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Abstract:

In modern political thought, one of the most recalcitrant, and increasingly pressing, questions of modern democracy is whether, and in what sense, the people can be *present*. While the presence of the people has, and continues to be, the *sine qua non* of the democratic form of government, it has also been for a long time held that the people cannot be present literally or in fact. According to the conventional narrative, this absence has been seen as a necessary acquiescence to the problem posed by the modern state, territorially expansive and populous, precluding an assembly democracy in which all can be physically present. The paradox which thus underpins modern democracy is that the people, being represented, is present in some sense, while not present literally or in fact.

This thesis argues that the conventional narrative of the paradox of presence of modern democracy remains incomplete. It argues that in posing the question of what it means to speak of the presence of the people, contemporary political theory and intellectual history has so far neglected the question of time. Turning to the history of political thought of early modernity, the thesis contends that in the political thinking of Thomas Hobbes, Samuel Pufendorf and Robert Filmer, the critique of the democratic assembly was indeed framed primarily as one of time, rather than size and space. The democratic assembly, it was suggested, could not be present often enough to ensure the continuance of political order. Taking this problem of presence as a point of departure, the thesis traces its constitutive role in the political thought of some of the key thinkers of modern political thinking, including John Locke, Jean-Jacques Rousseau, as well as some of the central theorists of representative government from the end of the eighteenth century. It argues that while the question of time gradually came to be lost from the vocabulary of modern political thought, the problem continued to underpin and structure modern thinking on democracy and popular sovereignty. The imperative which thus continues to underpin modern democratic thought, though largely implicit, is that the people, understood as a political unity, must be made present often enough to ensure the continuance of political order.

The thesis suggests that bringing this imperative to the fore allows political theory a greater understanding of the paradox of presence which imbues modern political thinking on democracy and popular sovereignty.

Signature

Date 2022-04-12

The Present People

Daniel Gustafsson

LUND UNIVERSITY

To my parents

Acknowledgements

Table of Contents

Chapter I: Introduction

When Jean-Jacques Rousseau wished that he had been born into a state where "the People and the Sovereign are the same person",[1] he gave expression to a wish which, in some sense, continues to underpin modern democracy. In the same breath, however, Rousseau imposed on such a state a condition which, for modern democratic thought, has hardly ceased to be something of a predicament. After all, the people and the sovereign, Rousseau insists, can be the same person only on condition that the former are present to exercise their sovereignty. Only in the democratic assembly, in which all citizens are physically present alongside their fellow citizens to conduct the common life of the state, can the people and the sovereign be truly one and the same. It is a condition which has continued to trouble modern democratic thought for the simple reason that such a presence is, under conditions of modern life, impossible. The people, in short, cannot be present.

From the point of view of Rousseau's wish, the modern democratic state is beset by a paradox. The paradox of our modern democracy, after all, is that the people are simultaneously absent and present. To be represented, in the etymology of the word, is to be made present again. It is to be present in some sense, while not present "literally or in fact".[2] It is a linguistic paradox which alludes to a very real paradox, or at least a very real tension, inherent in modern democratic thought.[3] To be represented, after all, is to be absent. And while it implies that one ought to recognize in those who *are* present something of the represented, the represented cannot be present in quite the same sense as the representative. In the modern representative form of democracy, the people are not themselves literally

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[1] Jean-Jacques Rousseau, "Discourse on the Origin and the Foundations of Inequality Among Men [Second Discourse]," in *The Discourses and other early political writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 115.

[2] Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley, Los Angeles, London: University of California Press, 1967), 8f.

[3] David Runciman, "The Paradox of Political Representation," *The Journal of Political Philosophy* 15, no. 1 (2007): 93.

present to exercise the sovereignty which they purportedly possess. This is the paradox of modern democracy, and which I will here call the paradox of presence. In the democratic form of government, the people must be present, yet cannot be present.

While contemporary political thought has long asserted as an inevitable fact of modern life the paradox of modern democracy, it is one which it has never entirely reconciled itself to. As modern scholars have continued to gaze back nostalgically to Rousseau,[4] they have echoed his disquieting question: are we modern citizens not after all like the English, who think they are free when they are in reality free only on election day?[5] Whatever presence we modern citizens are bestowed by our representatives, it is clearly not literal or in fact. And while Rousseau's democratic assembly may be unattainable, modern scholars have posed the question of whether popular sovereignty does not manifest itself precisely in those moments when people assemble in the public space to assert their very literal and real presence.[6] And while others have cautioned that our modern paradox will remain disquieting only as long as we continue to romanticize what we cannot have,[7] contemporary political thought has had to acknowledge that our paradox now appears perhaps increasingly disquieting.[8] While Rousseau's wish may be a forlorn one, the phenomenon of populism today alludes, if not in truth to a genuine effort to make it a reality, then at least to the disquieting question of whether the citizens of modern democracy do indeed recognize themselves in those who exercise the power of the state.[9] In some form or another, populism today alludes to a sense

[4] Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970), 22.

[5] "The English people thinks it is free; it is greatly mistaken, it is free only during the election of Members of Parliament; as soon as they are elected, it is enslaved, it is nothing", Jean-Jacques Rousseau, "Of the Social Contract," in *The Social Contract and other later political writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 114. On similar arguments in contemporary political theory, see Cornelius Castoriadis, "The Greek Polis and the Creation of Democracy," *Graduate Faculty Philosophy Journal* 9, no. 2 (1983); Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997); Hanna Fenichel Pitkin, "Representation and Democracy: Uneasy Alliance," *Scandinavian Political Studies* 27, no. 3 (2004).

[6] Judith Butler, *Notes Toward a Performative Theory of Assembly: Mary Flexner Lecture Series of Bryn Mawr College* (Cambridge, Massachusetts: Harvard University Press, 2015), 162.

[7] Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago and London: The University of Chicago Press, 2006), 10.

[8] Michael Saward, *The Representative Claim* (Oxford: Oxford University Press, 2010), 1.

[9] Ernesto Laclau, *On Populist Reason* (London/New York: Verso, 2005); Benjamin Moffitt, *Populism* (Cambridge/Medford: Polity, 2020); Chantal Mouffe, *For a Left Populism*

that the paradox of modern democracy is a broken promise. Whether the origin of populism is an unduly romanticized ideal, or a genuine sense of despair at the distance which separates citizens from those who are supposed to make them present again, it has brought to the fore the question of what it means to speak of the presence of the people.

Many scholars, then, have sought to reconcile, or find a way out of, the paradox of modern democracy. Yet despite these efforts, the paradox appears stubbornly irresolvable and irreconcilable. In this thesis, I hope to provide part of an answer to why this might be. While many contemporary scholars have sought to understand the source of our modern paradox, and how we came to end up in it, a clear answer remains lacking. The reason, I suggest, is that we have yet to fully answer the question of why the presence of the people should be a necessity to begin with. Furthermore, the reason we have not, I suggest, is that we have yet fully to understand the meaning of the word *presence*. This, I argue, is the question which we must attempt to answer in order to understand our modern paradox. The argument which underpins this thesis is that if we wish to understand our modern paradox, we ought to turn to the history of how our modern political thinking came to end up in it. While certainly not the first work in political theory and intellectual history to do so, there is a piece of the story we have so far neglected. And while recovering it may not help us resolve our paradox, it may perhaps help us better understand it.

The history which this thesis attempts to recount starts with a hypothesis. This hypothesis is the narrative, familiar at least since J. S. Mill, of how our modern paradox came to be.[10] According to this narrative, modern democracy first emerged in a world already populated by territorially extensive and populous states, whose mere size and scale precluded a democracy modelled on Rousseau's dream. Since all citizens, under such circumstances, could not possibly assemble in one place, modern democracy could emerge only in its representative form. From this moment, the paradox of modern democracy became a fact. This is the

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(London/New York: Verso, 2018); Jan-Werner Müller, *What is Populism?* (Philadelphia: University of Pennsylvania Press, 2016); Pierre Rosanvallon, *The Populist Century* (Cambridge/Medford: Polity Press, 2021); Stefan Rummens, "Populism as a Threat to Liberal Democracy," in *The Oxford Handbook of Populism*, ed. Cristóbal Rovira Kaltwasser et al. (Oxford: Oxford University Press, 2017).

