

## Representative Government and Popular Sovereignty

For the Political Philosophy Workshop at Brown University  
April 19, 2007

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Are representative governments working well? The answer to that question depends on what we think the purpose of representative government is. Most research in political science presumes that the purpose of representative government is to represent the will of the people in some way – by translating popular sentiment or public interest into policy. It therefore presumes that a good measure of the performance of representative democracy, at least in its representative capacity, involves comparing policy results with public opinion as it is or as it should be. The classic study of constituency influence in the House of Representatives by Miller and Stokes, for example, focused on "the extent of policy agreement between legislator and district" (Miller and Stokes 1963). More recent work continues to investigate similar relations: Page and Shapiro look for "congruence between changes in policy and changes in opinion" and assume that "normative concepts of democracy" would mandate something close to "direct democracy" (Page and Shapiro 1983). Stimson, Mackuen and Erikson ask "whether the national system is efficient in turning popular sentiment into policy" (Stimson, Mackuen, and Erikson 1995). These studies, and many more like them, presume a principle close to the one that Bartels articulates clearly: "The appeal of representative democracy hinges on the responsiveness of elected politicians to the preferences and interests of their constituents" (Bartels 1991). Occasionally the notion of responsiveness is examined in more depth (Manin 1997; Manin, Przeworski, and Stokes 1999), but most of the political science literature simply presumes that the purpose of representative government is to be an instrument of the popular will.

In this essay I do not deny the importance of responsive government; Robert Dahl is surely right to suggest that the notion of responsiveness is central to any understanding of modern democracy (Dahl 1971). But the relationship between representative government and popular sovereignty is more complicated than an emphasis on responsiveness alone would suggest. Here I want to indicate the nature of the problem and put forward a view of the purpose of representative government that is quite different from one that prioritizes responsiveness, a view drawn largely from two of the early theorists of representative government in France and in the United States, Benjamin Constant and James Madison. At the end I will briefly suggest the sorts of empirical research questions that might be proposed in light of this broader view of representative government.

The broader view that emerges from considering these thinkers is, in summary, this: The purpose of representative government is *to multiply and challenge governmental claims to represent the people*. This goal is quite different from asking the government as a whole to re-present the popular will as it can be found through any particular vote or poll. It is also different from the goal of asking it to re-present the popular will as it could be imagined to emerge from a process of deliberation or from an independent analysis of the public interest. In asking instead for a government to multiply and challenge representative claims, representative government aims (on this view) to provoke debate about precisely what the popular will is and thereby to prevent any one interpretation of the popular will from claiming final authority. It aims to foster and institutionalize popular impatience with our rulers, to both fuel and channel popular grievances against those in power. For conceptual reasons to be mentioned later, it is always possible to claim that a government is not fully or adequately representative. Representative government attempts to capitalize on this fact by trying to insure that there are always competing claims to represent the people present in government at the same time; this makes any

one claim to fully represent the people implausible, and helps to combat the use of such claims to justify the concentration of power. Counterintuitive as it sounds, a fundamental purpose of representative government, as Constant and Madison saw it, is to *oppose* popular sovereignty in the sense that it is usually understood – to undermine the idea that government can adequately represent the people.

To avoid misunderstanding, let me make one point clear at the outset: The suspicion of government efforts to turn popular sovereignty into policy that lies at the heart of this conception of representative government does not rest on a belief that the public is incompetent, unintelligent, or lacking in virtue. It does not even rest on the idea that public opinion must be, in Madison's words, "refined and enlarged"; it does not begin from a sense that public sentiment must be filtered through the minds of representatives or through a deliberative process before being allowed access to political power. There may be some validity to these statements – perhaps representatives sometimes are, by virtue of their competence or their deliberations or the influence of their office, better decision-makers than the people themselves. But this aristocratic point is not at all the consideration that lies behind the argument for representative government that I want to examine here. Too often, it is thought that such doubts about the capacities of ordinary citizens are the only reasons that one might have (aside from the practical impediments to gathering large groups) for preferring representative government to direct democracy. The aim of this essay is to suggest that there are other reasons, more fundamentally democratic reasons, for creating a form of government that always remains at some distance from public opinion, and whose claim to represent that opinion can never be made fully convincing.

