Figgis, *Churches*, 247, 248. See also, O. Gierke, *Political Theories of the Middle Age*, trans. F.W. Maitland (Cambridge, 1900).
- 26 [J.N. Figgis], 'Political Theories of the Middle Ages', *The Athenaeum* 3823 (1 February 1901), 133.
- 27 F.W. Maitland, *State, Trust and Corporation*, eds D. Runciman and M. Ryan (Cambridge, 2003); F.W. Maitland, *Township and Borough* (Cambridge, 1898).
- 28 J.N. Figgis, 'The Theory of the "Perfecta Societas" in Recent History', *Church Times* (19 August 1904), 226. David Runciman calls Figgis's *Churches in the Modern State* 'the best-known attempt to turn some of the insights offered by Maitland and Gierke into a coherent and distinctive political philosophy, often labelled political pluralism': Maitland, *State, Trust and Corporation*, xxxviii. There is no indication that Figgis had read Gierke before encountering him through Maitland's 1900 edition of Gierke's work. Runciman, *Pluralism*, 34–63, 89–123 examines Gierke's and Maitland's views on pluralism and the personality of the state. See also, J. Burrow, *Whigs and Liberals: Continuity and Change in English Political Thought* (Oxford, 1988), esp. 135–145.
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- 32 Figgis, *Churches*, 263; Figgis, 'Acton', *Dictionary of National Biography*, 12.
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- 36 Figgis to F.C. Burkitt, c. 1902–c. 1907 (Cambridge University Library, Add. MS 7658 B.314).
- 37 Figgis, *Hopes*, 200.
- 38 Ibid., 8. This echoed Creighton's insistence two decades earlier that '[t]he question of the future of the world ... is the question of the existence of Anglo-Saxon civilization on a religious basis.': quoted in J.N. Figgis, *Some Defects of English Religion* (London, 1917), 45–46.
- 39 J.N. Figgis, *The Will to Freedom or the Gospel of Nietzsche and the Gospel of Jesus Christ* (London, 1917).
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- 43 J.N. Figgis, 'Societas Perfecta', in J. Hastings (ed.), *Encyclopedia of Religion and Ethics* (Edinburgh, 1921), XI, 650.
- 44 J.N. Figgis, 'The Theory of the "Perfecta Societas" in Recent History', *Church Times* (19 August 1904), 226. Here Figgis shared Skinner's later insistence that all political thought is the product of some polemical engagement or another and that it reflects the demands of particular moments, not some timeless engagement across time and space: Q. Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory* 8 (1969), 3–53.
- 45 Figgis, *Antichrist*, 258.
- 46 J.N. Figgis, 'Respublica Christiana', *TRHS* 5 (1911), 76–77.
- 47 J.N. Figgis, 'Politics at the Council of Constance', *TRHS* 13 (1899), 108.
- 48 J.N. Figgis, *The Political Aspects of St. Augustine's 'City of God'* (London, 1921), 112.
- 49 Figgis, 'Respublica Christiana', 78. Emphasis in the original.
- 50 J.N. Figgis, *The Divine Right of Kings* (London, 1914), 64. Cf. C. Schmitt, *Political Theology: Four Chapters on Sovereignty*, trans. G. Schwab (Chicago, 2005), which also takes this position.
- 51 F. Oakley, *The Mortgage of the Past: Reshaping the Ancient Political Inheritance (1050–1300)* (New Haven, 2012), esp. 25–41, 160–219.
- 52 Figgis, 'Politics at the Council of Constance', 107–108. C. Schmitt, 'The Value of the State and the Significance of the Individual' (1914) in C. Schmitt, *Early Legal and Theoretical Writings*, trans. and eds L. Vinx and S.G. Zeitlin (Cambridge, 2021) similarly conceives of the Church as a state.
- 53 J.N. Figgis, *Studies in Political Thought from Gerson to Grotius, 1414–1625* (Cambridge, 1907), 48.
- 54 *Ibid.*, 48–49.
- 55 The term is from Justice Anthony Kennedy, who argued that 'Federalism was our Nation's own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens should have two political capacities, one state and one federal ...' (U.S. Term Limits Inc, v. Thornton [93–1546], 514 U.S. 779 [1995]).
- 56 Figgis, *Political Aspects*, 112.
- 57 J.N. Figgis, 'Political Thought in the Sixteenth Century', in A.W. Ward *et al.* (eds), *Cambridge Modern History* (Cambridge, 1904), III, 738.
- 58 J.N. Figgis, 'Erastus and Erastianism', *Journal of Theological Studies* 2 (1900), 88.
- 59 Figgis, *Churches*, 142.
- 60 Figgis, 'Erastus and Erastianism', 88. Cf. S.G. Zeitlin, 'Interpretation and Critique: Jacob Taubes, Julien Freund and the Interpretation of Hobbes', and