[10] J. S. Mill summarily stated the problem in its for us familiar form, asserting merely that "since all cannot, in a community exceeding a single small town, participate personally in any but some very minor portions of the public business, it follows that the ideal type of a perfect government must be representative", John Stuart Mill, *Considerations on Representative Government* (Chicago: Henry Regnery Company, 1962), 74.

narrative which has, since the days of Mill, continued to be reiterated, to varying degrees, by modern scholars.[11] This then, is the hypothesis with which the history recounted here starts. The argument of this thesis, to be sure, is not to suggest that this hypothesis is false. It is, however, that it is a narrative which remains somewhat incomplete. While it gives us an answer to why the people, in modern democracy, cannot be present,[12] it does not tell us why they ought to be. The reason for this missing piece in the narrative is that we have tended to begin the story at a time when the idea of modern representative democracy had already emerged. If we wish to understand our modern paradox, we ought instead to re- turn to a time before this event, when modern political thought laid down the fundamental concepts with which we are still living, and the idea of the demo- cratic assembly, through the works of thinkers like Jean Bodin and Thomas Hobbes, first acquired its modern form.[13]

Certainly, this idea appeared – until Rousseau – in no other form than as an object of criticism and scorn. Yet, in their criticism appeared a meaning of the word *presence* that our contemporary political thought has largely forgotten, and which, I suggest, may help us understand our contemporary paradox. It is a mean- ing which is in fact reflected in the word itself: that what is present in space is also present in *time*. While early modern thinkers certainly regarded the democratic assembly as a practical impossibility, their argument – if we look closely – was that

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[11] In various ways, democratic theorists have since asserted the manifest and self-evident nature of the problem, see for instance Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (London & New York: Routledge, 2005), 246. "Thus, when vast territories and entire nations are involved, direct democracy becomes an unusable formula", Giovanni Sartori, *The Theory of Democracy Revisited* (Chatham, New Jersey: Chatham House Publishers, Inc., 1987), 283. "Within a few generations of Montesquieu and Rousseau, representation was widely accepted by democrats and republicans as a solution that eliminated the ancient limits on the size of democratic states and transformed democracy from a doctrine suitable only for small and rap- idly vanishing citystates to one applicable to the large nation-states of the modern age", Robert Dahl, *Democracy and its Critics* (New Haven: Yale University Press, 1989), 29. Bernard Manin, who suggests that this practical difficulty "was not the prime consideration motivating such founders of representative institutions as Madison or Siéyès", nevertheless acknowledges that "[t]he fact remains that the sheer size of modern states had the effect of making it materi- ally impracticable for the assembled people to play a part in government", Manin, *The Principles of Representative Government*, 9.

[12] Robert A. Dahl and Edward R. Tufte, *Size and Democracy* (Stanford, California: Stanford University Press, 1973).

[13] At this time, democracy was still understood to be by nature direct, and Hobbes presumed, "as everyone in his time did, that a democracy must involve an actual assembly of citizens", Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2015), 87.

in such a form of government, the people cannot be present *often enough*. It is this meaning to which Robert Filmer, in the seventeenth century, eloquently gave expression when he asserted as absurd the notion that God would ever fix the "indivisible beam of Majesty" in the people, and thus "sometimes, and that for the most part, no where, as when the Assembly is dissolved, it must rest in the aire, or in the walls of the Chamber, where they were Assembled".[14] If we wish to understand what presence means, in short, we ought to contemplate not the cacophony and tumult evoked by the image of an entire populace assembled in one *place*, but imagine, as Filmer invites us to do, the people being *absent* from the assembly for a week, a month, or a year, during which time no law is made or abrogated, no delict sanctioned, no act of political authority undertaken.

What appeared, then, in early modern thought, is in some sense the missing piece in our familiar narrative. Though perhaps a small piece, it is also one which begs us to think differently about the question of presence. It is a shift from the question of why the people *cannot* be present, to the question of why they *must* be present, and, by extension, why it is in the first place that *whoever* carries the power of the state – be it the people or not – must be present, and must be so not only on rare occasions, but often enough. In thinking about presence not as a presence in some delineated piece of space, but as a presence in a moment in time, we may begin to understand wherein the significance of this presence truly resides, and why early modern thinkers like Filmer and Hobbes should have made it the condition of possibility of political order. And in understanding this, we may come to understand better to what extent we moderns too think, though perhaps somewhat unselfconsciously and unreflexively, of this presence as the condition of possibility of political order. This is the small piece in the narrative which it is the aim of this thesis to recover.

The aim here, thus, is to adopt, as Quentin Skinner once put it, the role of "a kind of archaeologist, bringing buried intellectual treasure back to the surface".[15] The *treasure*, in this case, is a question of presence which political thought has largely forgotten. While this thesis, then, is partly historical in intent, the reason for bringing this treasure to the surface is also that it "may enable us to acquire a self-conscious understanding of a set of concepts that we now employ

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[14] Robert Filmer, *Observations upon Aristotles Politiques, Touching Forms of Government. Together with Directions for Obedience to Governours in dangerous and doubtfull Times* (London: Printed for R. Royston, at the Angel in Ivie-Lane, 1652), preface, unnumbered.

[15] Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), 112.

unselfconsciously and, to some degree, even uncomprehendingly".[16] In understanding what the problem of presence was to begin with, we may also reflect on why we do not think of it in the same terms anymore. If we do not, we ought to acknowledge that history has bequeathed on us a solution we have, in some sense, tended to assume somewhat unselfconsciously. We may certainly say that modern representative government "swept away the constraints of size".[17] But if the problem never really was merely a constraint of size, the question is if it could be swept away at all. While the history which is the subject of this thesis, then, in part is an attempt to bring to the surface a piece of treasure buried in early modern political thought, it is also a history of how this treasure came to be buried, and how, by the emergence of representative democracy at the end of the eighteenth century, the problem which early modern thought had posed had come to be forgotten. It is, thus, also a history of how modern political thought came to bequeath on us a solution we have continued to apply somewhat unselfconsciously, and through which our modern paradox comes endlessly to return to us, more or less disconcertingly.

If we wish to understand our modern paradox, we ought to acknowledge that our modern state is, in truth, today a more or less continuous presence in virtually every waking moment of our lives. Through an imbrication of bodies, be they legislatures, governments and bureaucracies, there would appear to be few times in which the power of the state now rests in the air or the walls of the chambers these bodies occupy. Why this continuous presence of the state has come to be, and to what problem it has become the solution, is the question we have to understand if we wish truly to understand how we came to end up in our modern paradox. And in order to understand this, we may wish to turn to the history of the ideas which underpin this facet of the modern state.

Historically, the contribution which this thesis aims to make, then, is to recover a small piece in the familiar narrative of the source of the paradox of modern democracy. Theoretically, the hope is that in recovering this missing piece, it will contribute to a greater understanding of the paradox of presence of modern democracy, and why modern democratic thought has so incessantly asserted both the necessity and impossibility of the presence of the people. And while it may not help us resolve the paradox, it may go some way towards making a self-conscious decision about how to respond to it.

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[16] Skinner, *Liberty Before Liberalism*, 110.

[17] Dahl and Tufte, *Size and Democracy*, 8.

As our modern paradox has today become perhaps increasingly disquieting, and as populism calls modern representative democracy into question, we now, perhaps more than ever, need the vocabulary with which to address this question. In this sense, the vocabulary which we have so far employed might not be up to the task. If we continue to think of our modern paradox as a problem of size, we may continue to think of it as one which can be swept away. After all, if the problem is merely one of size, then there is little reason to suggest that the paradox cannot be resolved through the momentary presence of the people in the streets and squares, or in acclamation of a political vision. The temptation will remain to solve our paradox through what Margaret Canovan once called the promise of a "redeeming presence".[18] Whether this promise, in the end, is a genuine one is a question which we cannot address through the language of spatiality and size alone. As long as we continue to employ this vocabulary, we will no doubt continue to concede that there are times and places "in which the people, in the singular and at full strength, is self-evidently present".[19] And as long as we do so, we will lack the vocabulary to articulate why such a singular and momentary presence may not be enough to redeem the ordinary absence which undoubtedly must follow it.

At the same time, we may also have to acknowledge that our dilemma is a very real one. Though populism may be a false solution to our predicament, if it is also a *symptom*,[20] we ought to understand to what illness it is such. It may not be enough to say that the hold which Rousseau's dream of the democratic assembly exerts over the imagination of modern democratic thought is a romanticized fiction. That dream may be a false one, but we may still need to understand wherein the promise of a presence which *is* literal and in fact lies.

In the following section, I will return to the paradox of modern democracy, and the attempts of contemporary political theory to understand, reconcile and resolve it. I will attempt to indicate how and why, despite these efforts, our paradox appears stubbornly irresolvable and irreconcilable, and how the present study may offer, if not a way out of our predicament, then at least part of the vocabulary with which to understand it.

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[18] Margaret Canovan, *The People* (Cambridge/Malden: Polity Press, 2005), 139.

[19] Rosanvallon, *The Populist Century*, 135.

[20] Rummens, "Populism as a Threat to Liberal Democracy," 563.