The aristocratic argument against popular sovereignty and direct democracy is often traced to Edmund Burke, whose suspicion of popular politics can be seen in his famous skepticism about the French Revolution and whose statement to his own constituents has become the emblematic articulation of the view that representatives should use their own judgment rather than merely echoing the opinions of their constituents (Burke 2000; Burke 2003). The view that I want to draw attention to is not drawn from Burke. It is instead drawn from Burke's enemies and critics, from Rousseau, who helped to inspire the French Revolution, and from Constant, who defended that revolution against Burke's attack. Constant is often portrayed as a critic of Rousseau's, since he opposed the notion of popular sovereignty associated with Rousseau. And since Constant was one of the first writers in any language to use the words "liberal" and "liberalism" in politics, and one of the first to outline a full account of liberal, representative government, his relation to Rousseau is viewed as emblematic of liberalism's relation to democracy: Liberalism, because of its support for representative rather than direct democracy, is often viewed as fundamentally undemocratic. The argument that I want to suggest here draws the democratic Rousseau and the liberal Constant much closer to one another, and so suggests that the phrase we use to describe our own form of government, "liberal democracy," is not in fact an oxymoron. It is true that liberals such as Constant are suspicious of efforts to institutionalize popular sovereignty directly. But it turns out that on this point Constant was merely following Rousseau. If we can understand Rousseau's reason for harboring this suspicion, we will come closer to seeing the democratic argument for this liberal position.

## Rousseau on popular sovereignty

None of the canonical political theorists was more insistent on defending the sovereignty of the people than Rousseau. With the concept of the general will he sought to capture the intuition that all citizens had to be regarded as equal, that no one could impose his or her views on the rest, and that the only legitimate source of authority in politics was the vote of the people as a whole, where every individual had an equally weighted vote. He thought that the authority of the people could not be transferred or alienated, even if the people wished to do so; nor could it be represented. Truly representative institutions were, he wrote, an inheritance from the feudal past and signs of political corruption. In a healthy polity citizens would fly to the assemblies themselves rather than allowing representatives to do their work for them (Rousseau 1997). On the basis of such statements, political theorists have regarded Rousseau as an inspiration for participatory democracy, and populist politicians since Robespierre have quoted from Rousseau's *Social Contract* to advance their cause.

But the truth is that Rousseau, in spite of his radically democratic understanding of sovereignty, did not advocate any form of direct democratic government in the *Social Contract*. In fact he warned against democracy: "If there were a people of Gods, it would govern itself democratically. Such a perfect government is not suited to men," he wrote. And further:

In the strict sense of the term, a genuine Democracy never has existed, and never will exist. It is against the natural order that the greater number govern and the smaller number be governed. It is unimaginable that the people remain constantly assembled to attend to public affairs, and it is readily evident that it could not establish commissions to do so without the form of administration changing (SC 3.4).

This passage might make it sound as if Rousseau's primary reason for warning against direct democratic government was practical. Later in the book, however, he explicitly argued against the view that in large modern states it is impossible for the people to gather together and vote on important questions. He pointed out that Rome, no small polity, routinely asked citizens to vote directly on matters of importance, and he insisted that such regular meetings of the citizenry could be held in modern times as well (SC 3.12). Whether he was right does not matter. The point is that his reason for opposing direct democratic government was not simply that it was impracticable to gather all the citizens in a large state together.

Rousseau's deeper reason rested on a theoretical distinction that he regarded as crucial, and that he worried his readers would not pay enough attention to. This is the distinction between *legislation* and *execution*. The legislative power is analogous to the faculty of the will in an individual person; it is the power to decide what to do, and it is the power that the *sovereign* has the authority to wield. The executive power, on the other hand, is analogous to the physical power of the individual; it carries out the decisions of the sovereign will and applies them to particular situations. This is the power that *government* wields. The key point about these two powers, according to Rousseau, is that they had to be kept distinct from one another in a polity. The reason was that the sovereign will had to remain *general* in order to retain its unique legitimacy. Only legislative acts that were general in scope could be viewed as equally touching all citizens. And only the fact that the general will touches all citizens equally made it

compatible with the freedom of all citizens. For if submitting to the general will meant submitting to rule of particular other people, it would seem to require giving up one's freedom. Democratic sovereignty gains its special claim to legitimacy from the fact that it does not require this, the fact that, as Rousseau put it, "each, by giving himself to all, gives himself to no one" (SC 1.6). But acts of government are necessarily *particular*. They affect different people in different ways, and they reflect particular officials' judgments about particular issues. Therefore, as soon as a legislative power engages in executive acts of government, it loses its claim to be "no one" and becomes someone in particular, a ruler with particular goals and interests. If submitting to the sovereign general will is different from submitting to a ruler, as Rousseau insisted it was – if it is more *democratic* and more compatible with freedom – that is only because the sovereign cannot mandate anything that is not general enough to affect all citizens equally. This means that the sovereign cannot govern. Only by remaining separate from most acts of government can the sovereign popular will maintain its general character and thus preserve its unique democratic legitimacy. When the government and sovereign are confused, as when government claims sovereign authority for its particular acts, this legitimacy is destroyed and sovereign authority is usurped. *Usurpation* occurs whenever the government claims the authority that rightfully belongs to the sovereign. The confusion of these two aspects of rule was the ultimate cause of the inevitable downfall of all governments, in Rousseau's eyes; usurpation led to tyranny or despotism (SC 3.10).