- J. Taubes, 'Leviathan as Mortal God: On the Contemporaneity of Thomas Hobbes', *Telos* 181 (2017), 3, 39, 48–64.
- 61 Figgis, 'Some Political Theories', 89.
- 62 C. Schmitt, *Land and Sea: World-Historical Meditation*, trans. S.G. Zeitlin (Candor, NY, 2015), 65 follows Figgis in casting the Jesuits as world-historical figures in the story of modernity. See also, C. Schmitt, *The Tyranny of Values and Other Texts*, trans. S.G. Zeitlin and eds R.A. Berman and S.G. Zeitlin (Candor, NY, 2018), 70 n. 70, 72 n. 78. Cf. H. Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540–1630* (Cambridge, 2004). I thank Sam Zeitlin for these references.
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- 64 Figgis, *Political Aspects*, 113.
- 65 Figgis, 'The Theory of the "Perfecta Societas"', 226.
- 66 Figgis, *Divine Right*, 264.
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- 68 *Ibid.*, 109.
- 69 Figgis, *Antichrist*, 262.
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- 72 Figgis, *Antichrist*, 266.
- 73 Figgis, 'Politics at the Council of Constance', 110–111.
- 74 Figgis, *Divine Right*, 211–212.
- 75 Figgis and Laurence, 'Introduction', in Acton, *History of Freedom*, xix.
- 76 Figgis, *Churches*, 153, 154.
- 77 J.N. Figgis, 'William Warburton', in W.E. Collins (ed.), *Typical English Churchmen from Parker to Maurice* (London, 1902), 227; J.N. Figgis, 'A Great Constructive Statesman', *The Guardian* (11 July 1906), 1155.
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- 79 Figgis, *Churches*, 153, 154.
- 80 *Ibid.*, 158.
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- 84 Figgis, 'Gerson to Grotius', 13.
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- 104 Skinner, 'Who Are "We"?', 148.
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- 109 Q. Skinner, 'Machiavelli's *Discorsi* and the Pre-humanist Origins of Republican Ideas', in G. Bock *et al.* (eds), *Machiavelli and Republicanism* (Cambridge, 1991), 121–141.
- 110 Skinner, *Foundations*, II, 351.
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- 122 M.L. Pallares-Burke, ‘Quentin Skinner’, in M.L. Pallares-Burke (ed.), *The New History: Confessions and Conversations* (Cambridge, 2003), 236.
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- 124 Figgis, *Gerson to Grotius*, 196.
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- 130 Skinner, ‘Political Philosophy’, 452.
- 131 J. Jennings, ‘What Intellectual History Teaches Us: A Conversation with Quentin Skinner’ (10 July 2018) <https://csgs.kcl.ac.uk/podcast/what-intellectual-history-teaches-us-a-conversation-with-quentin-skinner/>; Q. Skinner, *Liberty before Liberalism* (Cambridge, 1998), 54. More generally, see Q. Skinner, *Hobbes and Republican Liberty* (Cambridge, 2008).
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- 133 Jennings, ‘What Intellectual History Teaches Us’.
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- 135 Cf. R. Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2016).
- 136 Skinner, ‘The Sovereign State’, 40–41.
- 137 Ibid., 41–42.
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- 145 Q. Skinner, 'On Justice, the Common Good and the Priority of Liberty', in C. Mouffe (ed.), *Dimensions of Radical Democracy: Pluralism, Citizenship, Community* (London, 1992), 222.
- 146 Skinner, 'Who Are "We"?', 149–150.
- 147 Q. Skinner, 'Hobbes on Sovereignty', *The Listener* (22 September 1966), 420. See also, Q. Skinner, 'Hobbes on Sovereignty: An Unknown Discussion', *PS* 13 (1965), 213–218.
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- 151 Hobbes, *Leviathan*, 120.
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- 153 Goldie, 'The Context of *The Foundations*', 19.
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Conclusion: what is popular sovereignty?

Mark Blitz

Questions

Popular sovereignty seems first to involve a substitute for or an analogy to political rule simply.¹ This is the sovereignty element in popular sovereignty. And, it is ‘rule’ by *the people*: this is the popular element in popular sovereignty. Popular sovereignty is ‘government of the people, by the people, for the people’. So, two questions are: to whom else’s sovereignty is popular sovereignty opposed, and what is ‘sovereignty’ as distinguished from rule?²

Popular sovereignty, as I just indicated, is a term or concept that we often use equivalently to rule by the people, or democracy. Its origin, however, is theoretical. By this I mean that it is not a concept that we find in the pre-philosophical politics of the classics, or in Plato or Aristotle. It is not altogether commonsensical or natural. It belongs, rather, to the response to the classics, and, especially, to the political and other earthly effects of revealed religion. As is true of similar concepts such as representation and separation of powers, the combination of our forgetfulness of the origin of our new political concepts and what remains in them that is commonsensical leads us to overlook the differences between our concepts and the roots to which they are related.