The Paradox of Presence

The question which underpins this thesis is from where the paradox of presence which imbues modern democracy comes. Posing the question in this manner is to suggest that the linguistic paradox of representation is one which alludes to, or reflects, something more than a mere case of intricate language-use. It is to suggest that the linguistic paradox of representation reflects a more fundamental structure of modern political thought. It is to suggest that the modern democratic idea remains premised on the supposition that the people *must* be present, while conceding that they cannot be so. In some sense, though we have perhaps yet to understand precisely why and in what sense, the idea of democracy presupposes the presence of the people. This simultaneous impossibility and necessity, which our modern political thought has incessantly imposed on the idea of democracy, I suggest, in the end underpins the paradox of representation. It is, thus, to suggest that the word *presence* is in no way arbitrarily chosen in the efforts of modern political thought to make sense of democracy and popular sovereignty. The question, then, is what precisely we mean by presence, and in what sense the people must be present. If we take the linguistic question seriously, then what do we mean by 'presence'?

While the term 'presence' is now virtually ubiquitous in the reflections of contemporary political theorists on democracy and popular sovereignty, it arguably does not have a clear and unambiguous signification. In contemporary political thought, we seem to find two distinct senses of this word, although both related to the question of *being*. The first is literal and spatial. Presence is to be in a given *place*, it is to be *here* rather than *there*. In this sense, the people are present when they are in physical proximity to one another in a delineated piece of space. The second is more abstract, and pertains more specifically to the question of being. When, for instance, Carl Schmitt spoke of the plebiscitary-democratic sovereign people as "directly present [unmittelbar präsenten]",[21] he did not have in mind their physical presence in space. Rather, he meant their presence as a political and sovereign unity, their presence as an acting entity endowed with a unified political will, underpinning the political order or, occasionally, re-fashioning it. Both senses appear, albeit in different ways, in contemporary political theory. And both have been invoked, albeit again in different ways, in order to account for, or reconcile ourselves to, the paradox of modern representative democracy. While the

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[21] Carl Schmitt, *Legality and Legitimacy*, ed. Jeffrey Seitzer (Durham/London: Duke University Press, 2004), 62.

former alludes to a *practical* question, the latter alludes rather to an *ontological* or *normative* one. The former reiterates the familiar spatial narrative: is there, in the end, a *place* in which all the citizens of a modern state could be present? The latter, however, poses a different question: is there, in the first place, a people present to itself as a unity, to which any form of government could give an authentic and genuine expression? If there is not, if the people are only a multitude of individuals united merely by the legal order of which they are members, then what reason do we have to expect direct democracy to bring about a more authentic and genuine expression of its will? While the former asserts our paradox as real, and as an un-avoidable acquiescence to a practical problem, the latter suggests that it is in the end underpinned by little more than a romantic idea, bequeathed on us by the likes of Rousseau.

While these two answers, then, would seem to present us with a clear dichoto-mous choice, the argument I wish to make is that this choice is, to some extent a false one. While both point to wherein the source of our modern paradox lies, neither account for it entirely. The reason, I suggest, is simply that neither account for the sense of presence as being in *time*, and thus neglect part of the problem of presence. Thus, the efforts of contemporary political theory to resolve, remedy or reconcile us to the paradox of presence notwithstanding, the paradox appears stubbornly irreconcilable and irresolvable. This is the argument I hope to make in the following.

While the paradox of modern democracy is today one which has elicited a great deal of attention in contemporary political theory, extensive treatment of it is nev-ertheless a comparatively recent phenomenon. Not long ago, Joseph Schumpeter could still dismiss, with "comparative ease", the question of direct democracy as a practical possibility in the modern world,[22] and Giovanni Sartori could still assert that "if we discovered that, today, direct democracy is impossible, it would be pointless to discuss its desirability".[23] For both, the impossibility of assembling the populace of a modern state in one place was, essentially, the end of the discus-sion. And while both, in this sense asserted the paradox of representative democ-racy as a very real one, it was an acquiescence whose necessity was plain and obvi-ous. If the paradox of modern democracy has emerged as a pressing question, it is

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[22] Schumpeter, *Capitalism, Socialism and Democracy*, 246.

[23] Sartori, *The Theory of Democracy Revisited*, 280. It should be noted that much of the literature on representative democracy, until recently, has contained little in the way of reflection on the paradox. Robert Dahl, for instance, has typically equated voting with participation, Dahl, *Democracy and its Critics*; Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven and London: Yale University Press, 1971).

arguably for the simple reason that contemporary political thought has been reluctant to regard as pointless the normative question of the desirability of direct democracy. Thus, participatory democratic theorists like Carole Pateman have argued that Rousseau's wish, regardless of its impossibility, ought in some sense to remain our own. The participatory argument, to be sure, has not been fundamentally to challenge the earlier concerns of Schumpeter and Sartori. It has not, in the end, sought to refute the inescapable practical problem involved in assembling the entire citizenry in one physical place. Rather, while reiterating the problem of space and size, it has sought to bring back the normative question: if direct democracy is, in the end, desirable, the onus is on us to amend, if not necessarily to resolve, the paradox of representative democracy, and to make the people, as far as possible, present. Subsequent theorists, largely indebted to the political theory of Claude Lefort, on the other hand, have instead sought to bracket the practical question in favour of a closer examination of the ontological and normative. Rather than assert the problem of size and spatiality, they have instead sought to question the regulative ideal which the influence of Rousseau has bequeathed on us. This ideal, rather than any practical problem, they have suggested, is the source of the disquietude we now feel about our modern paradox. In a sense, they have inverted Sartori's formula: if direct democracy is undesirable, it would be pointless to discuss its possibility.

In this section, I will suggest that in the end, neither approach entirely resolves, or reconciles us to, the paradox of representative democracy. Neither succeeds for the simple reason that neither entirely addresses the problem of presence. Neither, in the end, addresses the fundamental premise which underpins the problem of presence: the state must be made present often enough, and must be made present by physical individuals present in time and space. This premise, rather than the explicit object of inquiry, I suggest, figures in contemporary political theory as a largely unstated presupposition. The aim in the following, thus, is to attempt to bring this presupposition to the fore.

In the participatory democratic theory of figures like Pateman, the paradox of modern democracy is asserted, at least normatively, in unambiguous terms. Direct democracy is indeed the ideal to which we ought to aspire, and which we do not have. The source of our paradox, then, is the familiar problem of size, which at least at the national level forces us to acquiesce in the necessity of representation.[24] And while the paradox thus cannot be entirely resolved, it is one which at least beckons to be amended through various forms of local participation, perhaps

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[24] Pateman, *Participation and Democratic Theory*, 109.

aided by the capacity of technology to diminish the problem of space. In the deliberative democratic theory of thinkers like Seyla Benhabib and Jürgen Habermas, on the other hand, the paradox appears in more ambivalent terms. The eschewing of the "fiction of a general deliberative assembly", Benhabib makes clear, is one in which "more than an issue of size is at stake".[25] Similarly, while Habermas substitutes, on normative grounds, the "virtual presence of scattered readers, listeners, or viewers linked by public media",[26] for the "embodiment in the assembled, physically present people",[27] this acquiescence is also partly one accepted "for technical reasons".[28] The assembly of all, then, is something we do not want, and something we cannot have. The source of our paradox, correspondingly appears ambiguously as a practical problem *and* as an unduly romanticized ideal.

In the works of political theorists indebted to Lefort, however, this ambivalence no longer figures very prominently. Since the normative ideal of direct democracy is here, from the outset, bracketed, the practical question becomes essentially relegated to the background. Since the seat of power in democracy is, in Lefort's terms, irredeemably *empty*,[29] it makes little sense, after all, to wish to see the people present there. Since there is no direct democracy which would make the people truly present to itself as a unified whole, capable of expressing its genuine and authentic will, we ought to re-evaluate the normative ideal which thinkers like Rousseau have bequeathed on us, and with it, the paradox of modern democracy.

Upon the Lefortian thesis, contemporary political theorists have then sought to resolve the democratic paradox of presence. Thus, legal theorists have suggested

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[25] Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, New Jersey: Princeton University Press, 1996), 73f. As Joshua Cohen has similarly argued, although without elaborating the precise reasons, the "claim about the impossibility of direct democracy is plainly correct", Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Deliberative Democracy – Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge, Massachusetts/London: The MIT Press, 1997), 84.

[26] Jürgen Habermas, *Between Facts and Norms: Contribution to a Discourse Theory of Law and Democracy* (Cambridge, Massachusetts: The MIT Press, 1998), 361.

[27] Jürgen Habermas, "Three Normative Models of Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, New Jersey: Princeton University Press, 1996), 29. While Habermas is indebted to Hannah Arendt, his republicanism is one articulated against Arendt's more 'populist' version, which to a greater extent asserts the necessity of direct personal involvement in political affairs. On Arendt's 'populist' interpretation of republicanism, see also Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997), 19.

[28] Habermas, *Between Facts and Norms*, 182.