The problem with direct *democratic* government is that it asks the same people to act as both sovereign and government. In theory one person might play both roles without mixing them, but in practice it would be difficult to keep the two roles separate in one's mind. The people, while they were acting as a government, would tend to claim sovereign authority for their actions. And we might think, why not? They are, after all, the sovereign. Usurpation in a direct democracy might not seem so bad, since if the people in their capacity as governors are usurping the authority of the sovereign, they are only usurping that authority from themselves. But Rousseau would insist that we consider this case more carefully: The party doing the usurping is "the people" acting in pursuit of particular interests or considerations. The party whose authority is usurped is "the people" acting according to the general will. Rousseau's argument for the absolute sovereignty of the democratic people applies only to the latter version of the "people." If this sovereign authority is replaced by a people acting instead according to particular interests – either private interests or the interests of government as a particular body in society – then its legitimacy disappears. Thus, to say that a direct democracy has usurped the sovereign authority of the people is another way of saying that the people have become corrupted by private concerns, that they are no longer willing in a way that is general enough to be democratically legitimate. In the chapter on democracy Rousseau therefore articulated his deepest reason for warning against direct democratic government in this way:

It is not good that he who makes the laws execute them, nor that the body of the people turn its attention away from general considerations, to devote it to particular objects. Nothing is more dangerous than the influence of private interests on public affairs, and abuse of the laws by Government is a lesser evil than the corruption of the Lawgiver [the sovereign], which is the inevitable consequence of particular considerations (SC 3.4).

Of course we might disagree with Rousseau's view that a popular will is only legitimately sovereign if it has a general or "uncorrupted" character. Then we would face the formidable task of explaining why a mere tally of votes should have any particular moral legitimacy, why accepting a majority vote as legitimate is not simply an example of might making right. Perhaps there are non-Rousseauian ways to make the case for democratic sovereignty, but this is beyond the scope of this paper. Here, I assume that Rousseau's argument for popular sovereignty is good, and ask why it does not issue in an argument for direct democratic government. The reason that Rousseau gave was that usurpation is particularly likely in democratic governments, and that usurpation destroys the conditions under which a people's will can rightfully be called sovereign. Therefore, even though Rousseau claimed that "the legislative power belongs to the people and can belong only to it" he just as firmly insisted that the executive power "cannot belong to the generality [of the people] in its Legislative or Sovereign capacity" (SC 3.1). His theory of sovereignty is democratic but his theory of government is not.

Pure democratic governments are not the only governments that Rousseau thought were likely to engage in usurpation, but they are especially ill-equipped to resist the impulse because they include no institutional separation of the legislative and executive roles. In other forms of government, the people acting as sovereign can check or slow the process of usurpation by expressing their judgment about the actions of the government. The most important practical recommendation of Book 3 of the *Social Contract* was that every form of government should be subject to periodic referenda in which all citizens could vote on two questions: whether the present form of government should continue, and whether the present officeholders should continue in office (SC 3.12-14, 18). It is clear enough how this would work in an elective aristocracy: the people as a whole would vote on whether the few of them who had governmental offices should retain power. But in a direct democracy the people as a whole (as sovereign) would have to render judgment on themselves, the same people as a whole (as government). The problem is that not this is conceptually impossible; Rousseau mentioned that the British House of Commons sometimes transformed itself into a committee of the whole to discuss a matter and then transformed back into itself to hear the recommendations of the committee, so the same group of individuals performed two distinct roles (SC 3.17). But Rousseau did not think such an arrangement was to be recommended if one wanted to prevent, or at least slow, the corruption of the people and the usurpation of its sovereign authority. The periodic referenda that he recommended to preserve the sovereignty of the people would work best if the people voting in them were not evaluating their own performance. Being judge in one's own case is never very successful. For Rousseau, the sovereign people's *distance* from the particular work of governing is precisely what enables it to protect its own sovereignty.

Rousseau's opposition to representation must be understood in light of what has just been discussed. The relationship between sovereign and government is not one of "representation," as he most often uses the term. Government does not represent the people in the sense of bearing their sovereign authority. Government officials hold their power by "nothing but a commission, an office in which they, as mere officers of the Sovereign, exercise in its name the power it has vested in them, and which it can limit, modify, and resume..." (SC 3.1). Sovereign authority always remains with the people and cannot be transferred to government; any effort by the governors to claim sovereign authority for themselves, by saying that they represented the people, was nothing other

than a form of usurpation.<sup>1</sup> The key point – and the counterintuitive one – is that the distinction between sovereign and government, and the distance that it recommends between the people and the government, is wholly consistent with (and is in fact is a consequence of) the impossibility of “representation” in Rousseau’s understanding of the word. Efforts to represent are, in his terms, efforts to usurp the sovereign people’s authority.