Another way to make this point is to recognise that sovereignty has a modern ring, a post-Machiavellian ring.³ One thinks of Bodin, Althusius, Pufendorf, Grotius and Vattel, not to say Hobbes and Locke.⁴ When I was starting out, Bodin was supposed to be studied by aspiring historians of political thought.⁵ Fashions soon changed, however, and no one even pretended to read much Bodin. Carl Friedrich (1901–1984) – then sovereign among Harvard political theorists – used to talk fondly of Althusius but soon enough no one studied him either. Still, although we did not explore sovereignty, we certainly thought of it as a modern idea. Then, as fashions changed yet again among academics, as national sovereignty became a more pressing issue after the Soviet Union was defeated, as ‘globalism’ grew, and, more recently, as ‘populism’ emerged once more as a matter of practical

concern, sovereignty and its associated concepts began again to attract widespread study. What had been largely overlooked topics in Hobbes, Locke and later thinkers moved from backstage to a place in the spotlight.

To say that sovereignty has a modern ring means that popular sovereignty is not precisely equivalent to rule or government by the *demos* – the many – in the classical sense. So, a third question, which helps to specify the second question, is how popular sovereignty differs from classic democracy.

Now, the ‘people’ in popular sovereignty might mean the many (poor) as opposed to and outvoting or outmuscling the few (rich); or the majority (which might amalgamate some of the rich, some of the poor and some of those in the middle), as opposed to the minority; or everyone; or the many, the majority, or everyone added up and then divided to reach some average; or the many, the majority, or everyone somehow thinking about the common good. But the people’s sovereignty could also mean sovereignty by the *Volk* – the national or cultural people – or even sovereignty by the historical people in Heidegger’s sense.⁶ So, the fourth question, which helps to specify the first question, is who are the ‘people’, in the modern sense of popular sovereignty.

We may also develop this fourth question by suggesting that to clarify popular sovereignty, if we understand it to arise conceptually in early modernity, we should also distinguish it from and connect it to late, post-Rousseauian modernity. No one really spoke of *populism* until then, when ‘isms’ entered the political vocabulary.

The fifth issue is to clarify what is good or desirable about popular sovereignty, the dangers to it and, also, the limits to its desirability. If it is merely an analytic term, why should one care politically? The related question is how one might keep what is desirable and mitigate the dangers to this.

Connected to this is the sixth question, namely, the meaning and desirability of sovereignty as a state’s independent relation to other states – sovereignty’s relation to problems of international law and organisations and to ‘globalism’ and world government. This is important now, as it was important in the past for Grotius and Vattel. This issue is connected to the question of the desirability of popular sovereignty because the dominance of international institutions often restricts self-government, especially because so many governments are not liberal democracies. So, international rule limits the virtues of self-government. Many now worry about the loss of self-government given the rise of globalism and internationalism, while those who applaud internationalism often ignore or downplay self-government’s virtues, if they believe any exist.⁷

The international issue helps to specify the first question – to whom else’s sovereignty is popular sovereignty opposed? This question also arises in other ways: is sovereignty merely an assertion of control over ordinary

political matters, or does it also assert control over non-political groups or institutions – churches, guilds, professions, landholders and so on?

I will now discuss these questions.

Sovereignty and popular sovereignty

As to the first question, popular sovereignty was at first differentiated from and opposed to the king's sovereignty – we usually think of 'sovereigns' as kings and queens – or even the sovereignty of an oligarchic group. The king's sovereignty is opposed to the unbridled rule of religion – it places religion as a public matter under political limits. One might thus think of sovereignty as absolute in Bodin or in Hobbes' terms, although one need not: its purpose is limited as we will see, but it is absolute within that purpose.

As is true of kingly sovereignty, popular sovereignty or, indeed, all sovereignty, reclaims government control over canon law, customs, guilds, local government and corporations. As I said, it is especially concerned to limit the independent public sway of religion (and other doctrines.) It is a kind of return, albeit limited in scope, to the influence of politics, and although in modern life we allow much private activity outside of government, these activities do not share as such in public rule.

Popular sovereignty and rule

True popular sovereignty as opposed to rule (our second question) and as differentiated from sovereignty generally depends on grounding politics on natural rights, which also limits the public sway of religion, guilds and similar institutions. But it is not rule in the sense of organising them, that is, in the sense of implementing an opinion about justice (such as equality in all things) and shaping character and happiness fully in accord with this. Nonetheless, natural rights democracy obviously influences and in time changes institutions and the activities they support, for example, by making toleration rather than piety the chief virtue with regard to religion. The key in popular sovereignty is the individual as the true sovereign (consonant with others), and, then, the degree of concrete political control that properly flows from this. Even the sovereign monarch was (for example, versus the Church) an incomplete ruler and ultimately, when government becomes representative, an indirect one.⁸