[29] Claude Lefort, *Democracy and Political Theory* (Cambridge: Polity Press, 1988), 225.

that the familiar *paradox of constitutionalism*,[30] which resides in the simple fact that the people cannot *be* anything before it acquires constituted form, is one which can be resolved once we forego the belief in the sovereign people, "directly and genuinely *present*",[31] beneath constituted government, as Carl Schmitt put it. Behind those "predetermined channels", "prearranged procedures", and "preset criteria of enfranchisement",[32] which define constitutional democracy, there may simply be no *people*, endowed with a unitary will to which a direct, or pure democracy, could somehow give expression.[33] After all, since the *people* is "not just

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[30] Neil Walker and Martin Loughlin, "Introduction," in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007), 1; Jon Elster, "Introduction," in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1988), 9; Andrew Arato, *Post Sovereign Constitution Making: Learning and Legitimacy* (Oxford: Oxford University Press, 2016), 1; David Dyzenhaus, "Constitutionalism in an Old key: Legality and Constituent Power," *Global Constitutionalism* 1, no. 2 (2012): 234. See also Frank I. Michelman, "Constitutional Authorship," in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge: Cambridge University Press, 1998); Jeremy Waldron, "Precommitment and Disagreement," in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge: Cambridge University Press, 1998); Jon Elster, *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints* (Cambridge: Cambridge University Press, 2000). This paradox is sometimes framed as the *paradox of founding*, Bonnie Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory," *The American Political Science Review* 101, no. 1 (2007); Bonnie Honig, *Emergency Politics - Paradox, Law, Democracy* (Princeton and Oxford: Princeton University Press, 2009); Alan Keenan, *Democracy in Question: Democratic Openness in a Time of Political Closure* (Stanford, California: Stanford University Press, 2003); Mónica Brito Vieira, "Founders and Re-founders: Struggles of Self-authorized Representation," *Constellations: An International Journal of Critical & Democratic Theory* 22, no. 4 (2015).

[31] Carl Schmitt, *Constitutional Theory* (Durham, NC and London: Duke University Press, 2008), 271.

[32] Stephen Holmes, "Precommitment and the Paradox of Democracy," in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1988), 231.

[33] It should be noted, however, that some theorists have followed Schmitt in asserting the political, as opposed to legal, unity of the people. The constitution, Ernst-Wolfgang Böckenförde thus argues, must be derived "from an idea of order established once, sustained, and normatively solidified by a political decision, an idea born by the people or by the crucial groups and powers within society". Thus, "anytime the people takes an active role as an organized entity, in the form of an active citizenry, the unorganized people of the *pouvoir constituent* is also involved and present in some way", Ernst-Wolfgang Böckenförde, "The Constituent Power of the People: A Liminal Concept of Constitutional Law," in *Constitutional and Political Theory: Selected Writings*, ed. Mirjam Künkler and Tine Stein (Cambridge: Cambridge University Press, 2017), 171, 79. For a similar modern reading of Schmitt, see Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (New York: Cambridge University Press, 2008), 6f, 128. As pointed out by David Dyzenhaus,

a random assemblage of individuals",[34] it is simply never "directly present to itself as a unity".[35] The *people* to which we ascribe sovereignty, it is suggested, is in truth little more than a rhetorical figure, something irredeemably "*absent* from the sphere of political reality". It is that in whose name concrete individuals must speak in the sphere of political reality, and which lends their voice its democratic authority, but which "must be *transcendent, not immanent,* to a political community".[36] When we speak of *the people*, it is suggested, we actually speak of *two bodies*.[37] And that to which we ascribe sovereignty is in reality a mere rhetorical figure, an absent body never identical to the body of the totality of concrete living citizens. Thus, while modern democracy will perhaps always desire to see the absent and sovereign body coincide with the totality of concrete citizens, as it will perhaps always desire to see the people "moving into Lefort's 'empty place of

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Bruce Ackerman's conception of 'dualist democracy', which distinguishes between normal law-making and higher law-making as decisions "by the People", comes close to Schmitt's constitutional theory, Bruce Ackerman, *We The People – 1 Foundations* (Cambridge/London: The Belknapp Press of Harvard University Press, 1991), 6; Dyzenhaus, "Constitutionalism in an Old key: Legality and Constituent Power," 238.

[34] Dyzenhaus, "Constitutionalism in an Old key: Legality and Constituent Power," 234; Holmes, "Precommitment and the Paradox of Democracy," 231. Stephen Holmes suggests that the paradox arises from the erroneous opposition of liberalism and democracy, Stephen Holmes, *Passions and Constraints: On the Theory of Liberal Democracy* (Chicago and London: The University of Chicago Press, 1995), 6.

[35] Hans Lindahl, "Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood," in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007), 22. Lindahl here mirrors, in important ways, the arguments of Hans Kelsen, for whom the Schmittian conception of the people must be understood to be little more than a hypostatization of the unity of the legal order, meaningless when taken to signify an entity existing independently of that legal order, Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (Tübingen: Verlag von J. C. B. Mohr, 1928), 14; Hans Kelsen, "God and the State," in *Essays in Legal and Moral Philosophy*, ed. Ota Weinberger (Dordrecht-Holland/Boston-U.S.A: D. Reidel Publishing Company, 1973), 69; Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (Cambridge, Massachusetts: Harvard University Press, 1949), 185. It is, Kelsen argued, from within the legal order that a *basic norm* is retrospectively presupposed, with which the enactors of the constitution are endowed with legitimacy to act in the name of the whole, Hans Kelsen, *Pure Theory of Law* (Berkeley and Los Angeles: University of California Press, 1967), 195.

[36] Hans Lindahl, "Sovereignty and Symbolization," *Rechtstheorie* 28, no. 3 (1997): 354.

[37] Pasquale Pasquino, "Popular Sovereignty – The People's Two Bodies," in *Sovereignty in Action*, ed. Bas Leijssenaar and Neil Walker (Cambridge: Cambridge University Press, 2019), 154. For a similar argument, see Lindahl, "Sovereignty and Symbolization," 357; Pierre Rosanvallon, *Democracy Past and Future*, ed. Samuel Moyn (New York: Columbia University Press, 2006), 82; Honig, *Emergency Politics - Paradox, Law, Democracy*.

power' and exerting their sovereignty at last",[38] this will remain a fundamental impossibility.

Upon the same logic, theorists of representation like Nadia Urbinati and Iris Marion Young have similarly argued that the paradox of representative democracy is indeed one from which we can escape. Not, as participatory theorists like Pateman have assumed, by amending our representative institutions, but by eschewing the very ideal upon which such amendments have been rationalized to begin with. Representation, in short, is neither antithetical to democracy, nor "merely a pragmatic alternative for something we, modern citizens, can no longer have, namely direct democracy",[39] but the very institutionalization of the empty seat of power.[40] While we cannot speak, in our modern democracy, of the people being present literally or in fact, we can, it is suggested, speak of citizens as present through a

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[38] Canovan, *The People*, 129.

[39] Urbinati, *Representative Democracy*, 10.

[40] Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), 126; also Lisa Disch, "The People as "Presupposition" of Representative Democracy – An Essay on the Political Theory of Pierre Rosanvallon," *Redescriptions – Yearbook of Political Thought, Conceptual History and Feminist Theory* 12 (2008); Sofia Näsström, "Democratic Representation Beyond Election," *Constellations: An International Journal of Critical and Democratic Theory* 22, 1 (2015). The argument here relates to the contentious issue of whether, and in what sense, representatives *create* what they represent, see Andrew Rehfeld, "What is Representation?: On Being and Becoming a Representative," in *Reclaiming Representation: Contemporary Advances in the Theory of Political Representation*, ed. Mónica Brito Vieira (New York and London: Routledge, 2017), 61; Saward, *The Representative Claim*, 71; Mónica Brito Vieira, "Representing Silence in Politics," *American Political Science Review* 114, no. 4 (2020): 983; Mónica Brito Vieira, "Performative Imaginaries: Pitkin versus Hobbes on Political Representation," in *Reclaiming Representation: Contemporary Advances in the Theory of Political Representation*, ed. Mónica Brito Vieira (New York and London: Routledge, 2017), 47; Philip Pettit, "Varieties of public representation," in *Political Representation*, ed. Ian Shapiro et al. (Cambridge: Cambridge University Press, 2010), 76. Similarly, the question of whether representation is antithetical to democracy or not remains subject to considerable contention. On the argument that it is, see Castoriadis, "The Greek Polis and the Creation of Democracy."; Manin, *The Principles of Representative Government*; Pitkin, "Representation and Democracy: Uneasy Alliance." On the contrary argument see, in addition to the literature above, Bryan Garsten, "Representative government and popular sovereignty," in *Political Representation*, ed. Ian Shapiro et al. (Cambridge: Cambridge University Press, 2010); Pettit, "Varieties of public representation."; Mónica Brito Vieira and David Runciman, *Representation* (Cambridge/Malden: Polity, 2008); George Kateb, "The Moral Distinctiveness of Representative Democracy," *Ethics* 91, no. 3 (1981).

disembodied *voice*,[41] endowed with a kind of *artificial* presence.[42] The paradox of representation, thus, can be resolved once it is acknowledged that this disembodied or artificial presence does not signify a less genuine, or real, presence in any substantial sense. Once we forego the idea that there is a literal presence which would bring into being a people capable of expressing its genuine and authentic will, the paradox of presence can be, if not resolved, then at least made to lose its normative significance.[43] In fact, the paradox reveals its democratic significance by virtue of the fact that *no one* can lay claim to speak and act unequivocally in the name of the people.