This interpretation thus aims to draw attention to the fact that popular sovereignty in Rousseau functions not only in a positive sense, as a way of thinking about what basic law the people might actively authorize and legislate, but also – at least as importantly – in a negative sense. In the negative sense of popular sovereignty, the claim that the people are sovereign functions as a reminder that governing institutions and officers are *not* sovereign. Popular sovereignty understood in a negative sense functions as an argument to use against would-be usurpers. The abstract notion of “the people” is, precisely because of its abstract generality, a rebuttal of any claim that a particular official or assembly fully and completely represents the popular will. This negative function of popular sovereignty is itself institutionalized in the regular referenda through which the people can reject the government and government officials. While Rousseau opposed “representation” of one kind, the system of government that he recommended is not so different from the practices of representative democracy: Governmental functions are delegated and periodic popular elections are held to judge the performance of the delegates. The most significant differences between what Rousseau suggested and the basic structure of our liberal democracies are a) that our regular elections ask only the second of the two questions that Rousseau thought should be put to the sovereign people – we ask whether officeholders should be changed, but not whether the offices themselves, the constitutional framework of government, should be changed; b) that Rousseau did not envision the role of political parties; and c) that Rousseau did not recommend the elaborate institutional checks and balances that we have, such as separation of powers and federalism. So I do not claim that Rousseau had a modern theory of representative government. But he did prefer an indirect system of government to a more direct form of democracy, and he did so for democratic reasons. His suspicion of governmental claims to represent the popular will arose from his desire to protect the sovereignty of the people against potential usurpers. Many of the institutional arrangements promoted by theorists after the democratic revolutions in France and America can plausibly be viewed, I think, as aiming to do the same thing.

## Liberal Democracy

Benjamin Constant, after having watched the course of the French Revolution and its aftermath, from its hopeful beginnings through the Terror and eventually Napoleon’s

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<sup>1</sup> Rousseau did say that acts of the government should be presumed to be consonant with the sovereign general will so long as there was an opportunity for the sovereign to voice opposition and it did not do so (SC 2.1). But if the people did make its sovereign will known, no governmental authority had any standing at all to contest that will: “The instant the People is legitimately assembled as a Sovereign body, all jurisdiction of the Government ceases, the executive power is suspended, and the person of the last Citizen is as sacred and inviolable as that of the first Magistrate; because where the Represented is, there is no longer a Representative” (SC 3.14). In this passage Rousseau slipped into using the language of representation to describe the relation of government to sovereign, but the general point is clear: sovereign authority always remains with the people and is never taken over by their governors.

coup d'état, argued that Rousseau's warning against usurpation in Book 3 of the *Social Contract* had been wholly ineffective. In fact, Constant thought, Rousseau's writings had been used as a justification for new and more pernicious forms of despotism by politicians who claimed to act in the name of the people. Rousseau had meant to give sovereignty to the people, but politicians had quickly found that they could arrogate that sovereignty to themselves precisely by claiming to represent it.

Constant thus began his major work on liberal politics, *Principles of Politics Applicable to All Representative Governments*, with a chapter on popular sovereignty in which he seems to repudiate Rousseau's thought. He insisted, against Rousseau, that there was no such thing as *absolute* sovereignty, not even if it was placed in the hands of the people themselves. "When you establish that the sovereignty of the people is unlimited, you create and toss at random into human society a degree of power which is too large in itself, and which is bound to constitute an evil, in whatever hands it is placed...There are weights too heavy for the hand of man," he wrote (Constant 1988). To limit sovereignty he asserted that there was "a part of human existence which by necessity remains individual and independent, and which is, by right, outside any social competence" (Constant 1988). These parts of human existence were protected by rights, and no government that interfered with them was legitimate, no matter on what grounds it did so. Thus Constant moved directly from his criticism of Rousseau to the fundamental commitments of liberalism and to the notion of limited government.

Beneath the disagreement with Rousseau about whether popular sovereignty was absolute, however, lay a more fundamental agreement with him. It is crucial to stress that Constant did not dispute the idea that popular sovereignty was the only rightful source of political authority. In fact, he made the argument even more forcefully and more succinctly than Rousseau had, insisting that the only alternative to popular sovereignty was force, which was clearly illegitimate. What Constant feared was the results of giving absolute sovereignty to any particular officer or organ of government. But he acknowledged that Rousseau had feared precisely the same thing:

Rousseau himself was appalled by [the] consequences [of his theory]. Horror-struck at the immense social power which he had thus created, he did not know into whose hands to commit such monstrous force, and he could find no other protection against the danger inseparable from such sovereignty, than an expedient which made its exercise impossible. He declared that sovereignty could not be alienated, delegated or represented. This was equivalent to declaring, in other words, that it could not be exercised. It meant in practice destroying the principle which he had just proclaimed (Constant 1988).