Popular sovereignty as distinguished from rule simply depends on the justification of individual natural rights. It is a kind of partial or separated rule for the purpose of securing and advancing rights, and it supports politics that

represents individual natural authority and controls the separate authority of churches and guilds. But popular sovereignty does not form individuals into a whole – that is, it does not direct us to a dominant private as well as public good. It ultimately supports privacy although it can turn against this. But because *rule* is natural, popular sovereignty in fact cannot help but be a kind of rule, or limited rule – namely, self-government to secure individual rights and the relief of unease, rather than as in classic democracy freedom to pursue what is beautiful or qualitatively most pleasurable, and freedom as being able to fight in wartime.⁹

Popular sovereignty and democracy

One could think of popular sovereignty simply as the popular version of limits on the Church similar to the attempted sovereignty of kings and aristocrats over them, but now with the people as sovereign as opposed to monarchs, oligarchs and priests. But that would be too general and would fail to clarify what I suggested is and becomes distinctive in popular sovereignty – equal natural rights.

Let me now develop this discussion, in terms of how popular sovereignty differs from classic democracy (my third question). Popular sovereignty as differentiated from sovereignty generally means government that is rightfully grounded on each individual's consent, agreement, election or choice.¹⁰ Consent is based on what is claimed to be the only natural authority, individual rights, held equally. There is no natural social or political authority. Justice, which is the distribution and order or connection of resources and opportunities, is for the purpose of securing rights. It is not for allowing or even favouring the pursuit of particular goods considered to be especially worthwhile but, rather, for satisfying all desires understood as equally relieving unease.¹¹ Hence, the correlate of securing rights is to maximise equally measured pleasures, to advance economic growth that aids this and, especially, to spread equal rights effectively to all. Thus, in time, slavery is abolished and equality for women is asserted and accepted, as they are not in classic democracy. All democracies are alike in some way because freedom for many is always connected to pleasure, but they differ because classic democracy is limited in its equality, is not based on rights and recognises the distinctiveness of pleasures connected to different goods.¹²

In classic democracy, as in all regimes, we require consent of the governed in the sense that the greater force needs to agree to the continuity of the regime. But this is not consent understood as rightful governments being based solely on equal individual authority: in classic democracy the rule of the many is grounded on the wish for freedom, or on the spiritedness that

we each have but which is more energetically or successfully asserted by some. But the rule of the many is not based on rightful universal individual consent. So, one has slavery, women's political inequality, restrictions on buying and selling, and limits to technology (to the arts), with no egalitarian principle that eventually erodes these practices and inequalities.

What justifies the legitimacy of universal consent? It is equal natural rights as discussed by Hobbes and Locke. The ancients claimed no such thing – one might say that the individual inviolability that rights suggest was for the ancients not separated from the nobility of the goods and pleasures one might actually choose and the courage with which freedom is asserted.¹³ Therefore, one does not have the equal authority of rights.

To say that popular sovereignty (as opposed to classic democracy) is connected to pleasure as the equal relief from unease is to say that pleasure is disconnected from particular goods and desires, and it is to downplay pleasure's other characteristics. The pursuit of happiness is the restless attempt to accumulate pleasures that differ only by amount. It is therefore also connected to economic growth and technology. It is also related to power – and therefore to the possibility of the separation of powers politically – as a universal means, not as this or that power, ability or possibility that defines something and differentiates it from other things.¹⁴ In our American sovereignty we separate powers of government and divide them federally. We do not split the various political institutions among different social and economic classes either as such or in terms of varied views of justice, virtue and character. We thus do not have a mixed regime. We also lack a mixed regime because of our purpose, to secure equal rights. Our mode of justice is therefore democratic but not necessarily egalitarian because of the liberal, the liberty-defending, meaning of rights themselves. We thus leave room for excellence or virtue and luck, and for the possibility of a large middle class, without representing it as such.

All this also suggests that modern democracy defends not only the liberation of individual talents from oligarchic, aristocratic, 'elite' and religious control, but also permits easy buying and selling rather than controlled and limited ownership and favours virtues (such as responsibility) that are connected to securing one's rights rather than classic virtue simply. Even in Bodin the sovereign is not to invade private property. If one likes, one could thus say that an element of the aristocratic principle exists in the liberalism of liberal democracies. Yet, because liberalism's non-interference allows vulgarity and even praises excelling in vulgarity as well as excellence simply it is not a true aristocratic principle. Liberal democracy is government that is popular at root but engineered so that the security of equal individual rights is not risked through constant majority dominance. Liberal democracies are popular sovereignties, but they allow inequalities that serve the common good. Other

inequalities and differences are also consequences of liberty understood as satisfying the often common desires that one chooses to satisfy. Liberal democracy is therefore easier to justify as something high than is democratic sovereignty alone, just as classic democracy mixed with some of the aristocratic principle is preferable to democracy or oligarchy simply.