From the Lefortian point of view, then, the paradoxes and dilemmas of modern democracy arise not from any practical problem, but from the erroneous belief in the possibility of the presence of the people to begin with. The source of our paradox, in short, is our historically inherited tendency to succumb to what Jacques Derrida once called a *metaphysics of presence*.[44] From this point of view, it is this metaphysics of presence which today informs the populist disquietude with the paradox of modern democracy.[45] Populism, in short, is the preeminent manifestation of those fictions of presence which inform the "failure to respect the emptiness of the place of power".[46] It is, in those terms, the manifestation of a desire for presence, for the kind of *pure democracy* which "understands the democratic people in terms of a homogeneous body with a singular will".[47] For understandable reasons, then, Rousseau looms large in explanations of the populist logic. The

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[41] Urbinati, *Representative Democracy*, 5. For a problematization of the relationship between voice and presence, Vieira, "Representing Silence in Politics."

[42] Runciman, "The Paradox of Political Representation," 94. Anne Phillips, who have also drawn on Pitkin, categorizes these approaches to representation as espousing a 'politics of ideas', and opposes to it what she calls a 'politics of presence'. Where the former regards the representation of ideas the sole legitimating factor in the representative system, the latter argues for the importance of a more proportional representation of politically marginalized groups, who are thereby rendered 'present', Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1995).

[43] In this sense, the antinomy between direct and representative democracy, it is suggested, begins to come undone, Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001), 128; Saward, *The Representative Claim*, 162.

[44] Jacques Derrida, *Of Grammatology* (Baltimore: Johns Hopkins University Press, 1976).

[45] On Lefort's view of populism, Lefort, *Democracy and Political Theory*, 107.

[46] Rummens, "Populism as a Threat to Liberal Democracy," 561. Also, Jaakko Heiskanen, "The nationalism-populism matrix," *Journal of Political Ideologies* 26, no. 3 (2021): 9.

[47] Rummens, "Populism as a Threat to Liberal Democracy," 558. Also Moffitt, *Populism*, 96.

populist vision, as Pierre Rosanvallon has put it, is one which "would seem to have been borrowed directly from the passages in Rousseau's *Social Contract* deeming that the general will could not err".[48] From the Lefortian point of view, then, the populist view follows from the belief that the paradox of presence is one which can, and ought, to be resolved, underpinned by the belief that a more genuine and authentic presence will resolve it. Liberal critics, thus, have rightly seen in the populist romanticization of pure democracy the spectre of democratic terror, and the closing of "democracy's irreducible gap between a society's image of unified collectivity and its actuality of social division".[49]

From this point of view, then, the paradox of presence, and the disquietude we now feel about it, resides merely in an idea. It resides merely in the idea of *the people*, whose genuine and authentic will, we imagine, some ideal form of direct democracy would give expression to. The paradox of presence, in the end, is underpinned merely by the notion that some literal presence, some physical presence in an assembly of all, would signify a more real and genuine democracy than the one we now have. The error, in short, is to imagine the people present at the seat of power, embodying it fully and unequivocally. It, in the end, is an idea which fails to understand that in democracy, the seat of power is empty: no one can truly embody it and speak, unequivocally, in the name of the people. It fails to grasp that democracy means that "those who exercise power do not possess it".[50]

In view of the overwhelming proliferation of Lefortian responses to the paradox of presence in contemporary political theory – much of it highly abstract in nature – it may seem a forlorn endeavour to suggest that there remains an ambivalence here. Yet, beneath all this abstraction, it is worth emphasizing the rather obvious fact that the paradox of presence does remain. The linguistic fact does remain that, even within the Lefortian thesis, we still need to speak of the people being

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[48] Rosanvallon, *The Populist Century*, 25.

[49] Jason Frank, "The People as Popular Manifestation," in *Sovereignty in Action*, ed. Bas Leijsse-naar and Neil Walker (Cambridge: Cambridge University Press, 2019), 85. While there is certainly, as Pierre Rosanvallon points out, a romanticism of the referendum, regarded as "an effective instrument to be used by a healthy and fully sovereign people for sidelining corrupt and incompetent elites", populism is not a critique of representation as such, Rosanvallon, *The Populist Century*, 23. "Populism without participation", as Jan-Werner Müller similarly notes, "is an entirely coherent proposition", Müller, *What is Populism?*, 29. Neither Chantal Mouffe nor Ernesto Laclau question the necessity of representation, and neither espouse direct democracy in any literal sense. Rather, both invoke symbolic representation, and accept, with some caveats, the necessity of representation through leadership, Laclau, *On Populist Reason*, 160; Mouffe, *For a Left Populism*, 70.

[50] Lefort, *Democracy and Political Theory*, 225.

present *in some sense*. The question, then, is to what this linguistic fact alludes. Or, to put the question in more banal terms, is the seat of power literally empty? Since the people are, in some sense, made present in the world by the representatives who speak in their name, what do we mean by 'presence' here? And can this presence be entirely bereft of its relation to time and space? After all, though we may substitute the disembodied voices of the people for the embodiment in the democratic assembly, even a voice must be physically present somewhere, and at some moment in time, and must be carried by a physical body in order to be so. And though we may substitute an artificial presence for a real one, even such an artificial presence requires a very real presence for it to become anything more than a chimera. Thus, we seem to return to the question: what do we mean by 'presence'? Since no disembodied voice can exist on its own, and no rhetorical figure affect the world, we seem still to presuppose a different presence; a presence by which these incorporeal entities are nevertheless made present in the world and act upon it.

The ambivalence of contemporary political thought, then, resides in the fact that while we may not want the fiction of a general deliberative assembly, or the embodiment in the assembled, physically present people, neither can we do merely with the virtual presence of scattered citizens in the public sphere,[51] or the disembodied voices of the represented. The virtual presence of citizens in the public sphere notwithstanding, in the end, "only the administrative system itself can 'act'".[52] The non-literal presence of the represented notwithstanding, in the end, the representative "must be the one who acts".[53] The question, then, is what is meant by 'acting', and why this acting presupposes a presence qualitatively different from the ephemeral presence of the disembodied voice or artificial presence of the represented. In the simplest possible sense, then, the practical question reappears by virtue of the fact that the seat of power in our modern democracy does not appear to be *literally* empty.

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[51] The idea that the public sphere is an equivalent of the democratic assembly, in fact, precedes deliberative democratic theory. Yves R. Simon referred to public opinion as a third deliberative assembly, thus incorporating an element of direct democracy within representative democracy: "The truth is that in every democracy, at least under modern conditions, the people retains the character of a deliberating assembly", Yves R. Simon, *Philosophy of Democratic Government* (Chicago & London: The University of Chicago Press, 1964), 186. Already J. S. Mill suggested that the public sphere was "the real equivalent, though not in all respects an adequate one, of the Pnyx and the Forum", Mill, *Considerations on Representative Government*, 9.

[52] Habermas, "Three Normative Models of Democracy," 29.

[53] Pitkin, *The Concept of Representation*, 209.

In this sense, then, the paradox of presence which the Lefortian thesis was meant to dissolve yet again appears. It reappears by virtue of the mundane fact that only through the very literal presence of tangible individuals can the state truly act on the world. It reappears by virtue of the question of *who* this then ought to be, and whether it ought, or can, be the body of concrete citizens. And, if populism is anything more than a disfigurement of democracy, if it is also a symptom, it is by virtue of the fact that this question is not incidental. It is by virtue of the fact that where politics has become "a mere issue of managing the established order, a domain reserved for experts",[54] we may no longer recognise, in any meaningful sense, the people present at the seat of power.