Constant's difference with Rousseau was therefore more one of strategy than one of ultimate intention. He thought that Rousseau's distinction between sovereignty and government, and the related claim that sovereignty could not be represented, were arguments that were too abstract to be successful in preventing governors from trying to usurp sovereign authority. Once someone introduces a justification of absolute sovereignty into the political universe, no set of arguments, no matter how sophisticated, will succeed in preventing political actors from trying to use that justification to support their own power. Constant thought that Rousseau was right about the danger of usurpation, but that his method of trying to prevent it was inadequate. Sovereignty and government could not be kept distinct (Constant 2003). The abstract idea of a sovereign people tended to become concrete in the form of demagogues claiming to rule in the



name of the people. Popular leaders became aspiring tyrants. In the first version of *Principles* he described this process in a striking passage. Whenever the government wants to grab power, he wrote,

it quotes the imprescribable prerogative of the whole society...The government can do nothing, it says, but the nation can do everything. And soon the nation speaks. By this I mean that a few men, either low types or madmen, or hirelings, or men consumed with remorse, or terror-struck, set themselves up as its instruments at the same time as they silence it, and proclaim its omnipotence at the same time as they menace it. In this way, by an easy and swift maneuver, the government seizes the real and terrible power previously regarded as the abstract right of the whole society (Constant 2003).

Constant and Rousseau were thus united in their worry about government misuse of the language of popular sovereignty. Constant, of course, had the advantage of hindsight, having seen not only Robespierre use this language but also, later, Napoleon, whose particular form of despotism legitimated itself through elections and democratic justifications. Constant devoted another work exclusively to describing Napoleon's democratically tinged despotism, and the second term in the title he chose for that work, a titled describing Napoleon's political sins, echoed Rousseau's language: "Conquest and Usurpation" (Constant 1988).

The real difference between Rousseau and Constant lay in their views of how best to combat the danger that usurpation posed. The philosophical part of Constant's solution was to simply deny that sovereignty could ever be absolute, to insist that the individual should be afforded rights that no authority could rightfully interfere with. This part of his solution is difficult to say much about, because Constant was not clear about the grounding of these rights. But there is also another part of his solution, the part that he wrote much more about, which focused on institutional design. Constant's specific proposals, which varied over time, demonstrate an inability to settle on one best means of carrying out his ideas. Early in his career he seems to have been more republican, while later he embraced the idea of a constitutional monarchy. But what lay beneath all of his different institutional proposals was a fundamental and unchanging desire to find ways of institutionalizing resistance to efforts to centralize authority. This is true even of his later arguments on behalf of a constitutional monarchy. He justified a monarch by arguing that it could be made into a "neutral" power that could check and keep in place the various "active" powers of government. When he defended the monarch's power to dissolve representative assemblies, he claimed that it was a means of checking the assembly. Why did the assembly need checking? It is important not to misinterpret his point here. His worry about the assembly was not that the people itself would act tyrannically through it. Unlike liberals such as Tocqueville and J.S. Mill, he was not preoccupied with the danger that the people themselves would become a tyrannical majority. Instead he suggested that it was the *representatives* who often became dangerous once they were separated from the people: "An assembly, the power of which is unlimited, is more dangerous than the people" (Constant 1988). When he supported a monarch's right to dissolve an assembly, he viewed this monarchical right as a way of defending the people against their own representatives: "The dissolution of assemblies is by no means, as some have argued, an insult to the rights of the people" (Constant 1988). On his plan, the monarch could not replace the representatives' policy with his own will, but could only send the matter back for consideration by the next group of representatives to be elected. In exercising this power, the monarch was contesting the

claim of the current representatives to be adequately representing the popular will. A very similar argument had been used to justify the monarch's "suspensive" veto during the Revolution. Even Constant's support for constitutional monarchy, then, has a democratic justification: it was part of an institutional plan to insure that no governmental power could advance a claim to act in the name of the people without being subject to challenge from another governmental power capable of making the same claim. If usurpation could not be avoided, the best that could be done was to multiply the sites of usurpation and set them against one another.