Liberal democracy as a version of popular sovereignty is connected to government that is limited in its goals – to secure rights and to emphasise security generally. But it is not necessarily limited in extent. Political sovereignty as we have said and as we see clearly in Hobbes means not allowing independent rule for guilds and churches. In time, toleration proves to be a better practice than control for reducing religion's public power and potential for war. But the point and purpose is the same in later liberalism as in Hobbes. With the classics, however, religion is part of the whole and has public power: one does not limit its sway for the purpose of securing rights. Not everything legal, moreover, is formed classically by statutory laws. Sovereignty, by contrast, suggests statutes and soon leads to the growth and dominance of such law as opposed to custom, guild control and canon law.

So, modern as differentiated from classic democracy, or popular sovereignty as differentiated from classic democratic rule, is characterised by equal natural rights; by private religion and privacy generally; by economic growth and equal access to markets; by a focus on the unity of pleasure (as relief from unease) and power and, therefore, on easy calculation (addition) and division of pleasures and powers; and by consent of the governed. In these senses, popular sovereignty is a new type of rule that as it were limits rule because of its ground in individual authority and its making many matters largely private. It is still a type of rule because it is directed to a way of life, but the limited and free nature of this direction also permits us to say that it is a novel enough branch of rule (limited vs. forming) that it is not rule (understood as forming) simply.¹⁵

Who are the people?

The fourth issue in considering popular sovereignty is how the people come to be understood. In Locke's thought, a people is whichever group decides to place themselves under a common government.¹⁶ A people need not be ethnically, nationally, religiously or even historically pre-formed. Obviously, these factors might help to secure a government, but we do not need them to make a people or government legitimate. Such legitimacy arises from consent.

But a sovereign people might also have a less individual origin. We French or Germans are sovereign over our government. A people or group in some hazy shared definition – religion, geography, traditions, conventions,

history – is seen as the legitimate ground of sovereignty, and it chooses government and controls citizenship. The people of popular sovereignty are in this view not self-grouped liberal peoples based on natural individuals, but, rather, the *Volk*.

This understanding of a people differs from the natural rights basis of popular sovereignty because it is not grounded on individual rights.¹⁷ The government need not even be democratic. Government is not based on the legitimacy of individual consent but on some notion of the legitimacy of inheritance and traditions, however attenuated, or on a notion of a legitimate government as one that speaks for what the people wills or should will as a unit. This view of the people, moreover, is connected to what journalists and scholars often have in mind when discussing or criticising ‘populism’, when populism is not merely another name for the demotic element in democratic government as opposed to the so-called elite or aristocratic element (that is often in fact merely oligarchic.) And, indeed, those who decry populism even in our natural rights-based government consider the people to be tied to old ways, old traditions, religion, family values and guns. Those who decry such populism discount excessively the ordinary grounds of virtue and happiness on which they themselves usually rest.

Indeed, when historians described late nineteenth- and early twentieth-century populism in the United States they often contrasted it unfavourably with progressivism.¹⁸ This was despite progressivism’s racism and eugenicism which until recently and even now historians and ‘progressives’ brushed aside or ignored.

What is the genuine (as opposed to the tendentiously understood) link between this kind of populism and the natural rights (or liberal democratic) ground of popular sovereignty? A central tie is an ordinary conservatism or dislike of change in both liberal publics and in populism generally.¹⁹ This can of course be swayed by revolution, youth and immediate issues. But adults in democracies are often satisfied to hold what they have and dislike change. And, because of this they sometimes support elites who are directed to the traditional elements of the common good or who have a common touch – hence, conservatism’s surprising link to democracy, its support, often, by the people. For us, this ‘conservatism’ means conserving natural rights and the institutions based on them as well as conserving the old or natural ways. So, our people are often interested in conserving liberty, conserving our way of life, and thus in conserving a greater openness than we see in the conservatism of traditional countries. It is therefore a mistake to see all populism as closed mindedness – this depends on what people wish to conserve.

The surprising link between conservatism and the people – one element of populism – rests also on the behaviour of elites. When the upper crust

defends the common good – when they fight in their country's wars, say – it is easier for the people to support them. The gap between few and many is not so great, spiritually and politically.

But when elites separate from the common good as priests and kingly courts tended to do prior to modernity, the people's populism turns against them. This may also involve a gap between new elites and old-fashioned semi-aristocrats. Our populism today involves a large degree of these separations – it involves an attempt by many of the people and some of the old elites to defend traditional goods from our censorious and liberty-questioning 'new class' elites.²⁰

The desirability of popular sovereignty and the dangers to it

There are several dangers to popular sovereignty, and with this we turn to our fifth topic. Popular sovereignty's virtue when grounded in natural rights is that it recognises something of the sacredness and necessity of one's own, of each of us, of our spiritedness and freedom and even of our wish to transcend ourselves. Dismissing this recognition is one reason that the casual selfishness of many of our elites, with their unacknowledged self-interest and penchant for occupying unproductive legal, academic and journalistic sinecures, is so dangerous: the first danger to popular sovereignty comes from those who rise to the top within it. Their forgetting or dismissing our ground in equal natural rights, the clearest and truest ground for popular sovereignty, is our great danger; the dangerous weakening of rule by law – equality under the law and due process connected to this – is a related difficulty. The most reasonable non-populist way to mitigate these difficulties is better education and the continued clash of different elements within our elites.