If the participatory claim, in the end, seems difficult entirely to discount, it is arguably for the simple reason that, since someone must be present to 'act', the question is what prevents the body of concrete citizens from being present to do this themselves. And if we are then brought back to the practical problem, the question remains of how we are to understand it. We seem to find, again, no other vocabulary than that of the spatial: the body of concrete citizens is simply too large, and too dispersed across the territory of the modern state, for it to be present in one *place*. And while there is something incontrovertible about this problem, it is a vocabulary which, in the end, tells us relatively little about why someone *must* be present in the first place. After all, if the problem is merely one of size and spatiality, there would seem to be little reason not to conclude, with participatory democratic theorists, that "the ultimate permissible size of a polis is now as elastic

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[54] Mouffe, *For a Left Populism*, 17. For a similar argument, Colin Crouch, *Post-Democracy* (Cambridge/Malden: Polity Press, 2004); Chantal Mouffe, *On the Political* (London and New York: Routledge, 2005); Christopher Bickerton and Carlo Invernizzi Accetti, "Populism and Technocracy," in *The Oxford Handbook of Populism*, ed. Cristóbal Rovira Kaltwasser et al. (Oxford: Oxford University Press, 2017); Rummens, "Populism as a Threat to Liberal Democracy." Nadia Urbinati regards both populism and technocracy, or what she calls 'epistemic democracy', as two iterations of the contemporary disfigurement of democracy, Nadia Urbinati, *Democracy Disfigured* (Cambridge, Massachusetts; London, England: Harvard University Press, 2014). For this reason, theorists who otherwise have been reluctant to share their view have conceded that "critics like Mouffe have a point that needs to be answered", Müller, *What is Populism?*, 60. The arguments of Mouffe and Laclau is premised on the assertion that every order is necessarily *hegemonic* in nature, whose essentially *political* character technocracy conceals, Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy - Towards a Radical Democratic Politics* (London/New York: Verso, 1985); also Yannis Stavrakakis, "Populism and Hegemony," in *The Oxford Handbook of Populism*, ed. Cristóbal Rovira Kaltwasser et al. (Oxford: Oxford University Press, 2017). For this reason, Laclau has argued that, as long as there is an order, it is doubtful whether the seat of power truly is empty, Laclau, *On Populist Reason*, 166.

as technology itself".[55] The question, again, is whether the source of our paradox is merely one of size. The promise of technology may, in the end, prove no more 'redeeming' than the momentary presence of the people in the streets or the squares, or through the occasional referendum.

I have here sought to outline the two somewhat distinct senses of the word 'presence' in contemporary political thought, and how these two senses have informed different ways of conceiving the source of our modern paradox as, on the one hand, a practical problem and, on the other, a normative one. While these provide partial answers to the question, neither account for it entirely. The paradox may appear less disconcerting if we acknowledge that there is no *people* which can simply be present to itself as a unified whole, but since we must still assume the very real and literal presence of those through whom *the people* is nevertheless made present and acts on the world, the paradox itself is not dissolved. And while the totality of concrete citizens may be prevented from being present to do this acting themselves, by the mere fact that they are too many and too dispersed, this alone does not tell us why the paradox cannot be resolved by some singular and momentary redeeming presence, or through the promise of technology. If we wish to understand our modern paradox, we might have to acknowledge that our modern political thinking still assumes, though perhaps without stating it, that the problem resides in the fact that the people cannot be present *often enough*.

If there is then merit to being archaeologists in the manner suggested by Skinner, it resides in the fact that we may use history to make this assumption self-conscious. It resides in the fact that, in doing so, we may begin to pose questions about why it is that this assumption still figures in contemporary political thinking. Why, after all, might we want the people present *often enough*? What, in the end, is *often enough*? Does it, indeed, matter *who* is present? Will it be enough to say that those who exercise power do not possess it?

To pose these questions is to try to understand the problem which underpinned the critique which figures like Filmer, Hobbes, and Pufendorf directed towards the democratic form of government. The argument here is in a sense to invert the Lefortian one. It is certainly true to say that "while Hobbes fills the empty place of power with the mortal god of Leviathan, Lefort leaves it open".[56] The question

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[55] Benjamin R. Barber, *Strong Democracy: Participatory Politics for a New Age*, Twentieth Anniversary ed. (Berkeley: University of California Press, 2003), 246. For a similar belief in the possibility of technology to bring about direct democracy, William E. Scheuerman, *Liberal Democracy and the Social Acceleration of Time* (Baltimore and London: The John Hopkins University Press, 2004), 206.

[56] Näsström, "Democratic Representation Beyond Election," 4.

we may nevertheless wish to ask, however, is *why* Hobbes fills the seat of power. While we may not wish to recover Hobbes' solution, we may nevertheless wish to understand the problem. The state, after all, is effective in the world only as long as *someone* is present to act on its behalf, and if we moderns are no more willing to countenance the authority of the state resting for long periods of time in the air or the walls, the problem of presence arguably remains our own. This is the problem we may wish to understand if we wish to understand how we came to end up in our modern paradox.

The History of the Present People

The argument of this thesis, then, is that if we wish to understand how we came to end up in our modern paradox, we ought to return to the democratic assembly in early modern political thought. Though we will, until Rousseau, find no one amenable to it,[57] the argument is that if we care to listen to what was said against it, we may understand the problem of presence which underpins our modern paradox.

If we care to truly listen to what was said against the democratic assembly, we will find something other than our familiar spatial narrative. But more than that, we find that this particular idea is a prism in which are reflected the fundamental concepts which early modern thought laid down, and with which we are still living. If the democratic assembly occupied a particular place in early modern political thought, it is for the very reason that concepts which in other forms of government would appear distinct, in the democratic form of government converge in particular ways. Within it, *the people* appears simultaneously as a political unity and as an aggregate of concrete citizens, and as the bearer of the power of the state and its subjects. Arguably none more so than Hobbes recognized this peculiarity in his treatment of the democratic form of government, and exploited this confluence of concepts in his arguments. In the question of whether the people can be present, Hobbes did not ask whether they could fit in a piece of delineated

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[57] The question of Hobbes' opinion of democracy, it should be noted, has elicited something of a debate among modern commentators, Richard Tuck, "Hobbes and democracy," in *Rethinking the Foundations of Modern Political Thought*, ed. Annabel Brett and James Tully (Cambridge: Cambridge University Press, 2006); Kinch Hoekstra, "A lion in the house: Hobbes and democracy," in *Rethinking the Foundations of Modern Political Thought*, ed. Annabel Brett and James Tully (Cambridge: Cambridge University Press, 2006); Ingrid Creppell, "The democratic element in Hobbes's' Behemoth'," *Filozofski Vestnik* 24, no. 2 (2003).

space, but whether the totality of concrete citizens could be present as a political unity to give life to, and make present, the artificial Man of the Leviathan. For it to be so, the people would have to be present in every sense of the word: in space, time, and as a unity, and often enough to have a say over the innumerable events which will call the association of the state into action. If we truly look, the democratic assembly is a prism in which the fundamental concepts of early modern, and indeed modern, political thought, are reflected.

The democratic assembly is a prism, provided we truly look. In the historiography of democratic thought, however, scholars have generally been reluctant to do so. The fact that the early modern period is often either entirely absent from this historiography, or, when it is treated, focused on thinkers held to have prefigured – sometimes their own words to the contrary – modern democracy, bespeaks to the methodological problem suggested here.[58] The end result of this kind of omission in the historiography of democratic thought is that what was said against democracy figures prominently only in the literature specifically dedicated to anti-democratic thought.[59] While this omission at times results in mere anachronism,[60] even when it does not, it easily leads to a teleology whereby what we today take democracy to mean becomes hypostatized into an entity, as though the

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[58] On the tendency of historiography to eschew early modern, and in general, anti-democratic thought, and the methodological implication of this neglect, see Cesare Cuttica and Markku Peltonen, "'Gone Missing': Democracy and Anti-democracy in Seventeenth-Century England," in *Democracy and Anti-democracy in Early Modern England 1603–1689*, ed. Cesare Cuttica and Markku Peltonen (Leiden/Boston: Brill, 2019). Examples of the above include, *Democracy the Unfinished Journey: 508 BC to AD 1993*, ed. John Dunn (Oxford: Oxford University Press, 1992); Paul Cartledge, *Democracy: a Life* (Oxford: Oxford University Press, 2016); R. R. Palmer, *The Age of the Democratic Revolution: The Challenge* (Princeton: Princeton University Press, 1959). Dunn's anthology arguably does not succumb to anachronism, but nevertheless focuses specifically on periods and writers in some sense espousing democratic ideas. In the early modern period, this typically includes the English seventeenth-century Leveller arguments for representation and extended franchise. Whatever their significance for later democratic developments, it is noteworthy that "the Levellers never called themselves democrats", David Wootton, "Leveller Democracy and the Puritan Revolution," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press 1991), 426.

[59] See for instance, Joseph V. Fernia, *Against the masses : varieties of anti-democratic thought since the French Revolution* (Oxford: Oxford University Press, 2001); Jennifer Tolbert Roberts, *Athens on Trial: The Antidemocratic Tradition in Western Thought* (Princeton: Princeton University Press, 1994).