That Constant was not worried about the people so much as about their representatives can also be seen in the fact that he opposed the Abbé Sieyès's system of indirect election for representatives. Sieyès had set up an elaborate set of electoral colleges to filter public opinion in the course of selecting delegates. Constant opposed the system and favored replacing the electoral colleges with direct elections (Constant 1988). And in the earlier, more theoretical version of *Principles*, he included an entire chapter devoted to arguing against the view that representatives, or those in government, were better suited to rule than the people themselves. The people who say that "light has to come from elevated places" may be right when speaking of uncivilized societies, he wrote, but their argument is wholly out of place in modern civilized societies with an educated class of any significant size. It was a mistake, he thought, to "attribute to governments the superiority of enlightenment":

We can reply to those who want to subject the intelligence of the many to that of the few what a famous Roman said to his son when the latter proposed to take a town, with the sacrifice of three hundred soldiers. Would you care to be one of this three hundred? (Constant 2003)

Thus it is a serious misunderstanding of Constant's liberalism to regard his suspicion of government efforts to directly enact popular sovereignty as a suspicion of the people itself. Far from favoring the rule of elites, he was suspicious of those who claimed to represent the people, those who used the language of popular sovereignty to justify their own rule. His targets were not the people as a whole but the individuals such as Robespierre and Bonaparte who had usurped the people's authority.

If we turn to Constant's counterparts in the U.S., those who had framed the constitution in the aftermath of the American Revolution, we find that many of them had had concerns similar to the ones that Constant voiced. While James Madison, for example, did not support a constitutional monarchy (unless one wants to give a tendentious reading of the Presidency), he did harbor a similar wariness about the danger of popular demagogues, especially in light of activity in the state legislatures trying to respond to the post-revolutionary debt crisis. And, like Constant, Madison thought the solution to this problem was not to allow any one part of government to become the sole institutional locus of popular sovereignty. Too often, Madison's defense of representative government is reduced to his famous remark in *Federalist #10* about the need to "refine and enlarge" public opinion. But this consideration does not explain his stance on many of the provisions in the Constitution. The truth is that he opposed giving sovereign authority even to the most "refined" version of public opinion. He did not, for instance, think that the Senate should have conclusive authority over the House of Representatives, even though he thought that the quality of deliberations would be higher there. Instead, he favored having two separate institutional efforts to represent the popular will present in government at once. He also favored staggering elections in

the Senate, so that the assembly would contain members who were elected at different times, and who thus reflected different snapshots of the popular will taken at different times. Each group of elected officials – each chamber of Congress, the winners from each election cycle – has a plausible case to make that they represent the popular will, and yet they may often disagree. What this means is that no group of representatives can plausibly insist that they are the only representation of the popular will; none can claim popular sovereignty without their claim being contested by others with at least as plausible a claim.

Nor was Madison the only of these founders to take a position similar to the one we have seen in Constant. Alexander Hamilton's defense of the Supreme Court's power of judicial review in *Federalist #78* uses an argument much like the one that Constant would use to support a constitutional monarch's right to dissolve the legislative assembly. Just as Constant said that the monarch should be able to appeal over the heads of the representatives to the people themselves, Hamilton suggested that the Supreme Court's ability to strike down legislation was designed to prevent "legislative encroachments" and to insure that "the intention of the people" was preferred to "the intention of their agents" (Hamilton, Madison, and Jay 2003). And, on the other side of the political spectrum we find Thomas Jefferson sometimes making similar arguments. Jefferson, the American founder closest to Rousseau in spirit, argued in his *Notes on the State of Virginia* that a concentration of power was despotic even if it was found in the most representative branch, the legislature. In a passage strikingly similar to what can be found in Constant's writings, Jefferson argued that despotism arose not from the fact that power was given to one person rather than many, but from the fact that it was concentrated in one institution, unchecked by others:

It will be no alleviation [to despotism], that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An *elective despotism* was not the government we fought for" (Jefferson 1984).

Jefferson went on to advocate as a solution to this problem the separation of powers and checks and balances, which is why Madison cited this passage at length in *Federalist #48* when defending the Constitution. Across the political spectrum at the American founding, then, these theorists of representative government shared the suspicion of representatives that Constant would make central to his liberal theory.

Of course the authors of the U.S. Constitution did not respond this fear by looking for an alternative to representation. They also did not take Rousseau's advice to institute regular referenda on the form of government as a whole. Jefferson did propose something like this in the form of new constitutional conventions every generation, but Madison and the framers rejected it for reasons set out in *Federalist #49*. Instead they sought to deal with the problem of usurpation by multiplying the points of representation within government and creating a contest between them. It has been remarked that what distinguishes the system of representative government instantiated in the U.S. Constitution from the "mixed regime" described in classical sources such as Polybius is that in our system, every branch is ultimately responsible to the people. In the classical mixed regime, the people were represented by one of the powers, but the other powers were supposed to represent the nobles or the rich or other orders of society. In insisting

that all three branches, and also all levels of government, local, state and federal, are in some sense representations of “the people,” the American system aims to multiply the plausible claims to represent the popular will. In Rousseau’s language, it multiplies the sites of usurpation. This multiplication in turn challenges any particular branch’s claim that its representation is determinative. Perhaps, if all three branches and all levels of government come to reflect a similar sentiment over a sustained period of time, then the government as a whole can be said to represent the popular will in a particularly authoritative way (Ackerman 1991). But at least in the ordinary course of politics, such agreement is not to be expected or even hoped for. In fact, the system seems designed to resist registering any unified representation of the popular will. By striving to have multiple representations of the popular will present in government at the same time, the system aims to encourage contestation about what precisely it is that the people want. There is plenty of anecdotal evidence, at least, that this does work in some sense; no piece of rhetoric is more omnipresent in American politics than the politician’s claim about what the American people want or need, a claim made on every side of every issue by every sort of politician.