Still, despite the virtues of natural rights there is a difference between one's own good and the common good. The bane of popular government has always been unwise and unsteady government. This is why broad education soon enough becomes an adjunct to popular rule – one needs to be able to judge what is best for the community or see who will judge best for it.

It is also why successful popular government divides government power, based on the twin notions that delay will aid deliberation and that what limits government is more often good than not. Representation is an essential part of popular sovereignty that is mixed with liberalism. Today, however, we arguably have an excess of elements of direct democracy in the sense that the constant fostering and expression of immediate public opinion on every issue has an undue influence not only on the electorate but on elites who are ill informed beyond their own areas.²¹ Our popular sovereignty is not strictly direct, of course, because we choose representatives. But it is

not one of distant or full representative democracy because direct popular interference in so much that occurs is central and because party government can refine and enlarge public views but also make them exceedingly partisan. Edward Banfield emphasises this contemporary fact that ‘everyone has a right, indeed an obligation, to participate – or interfere – in the day-to-day conduct of government’. For him, ‘this is the defining characteristic of rule by the people’. He goes so far as to say that we are therefore a direct democracy – and worries about present orientedness and other politically dangerous factors in such direct democracy.²²

Representation, which is not present in classic democracy, effectively means two things. If legitimate government serves what we all equally want – security in our rights and self-defined satisfactions of desire, or relief from unease – then government’s actions should simply stand in for us when the net effect of each acting individually is a result that none would choose. We can dispute where to draw the line concretely, but not, in liberal democracy, that this is what justifies law and government. Popular sovereignty understood as majority rule in Stephen Douglas’s sense is incorrect in liberal democracy because the grounds of equality and therefore of majorities are equal natural rights – freedom as inviolability – not some other type of equality. Thus, for us, majority preference that denies others their rights would contradict its own grounds.²³

Concrete judgements about what it is best to choose politically require prudence and expertise. But in representative democracies the people still rule because they choose the representatives and the representatives serve them. The notion is that an educated populace can recognise decent rulers and understand what they are likely to do. The liberal freedom in liberal democracy, for all its faults, controls mass vulgarity and foolishness much more securely than does identity populism, which is where the cultural, corporate, and much of the political elite currently resides. The electorate makes mistakes politically, of course, but not greater mistakes than the elites have made.

Popular sovereignty involves self-government, properly limited. The next great danger to popular sovereignty is the weakening of effective self-government. Without self-government there is little freedom, and one is controlled, even if mildly, by others. A key element of this problem, in addition to what we have said, is the reign of experts and bureaucrats. This problem cannot be managed easily, given technological complexity. But it is also the case that the ends and goals of government – are we secure, is our economy successful, is access to occupations and political positions fairly distributed, are schools teaching significant subjects successfully, is the judicial system impartial? – are as recognisable by average citizens as by bureaucratic

experts. Self-government requires attention to what is necessary and desirable to reach the goals that are apparent to common sense.

Rule of experts is a threat because of citizens' ignorance of technical matters. One counters this by electing people one trusts, and by participating in properly adjudicated legal trials. But 'expertise' is always easy to abuse – consider all our current talk about what hard and soft science does and does not demonstrate about climate, the effect of marijuana, the status of differences in gender, the way to control pandemics, and the danger or lack of danger in large budget deficits. Consider as well the record of mistakes made by scientists and science popularisers forty and fifty years ago about the availability of resources in the future. As I said, the closest one can come to a solution to the problem of being controlled by experts is judgement based on actual and predicted results, which judgement is commonsensical, and fostering the possibility of genuine disagreement among experts and elites.

The desirability of popular sovereignty rests on what it serves. The modern securing of individual rights proves to be a sound defence of individual liberty that also permits possibilities for excellence. One danger here is flattening of what is high because of our equality of desires. The other danger is the inequality that results from the feeling of many among the elites that having succeeded once or twice educationally they deserve to stay at the top, whatever their contribution to the common good. The populist element in popular sovereignty can help correct this.

It can also help correct the elites' failure to see the true public ground of liberal democracy. Wilfulness, a focus on identity and thinking of discussion merely as constructing narratives, rather than acknowledging common truths and reason, is odd behaviour privately, but somewhat limited in its harm. Such actions and the views on which they rest, however, are deeply harmful publicly. Universal individual natural rights are one of the few decent bases for a sensible way of life, and popular sovereignty rests on this base.