[60] Habermas' history of the *public sphere* does pose the question of in what sense the public sphere is 'democratic', other than by virtue of Habermas' retrospective theoretical argument, Jürgen Habermas, *The Structural Transformation of the Public Sphere : An Inquiry Into a Category of Bourgeois Society*, vol. 1 (Cambridge, Mass: MIT Press, 1991).

idea was already there, in crystalline form waiting to emerge through its "long, slow and wholly unexpected victory".[61] Where we read history in terms of the present, the obvious risk is that what we have now forgotten, remains forgotten. Though none of the philosophers who spoke of the democratic assembly before Rousseau occupy a given place in the history of what we now take to be modern democracy, we will, in neglecting them, also neglect something important about how modern democracy came to be.

Certainly, a few works have indeed sought to look at the democratic assembly of early modern thought. Since Skinner's authoritative *Foundations of Modern Political Thought*,[62] a few important works devoted to the early modern roots of our democratic thinking have posed the question of why the presence of the people and direct democracy should have become such an entrenched and romanticized ideal to begin with. While Urbinati has laid the source of this romanticization squarely at the feet of Rousseau,[63] Edmund Morgan has instead suggested that the *fiction* of popular sovereignty was invented by *parliamentarians* during the English civil war in order to buttress claims of authority on behalf of a ruling few.[64] While the latter account does beg the question of why so much has been said, apparently in all sincerity, about something patently 'false',[65] historian Daniel Lee has sought to provide a more full account of why "popular sovereignty had to be 'invented' in the first place".[66] The answer, Lee suggests, is that popular sovereignty emerged primarily "as a negative argument, to show to whom sovereignty should *not*

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[61] John Dunn, *Setting the People Free: The Story of Democracy* (London: Atlantic Books, 2005), 18.

[62] Quentin Skinner, *The Foundations of Modern Political Thought – Volume One: The Renaissance* (Cambridge: Cambridge University Press, 1978); Quentin Skinner, *The Foundations of Modern Political Thought – Volume Two: The Age of Reformation* (Cambridge: Cambridge University Press, 1978).

[63] Urbinati, *Representative Democracy*.

[64] Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York/London: W.W. Norton & Company, 1988), 50. For a similar argument, see Christopher Morris, "The Very Idea of Popular Sovereignty: "We the People" Reconsidered," *Social Philosophy and Policy* 17, no. 1 (2000): 25; Kevin Olson, *Imagined Sovereignties: The Power of the People and other Myths of the Modern Age* (Cambridge: Cambridge University Press, 2016).

[65] On the question of 'truth' in historical methodology, see Quentin Skinner, "Interpretation, rationality and truth," in *Visions of Politics – Volume 1: Regarding Method* (Cambridge: Cambridge University Press, 2002).

[66] Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford: Oxford University Press, 2016), 3.

belong".[67] The decisive point in this idea, was the distinction between the *possession* and the *exercise* of sovereignty – an argument somewhat mirroring Richard Tuck's distinction between *sovereignty* and *government* in his *The Sleeping Sovereign*.[68] In both accounts, the important point is that the people do not need to *exercise* their sovereignty in order to possess it. Indeed, the concept of popular sovereignty itself, Lee suggests, "has nothing essentially to do with democracy". Not until the seventeenth century, and at the hands of royalist writers like Hobbes and Filmer, did the idea which modern democratic thought now takes as its ideal – sovereignty exercised immediately by the people – emerge, and did so essentially as "an *argumentum ad absurdum*, to pour scorn on the very idea of the whole people acting in unison as one sovereign entity".[69]

These accounts, then, do indeed acknowledge the merit of looking to early modern thought in order to understand our present. And, they would seem to buttress, in historical terms, what Lefort has asserted in theoretical.[70] If the argument of Filmer and Hobbes against the democratic assembly was indeed an *argumentum ad absurdum*, there would seem to be little reason to take seriously the idea of the people exercising their sovereignty. What Rousseau, and subsequently participatory democratic theorists, have taken as the democratic ideal, then would seem to be, as Lefort suggested, a false ideal.

The merit of these accounts notwithstanding, the question perhaps is not only one of where to look, but *how* to look. While these accounts do bring out important facets of the history of modern democratic thought, they also, in some sense, neglect the opportunity to understand what was said against democracy. Filmer and Hobbes may well have intended their arguments as an *argumentum ad absurdum*. But, regardless of their intentions, we can also acknowledge that in those arguments, they posed questions we too may wish to ask. After all, if the people is a *sleeping sovereign*, who is in the meantime, awake? If popular sovereignty is not exercised by those who possess it, who *does* exercise it? Or, to pose

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[67] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 14.

[68] The distinction between *sovereignty* and *government*, which Tuck traces to Bodin, appears in Hobbes' figure of the *sleeping sovereign*, in which the people retain their sovereignty but entrusts, for a time, government to a temporary monarch. This distinction, Tuck suggests, is what allowed modern democracy to emerge, where the people is a sleeping sovereign, occasionally waking to exercise its sovereignty, Tuck, *The Sleeping Sovereign*.

[69] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 318, 05.

[70] Andrew Arato has suggested precisely that Edmund Morgan's historical account buttresses Lefort's theoretical account, Arato, *Post Sovereign Constitution Making: Learning and Legitimacy*, 72.

the question more succinctly, why must sovereignty be, in the first place, *exercised* at all? If, methodologically speaking, we bracket the *intentions* of the authors in saying what they said, we may focus on what *allowed* them to say what they said.[71]

If the aim then is to be archaeologists, there is merit to begin with the intention – as Michel Foucault phrased the *archaeological* endeavour to which Skinner alludes – to study "things said, precisely as they were said".[72] It is to take as a point of departure the assumption that in what early-modern thinkers like Hobbes, Filmer and Pufendorf said, we find a genuine theoretical problem which would continue to inform how the idea of popular sovereignty and democracy came to be articulated through the works of subsequent thinkers like John Locke, Jean-Jacques Rousseau, and the theorists of representative government by the end of the eighteenth century.

If we truly look, the democratic assembly is indeed a prism, and whatever the intentions Hobbes and Filmer had in saying what they did, their arguments invoked concepts subsequent thinkers continued to use, and did so in order to pose a genuine theoretical problem. If the power of the state cannot rest for long periods of time in the air or the walls of a chamber, if it must be *carried* by a body present, the dilemma of democracy is a very real one. The people may not *need* to exercise their sovereignty in order to possess it, but if sovereignty *needs* to be exercised at all, we return to the question of who does exercise it. This is the dilemma thinkers like Hobbes and Filmer posed, and whether they did so in order to pour scorn on the idea of the people exercising their sovereignty, it is a dilemma which thinkers like Locke, Rousseau, Emmanuel Joseph Sieyès and Thomas Paine, who did not share their antipathy towards popular sovereignty, all in some sense sought to address.

And, this dilemma now remains our own. Admittedly, turning to early modern thought does mean that the study is, from the outset, framed by the *sovereign state*, and arguably, neither the concept of *sovereignty* or the *state* ought to be adopted unproblematically. My aim here, however, is not to reify these concepts, or to

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[71] This then, in part, concerns the methodological question of whether the intentions of an author, or the discourses and paradigms within which they are expressed, are to be attributed methodological primacy, a question to which I will return below. See on this question specifically, Skinner, "Motives, intentions and interpretation," 94; Skinner, "Interpretation and the understanding of speech acts," 119; J. G. A. Pocock, *Politics, Language, and Time: Essays on Political Thought and History* (Chicago and London: The University of Chicago Press, 1989), 25.

[72] Michel Foucault, *The Archaeology of Knowledge* (New York: Pantheon Books, 1972), 109.

suggest that there is no merit in trying to think beyond them.[73] It is nevertheless to suggest that these concepts are, and will likely remain, concepts that are difficult to think beyond. After all, despite the efforts of contemporary democratic theorists to envisage the seat of power as *empty*, none have eschewed the state. Indeed, despite many attempts in modern political theory to transcend the state, most have, if they have not been willing to espouse anarchy, been forced to concede it, or concepts "semantically equivalent" to it.[74] We do, and will likely continue, "to organise our public life around the idea of the sovereign state".[75] Similarly, while it may be argued that Bodin's views on sovereignty "now seem quaint and irrelevant",[76] there is the equally compelling argument that we are in fact 'captives of sovereignty',[77] and that the concept of "'sovereignty' will continue to structure

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[73] Contemporary thinkers who have sought to 'think beyond' the concept of sovereignty have in particular drawn on Hannah Arendt and Hans Kelsen. Thus, for instance, Andrew Arato has sought to devise a theory of "post sovereign constitution making", Arato, *Post Sovereign Constitution Making: Learning and Legitimacy*. Also, Lucia Rubinelli, "How to think beyond sovereignty: On Sieyes and constituent power," *European Journal of Political Theory* 18, no. 1 (2019).