From this perspective the various debates among political theorists and philosophers about what exactly representation is, and the debates among political scientists about what sorts of institutions best reflect the will of the people, can be seen in a different light. These debates are precisely the kind that the system of representative government is designed to encourage and accommodate. Those who claim with Madison that public opinion must be refined and enlarged, such as contemporary proponents of deliberative democracy, will find within representative government a place for their views; but so will those who worry primarily about the lack of representation for private interests and other “unrefined” forms of opinion. What no party will find sympathy for in the theory of representative government that I am drawing out here is the idea that its particular interpretation of public opinion should be the final or authoritative interpretation. By locating the source of sovereignty in an abstract entity that cannot speak for itself, the “people” as a whole, representative government instigates constant debate about what the popular will actually is. It calls for “interpretive representation” of the kind that Philip Pettit describes in his contribution to this volume, but it does not allow Rawlsian public reason or any other theory to dictate one definitive interpretation (Pettit 2007). The constant contestation over how the popular will should be interpreted gives political life in liberal democracies much of its vitality and energy. It drives politicians to explore different interpretations and to try to make their interpretations persuasive; representative government understood in this way aims to foster a politics of persuasion (Garsten 2006). It also fuels the media, which helps to multiply and amplify different iterations of the popular will, and which investigates any claim to represent that will and exposes its problems. It is no accident that the proponents of this vision of representative democracy, Constant and Madison, were also great spokesmen for the importance of a free press (Constant 1988; Madison 1888).

The view of representative government articulated here takes advantage of a peculiar feature of the concept of representation itself. As Hannah Pitkin and others have noticed, the concept of representation seems to be structured in a way that makes its complete realization impossible. A representation that is identical to the represented object in every way is nothing other than the object itself, which is therefore not re-presented but simply *present*. Representation implies the absence of what is being represented (Pitkin 1967). Thus, political representation of the sovereign people implies that the people are not actually present themselves in government. The impossibility of fully and completely

representing the people's will – the impossibility that Rousseau highlighted – is therefore integral to the concept of representation itself. Representation properly understood requires a distinction between representatives and the people. This is the distinction that demagogues aim to obscure whenever they claim to fully represent the people; it is the distinction that representative government, with its indirectness, aims to preserve; and it is the distinction that Rousseau, with his warnings about mixing sovereignty and government, wanted to protect. In this sense we can say that both Rousseau and the theorists of liberal representative government were responding to a feature inherent in the concept of representation itself. Liberal democratic governments – representative governments – are meant to institutionalize the impossibility of adequately representing the popular will.

Of course this is not the only interpretation of representative government that could be drawn from the history of political thought. There is, for example, a competing story that could be traced from chapter sixteen of Hobbes's *Leviathan*, through Sieyès, the architect of the first National Assembly during the Revolution in France, and straight through to a commonly invoked understanding of the state today. In this alternate story, the sovereign power of the people is inert unless it is given coherence and agency by being represented in one unified authority – a single ruler, a single assembly, or a government as a whole understood as having the mission of responding to one representative will. Hobbes is the crucial starting point for this story: he argued that a multitude could only be considered as a *people*, in the sense of being one entity capable of action, if it was represented in a single sovereign: “For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person One” (Hobbes 1996). And Sieyès, in spite of his many blueprints for institutions that would divide the government in various ways, insisted with Hobbes that a people or “nation” could not be a coherent entity except through a single representation. He opposed any effort to appeal past the representatives to the people themselves, viewing the suspensive royal veto, for example, as a compromise on the principle of representation; he insisted that the National Assembly was “the sole authorized interpreter of the general will” (Sieyès 1996). From the perspective outlined earlier, we might say that when the representatives of the Third Estate, inspired by Sieyès, gave themselves the name of “National Assembly” and then proceeded to govern, they thereby joined the people (the Nation) with the government (the State) in just the manner that Rousseau had warned against. Robespierre would, once in government, find himself unable to resist a similar act of usurpation. Insofar as we continue to think of ourselves as living in “nation-states” and ask only that the state reflect our will as accurately as possible, we treat our government as a more complex version of the National Assembly. If we accept this view of our governments, we implicitly accept the acts of usurpation that gave birth to them. And if we insist that the representative nation-state nevertheless respects popular sovereignty, we can do so only by adopting a view of popular sovereignty closer to the one put forth by Hobbes and Sieyès than to the one we saw in Rousseau.