Sovereignty internationally

An additional element of popular sovereignty as self-government concerns the international sphere. This is where much of the recent and earlier debate about popular sovereignty has rested. Can one give to remote international bureaucracies central decisions about one's way of life or must one limit their impact and retain control, so that bodies such as the United Nations, the International Criminal Court and the European Union are reigned in or, as need be, ignored? Must the international regimes favoured by today's

establishment politicians and academics – free trade, a vigorous, often interventionist, United States military presence, and generously open borders, for example – be favoured at the expense of the more immediate concerns of the governing populace? Central to considering these issues are discrepancies among ways of life, so that protecting liberal democracy from the intentions of countries such as China may well be more important than simply open trade with them. Concern with popular sovereignty rather than internationalism, moreover, means the defence of self-government by single countries, where the health of our own country is decisive, both because of the importance of liberal democracy generally and because global institutions leave little room for freedom once they fall into the wrong hands, as they are so likely to do. Any group must have a right to keep others out, moreover, given the scarcity of good places and the need to have single countries if we are to have genuine self-government. (This place was originally no one's and is now ours, not yours, one might argue, and we use it well and expand resources generally.) But it must assert, defend and secure this right.

The result of these considerations is that popular sovereignty grounded on individual rights requires national governments, not the dominance of international regimes.

Sovereignty and obedience

Sovereignty involves the authority to govern and the likelihood of being obeyed. In immediate political terms, authority involves jurisdiction, making laws that should and (one believes) will be followed over a certain scope of territory or range of activity. This element of sovereignty fits with grounding popular sovereignty in individual natural rights seen as the only legitimate natural authority, and with political sovereignty generally as replacing or reigning in the independence of churches and canon law and guilds.

Jurisdiction also raises the issue of dual or confused sovereignty. In the United States this is significant for the relation between the national and state governments. When their regions of control are separate and clear this issue is not significant. When they have or assert overlapping authority the issue is important. Does this mean that there is no single sovereign? It does not, because the Constitution sets these relations, and the Constitution, while preserving the states is, nonetheless, a document of 'we the people'. The 'United States', moreover, 'shall guarantee to every State in this Union a Republican Form of Government'.²⁴ This is not to say that continuing issues of federal relations do not exist, but it is to say that the Constitution and over time the courts and other institutions as interpreting it is where these questions are resolved, together with practically growing loyalty to the

country as a whole rather than to the states. Seemingly confused sovereignty in the United States in fact shows our popular ground.²⁵ To put this more broadly, the sovereignty of the people need not mean the simple sovereignty of any of its governing institutions.

Authority, legitimacy and rule

The sovereign is the final authority. What more can we say about authority?²⁶ An authority is one whose guidance and direction is listened to or obeyed. Parents, priests and government are authorities. Authorities may be followed because they are persuasive, but obedience is also often established by threat and punishment.²⁷

My individual right is my individual authority. I am the one who freely directs or guides myself. Such individual authority may be restricted in its effect, but it is naturally unavoidable. Individual rights become a prominent authority from the eighteenth century on as obedience to other authorities diminishes.²⁸ As we said, government's authority also comes to be traced to individual authority, and is thus fundamentally limited. Following others becomes at root voluntary and traditional authorities eventually weaken in countries based on natural rights.

Individual authority is not the only natural authority. Parents' authority is also natural, to a point. Its ground is the care and attention that is connected to love of one's own, and, for a while, greater knowledge. Indeed, the authority of knowledge is also natural. But it must justify itself by being able to make its knowledge evident. It is not as such authoritative merely implicitly. How genuine knowledge can be useful politically, and how it is justly limited is an important question. Prudence, not to say philosophical understanding, is hard to recognise in regimes based on consent; expertise can properly exercise direction only if those to be directed choose or permit this. This means that the unwise direct the wise – but it also means that they can restrict the power of pretenders.

As we have mentioned, we can mitigate the problem of control by experts by recognising that although experts may sometimes know best how to reach various goals, many others also understand the goals – health, prosperity, safety, legal justice – that guide them.²⁹ Moreover, we are aided in choosing prudent experts and representatives by the fact that the virtue connected to prudence may be more easily noticed than prudence itself.³⁰ Nonetheless, popular recognition may often overlook the real thing, and popular knowledge of ends and goals differs from dialectical inquiry and understanding.

Justified political rule is grounded on naturally justified authority. In regimes based on natural rights one must be able to trace a government's

origin to choice by the true individual authorities, the voters. This makes it 'legitimate'. Although the purpose of liberal government is to secure the people's rights and advance the economic growth connected to this, a government's legitimacy is based on its origin, not its results. Legitimate government can aid stability, but it does not guarantee justice and prudence. The people's sovereignty does not ensure their wisdom: virtue and wisdom cannot lose their own natural title to rule.

Notes

- 1 This paper was first given at Ohio University in March 2019. Elements of its informal style remain. References to this book's chapters do not necessarily indicate agreement with the discussions to which they refer.
- 2 See the overall reflections on the people and sovereignty, with a focus on John Stuart Mill and other Victorians, in the chapter by Greg Conti ([Chapter 10](#)).
- 3 For the modern origins of popular sovereignty consider the chapters by Catherine Zuckert ([Chapter 2](#)), Heather Pangle Wilford ([Chapter 9](#)), and Susan Shell and Paul Wilford ([Chapter 11](#)). Cf. Robert Ingram's chapter ([Chapter 12](#)).
- 4 See Will Selinger's discussion of Pufendorf in [Chapter 5](#).
- 5 In my sophomore year in college, Harvard University Press held a sale, so several of us bought the complete translation of Jean Bodin's *The Six Books of a Commonweale* (1576), as well as Herbert Croly's *The Promise of American Life* (1909), *The Papers of James Wilson*, and other works that remained unsullied in the sanctuary of our bookshelves.
- 6 See the many discussions of the nation and the people in German thought in the nineteenth century, for example, J. Fichte, *Addresses to the German Nation*, ed. G. Moore (Cambridge, 2008). For Heidegger, consider paragraph 74 of *Being and Time* and the courses he gave from 1933–1935: M. Heidegger, *Nature, History, State, 1933–1934*, trans. G. Fried and R. Polt (London, 2013). The course was first published in German in 2009.
- 7 Consider also here the question of civil war. See Joshua A. Lynn's discussion in [Chapter 8](#).
- 8 H. Mansfield, Jr., 'Hobbes and the Science of Indirect Government', *APSR*, 65 (1971), 97–110.
- 9 For similar but also contrasting views, see Nathan Pinkoski's discussion of Locke in [Chapter 4](#), Shell and Wilford's of Hegel in [Chapter 11](#) and Ingram's of the views of Figgis and Skinner in [Chapter 12](#).
- 10 See Lynn's discussion of popular sovereignty in [Chapter 8](#) and Pangle Wilford's discussion of Tocqueville in [Chapter 9](#).
- 11 See Hobbes' *Leviathan* and Locke's *Essay Concerning Human Understanding*.
- 12 Consider Plato's discussion of necessary as differentiated from unnecessary desires in Book VIII of the *Republic*. See also M. Blitz, *Reason and Politics* (Notre Dame, IN, 2021).

- 13 The generality of spiritedness and desire is not for them linked to our equality of aspiration, because aspiration differs among us and because some high goods require inequality.
- 14 For this notion of power consider Aristotle.
- 15 See and compare the discussions of Locke and Montesquieu by Pinkoski and Selinger in [Chapters 4 and 5](#) and of Hegel by Shell and Wilford in [Chapter 11](#).
- 16 Locke, *Second Treatise*.
- 17 For this and other reasons Heidegger does not associate the German people and its state with sovereignty.
- 18 See R. Hofstadter, *The Age of Reform* (New York, 1955).
- 19 Consider, for example, Locke's *Second Treatise* §225, and the *Declaration of Independence*.
- 20 Consider Irving Kristol's description of the new class in the *Wall Street Journal* nearly 50 years ago (1975).
- 21 See E. Banfield, *Here the People Rule* (New York, 1985). Concern about excessive popular control, linking it with 'leaders', demagogues and popular influence outside constitutional structures but also with too powerful a democratic element within government was a significant motive in the American founders' devising a Constitution that attempted to filter popular will very carefully, while still being grounded on popular sovereignty. One might consider here L. Rotner, 'Popular Leadership without Populism? A View from the Founding' (Claremont Graduate University PhD thesis, 2017).
 In Harvey Mansfield's view, as Rotner notes it, '[w]hat is "popular" is what the people want, but "populism" is giving the people what they want through adventitious means outside the Constitution'. H. Mansfield, 'Democracy and Populism', *Society* 32 (1 July 1995), 30 As Rotner also notes, however, Francis Fukuyama considers the word conceptually empty. Populism, he claims 'is the label that political elites attach to policies supported by ordinary citizens that they do not like': F. Fukuyama, 'American Political Decay or Renewal?', *Foreign Affairs* 95 (2016), 68.
- 22 Banfield, *Here the People Rule*, xiv–xv.
- 23 See discussions in Lynn's [Chapter 8](#) and Pangle Wilford's [Chapter 9](#).
- 24 *United States Constitution*, Article IV, Section 4.
- 25 *Federalist Papers*, 15, 19, 81.
- 26 This section borrows liberally from Blitz, *Reason and Politics*. Among other issues we are now turning more explicitly to the limits of the desirability of popular sovereignty.
- 27 Consider Bertrand de Jouvenal (1903–1987) who argues in *Sovereignty* that authority is the faculty of gaining another man's consent – having one's own proposal accepted. Authority as such is natural ascendancy as one might see it among young children. (Cf. Plato, *Alcibiades I*.) Authority, de Jouvenal believes, creates social ties: B. de Jouvenal, *Sovereignty*, trans. J. Huntington (Chicago, 1957).
- 28 Locke, *Second Treatise*.
- 29 See Plato *Gorgias*; M. Blitz, *Conserving Liberty* (Stanford, CA, 2011).
- 30 See *The Federalist*, and Aristotle's *Rhetoric*.

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