Thus there are at least two conceptions of representative government that might guide our thinking. One views this form of government as a “liberal democracy”, in the sense that I have tried to invoke by joining the democratic Rousseau with the liberal Constant; the other views this form of government as a “nation-state” in the way just described. It is true that liberal democracies are nation-states, and therefore that some degree of usurpation is all but inevitable (as Rousseau himself acknowledged). Still, the emphasis in the two views is quite different, for the first view of representative government accents

the negative function of popular sovereignty while the second view pursues a positive enactment of that sovereignty.

Today there are a host of ideas about where the authoritative version of the popular will might lie in the U.S. government: Some suggest that it can be found in the Constitution as interpreted by the Supreme Court. Others argue that it can be found whenever a particular consensus emerges about certain issues and makes its way through various governmental institutions and procedures over a sustained period of time (Ackerman 1991). Still others look for the authoritative popular will in the views that a people might express after being allowed to deliberate with adequate information and fair procedures (Fishkin 1991). These are all plausible interpretations of our system of representative government. But they all implicitly adopt the second view of that system described above; they all view the government as a nation-state trying to enact a singularly authoritative interpretation of the popular will, rather than as a liberal democracy trying to encourage the multiplication and contestation of claims to represent the people.

### Research questions

In addition to asking which vision of representative government seems most attractive, we should also ask which best reflects what is actually going on in our system. What sort of empirical research questions could be formulated, in light of the issues raised here? We already have research designed to test how responsive government as a whole, or particular parts of it, are to public sentiment, and this line of investigation should surely continue. But we could also try to test the extent to which our system of representative government does what I have suggested early liberal theorists wanted it to do: multiply and challenge governmental efforts to represent the popular will. The institutional features of the U.S. system that I mentioned in this regard – staggered elections with overlapping terms of office, the different chambers of Congress and branches of government, and so on – are familiar features of the constitutional system of “checks and balances” often mentioned in textbook accounts of the government. These textbook examples deserve serious consideration by political scientists. Work finding that the Senate and House do not differ much on measures of responsiveness (Stimson, Mackuen, and Erikson 1995) begins to approach such questions, but does not fully address them. The question is not just how responsive these institutions are to public opinion on a uniform scale of responsiveness, but whether they are responding *differently* to the same public opinion. For example, the House and Senate seemed to respond differently to the proposed impeachment of President Clinton. As this essay goes to press those same chambers are responding differently to President Bush’s proposed strategy for the war in Iraq. Yet both houses claim to represent the popular will. Political scientists should investigate what considerations explain these different manifestations of the popular will. To see whether claims to represent the people are successfully being multiplied and challenged, we would have to investigate whether one interpretation or one institutional source of interpretation is consistently winning out, whether any one institution is effectively being granted final or sovereign authority on many issues and over a long period of time. I do not know what we would find. Some political commentators worry that the growth of the executive threatens this multiplicity, while others would point to the Court’s use of judicial review as the real threat. Empirical research might yield insights into such questions. We could also look to see whether there is more diversity among governmental interpretations of the popular will at particular times, and why. How does the multiplication and contestation of claims change

in response to stimuli such as wars, economic disturbances, technological innovations and demographic trends?

Having a research agenda based on this broader understanding of the purpose of representative government would not only provide useful descriptive information, it would also be normatively desirable. As things stand now, if any of the studies of responsiveness mentioned at the beginning were to find that a particular institution in government did accurately and reliably “translate” popular sentiment into policy, there would be a strong tendency, I think, to conclude that that institution could legitimately be sovereign over us. If responsiveness is the purpose of representative government and the criterion of its legitimacy, there would be no reason to deny this conclusion. I hope in this essay to have indicated why it is plausible to think that this conclusion might be wrong, and to think so for democratic reasons. Popular sovereignty can be understood in a negative sense, as Rousseau himself often seems to have understood it. A government institutionalizes the negative sort of popular sovereignty when it helps us to resist the ever-present temptation to grant final and exclusive authority to the government, no matter how much we approve of its interpretation of popular sentiment at any particular moment. What popular sovereignty as a normative ideal does, on this theory, is ask us to be on the lookout for usurpation and the demagogic appeals that accompany it. To evaluate the health of representative democracy, we should look not only at whether institutions are responding to our opinions, but also at whether the structure of government succeeds in multiplying and challenging claims to represent our opinions. Representative government is working well when no claim to represent the people goes uncontested.

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