[74] Jens Bartelson, *The Critique of the State* (Cambridge: Cambridge University Press, 2001), 124. This, for instance, is the case with the pluralists of the early twentieth century, in whose political thought there was, as Harold Laski conceded, "a hint of anarchy", Harold J. Laski, *Studies in the Problem of Sovereignty* (London: George Allen and Unwin Ltd, 1968), 24. Pointing to the richness and plurality of associations beneath the formal political institutions of the state, the pluralists of the early twentieth century, drawing on the association theory of Otto Gierke, sought precisely to resolve the question of the Hobbesian sovereign state, see Otto Gierke, *Political Theories of the Middle Age* (Mansfield Centre, CT: Martino Publishing, 2014), 73; Otto Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, ed. Ernest Barker (Cambridge: Cambridge University Press 1958), 44; Frederic William Maitland, "Introduction," in *Political Theories of the Middle Age* (Mansfield Centre, CT: Martino Publishing., 2014), xxvi; F. W. Maitland, *State, Trust and Corporation*, ed. David Runciman and Magnus Ryan (Cambridge: Cambridge University Press, 2003), 63; Laski, *Studies in the Problem of Sovereignty*, 5; also Ferdinand Tönnies, *Community and Civil Society*, ed. Jose Harris (Cambridge: Cambridge University Press, 2001), 228. For an overview, see David Runciman, *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press, 1997).

[75] Quentin Skinner, " Hobbes and the Purely Artificial Person of the State," *The Journal of Political Philosophy* 7, no. 1 (1999): 3.

[76] Pavlos Eleftheriadis, "Law and Sovereignty," *Law and Philosophy* 29, no. 5 (2010): 535.

[77] Jonathan Havercroft, *Captives of Sovereignty* (Cambridge: Cambridge University Press, 2011); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), 239.

and direct our legal and political imagination".[78] Again, the aim here is not to suggest that we do in fact need concepts like 'the state', or 'sovereignty'. It is, however, to suggest that we ought to try to understand to what problems these concepts have, historically, referred. In so doing, we may find that if we are now captives of these concepts, it is because these problems are still, in some sense, our own.

On the question of the state, Michael Oakeshott once argued that it is "as if, after five centuries, we had never got used to the sort of association called the state and had never ceased to find it, and the identity it imposes upon us, puzzling".[79] One of the central arguments of this thesis is that the question of the presence of the people is one indissolubly tied to the question of the state. If the democratic assembly, as it appeared in the political theory of Hobbes, is a prism, it is because it reflects the problem of the state itself. This problem, I suggest, was – in part at least – the problem of political order and time. This problem, certainly, is not one which begins with Hobbes. How political order could be made to resist the inevitable decay of time was a problem which preoccupied both Plato and Aristotle,[80] as it was the problem with which Machiavelli was concerned when he spoke of the prudence by which the prince might hope to maintain his *stato* in the face of *fortuna*.[81] But, what appeared with early modern political thought, and which

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[78] Martti Koskenniemi, "Conclusion: vocabularies of sovereignty – powers of a paradox," in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, ed. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2010), 222.

[79] Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975), 197.

[80] John G. Gunnell, *Political Philosphy and Time* (Middletown, Connecticut: Wesleyan University Press, 1968), 232.

[81] J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton and Oxford: Princeton University Press, 1975), 165. A rich literature has been devoted to the manner in which political thought has been intimately related to perceptions of time, whether understood as cyclical or linear, as progressive or eschatological. See for instance, Reinhart Koselleck, *The Practice of Conceptual History* (Stanford: Stanford University Press, 2002); Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (New York: Columbia University Press, 2004); Pocock, *Politics, Language, and Time: Essays on Political Thought and History*; Hannah Arendt, *Between past and future : Six exercises in political thought* (New York: The Viking Press, 1961); Hannah Arendt, *The Human Condition* (Chicago & London: The University Chicago Press, 1958). In fact, Hobbes' conception of time alone has elicited a great deal of scholarly attention, see Giovanni Fiaschi, "Hobbes on Time and Politics," *Hobbes Studies* 18, no. 1 (2005); Geoffrey Gorham, "Hobbes on the Reality of Time," *Hobbes Studies* 27, no. 1 (2014); William R. Lund, "Tragedy and Education in the State of Nature: Hobbes on Time and the Will," *Journal of the History of Ideas* 48, no. 3 (1987). The question of democracy and time has also elicited a number of works. See Paulina Ochoa Espejo, *The Time of Popular Sovereignty*, The Pennsylvania State University Press, (University Park, Pennsylvania, 2011); Dennis F. Thompson, "Democracy in

appears perhaps particularly clearly in Hobbes, is the problem of the state's presence in time. The – more or less – continuous presence of the state in time here becomes, perhaps for the first time, a fundamental problem of political thought, and would remain so throughout the early modern period. What thus imbued Hobbes' treatment of the democratic assembly with its particular significance, was to superimpose on this problem the concept of 'the people'. It is in this sense that the early modern idea of the democratic assembly is a prism which, provided we truly look, reveals the problem of the presence of the people.

The question, then, is if this is not also our own problem. If we wish to understand our modern paradox, we must perhaps first acknowledge that the "presence of the state" in contemporary political thought, [82] reflects a quite literal presence in the real world. In acknowledging this, we may have to recognize that our modern dilemma is also of our own making. As long as we continue to demand the presence of the state, we will also need to see, in some sense, the people present to carry it. To understand why this may be the case, we need to know not only where to look for the source of our modern dilemma, but also how to look.

An Archaeology of the Problem of Presence

As already indicated, the history recounted here is one dictated by the methodological question of not only where to look for the source of our modern paradox, but also how to look. The reason for turning to history, in the first place, is underpinned by the methodological assumption that if we now employ concepts unselfconsciously or uncomprehendingly, it is because history has bequeathed on us concepts and ways of thinking the origins of which, and thereby the full meaning of which, we have, in time, come in part to forget. The implication, thus, is that as we continue to employ those concepts, we run the risk of endlessly reiterating our own problems. If we continue to think of the source of our modern paradox as one of size and spatiality, we will arguably continue to find convincing the promise that it might be, in some way, resolved. On the contrary, if we continue to believe that the seat of power is empty, we will continue to find

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Time: Popular Sovereignty and Temporal Representation," *Constellations: An International Journal of Critical and Democratic Theory* 12, no. 2 (2005); Honig, *Emergency Politics - Paradox, Law, Democracy*; Rosanvallon, *Democracy Past and Future*; Scheuerman, *Liberal Democracy and the Social Acceleration of Time*.

[82] Bartelson, *The Critique of the State*, 5.

disconcerting the indication that it might not be. Trying to think oneself out of these problems with the very same concepts, then, becomes an exercise in trying to lift oneself up by the boot-straps.

For these reasons, then, there is reason to turn to the history of those concepts the origins of which we have, partly, forgotten. But, if history in this sense has value, the methodological principles must be to avoid the temptation of imposing on this history our own understanding. If we turn to early modern thought, it cannot again be in order to see which authors anticipated, without knowing it, our modern representative democracy.[83] It is, I would argue, intrinsic to the idea of the kind of archaeological endeavour proposed by Skinner, that the reading of historical texts, even very theoretical or philosophical texts like those of Hobbes, Locke and Rousseau, ought to be, precisely, *historical*. After all, the only manner in which we can treat history as a repository of "questions we no longer ask",[84] is if we first of all recognize what questions a historical text is in fact asking. It is, in short, intrinsic to the value of history to avoid imposing on it, anachronistically and teleologically, the very concepts and ways of thinking whose history we wish to understand.

The question, then, is *how* to look. Skinner's strategy for avoiding anachronisms and teleology, briefly put, is to approach the statement one wishes to interpret as *intended* to be an answer to a specific question. That is, it is to assume a statement to have been intended as, "for example, to attack or defend a particular line of argument, to criticise or contribute to a particular tradition of discourse, and so on".[85] What Skinner has in mind is the *conscious* intention, on the part of an author, to say something in response to something previously said. While this manner of approaching a historical text inoculates the historian from imposing their own questions on the text, Skinner's allusion to concepts *unselfconsciously* applied suggests that *meaning* cannot be entirely exhausted by the intentions of the author. Skinner, certainly, does acknowledge this point, pointing out that "any text of any complexity will always contain far more in the way of meaning than even the most vigilant and imaginative author could possibly have intended

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[83] Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory* 8, no. 1 (1969): 10f.

[84] Skinner, *Liberty Before Liberalism*, 112.

[85] Skinner, "Motives, intentions and interpretation," 100.

to put into it".[86] It is on this point that Skinner concedes the merit of giving interpretative primacy, in the manner of Foucault, to *discourse*.[87]

I suggested above that precisely in giving interpretative primacy to discourse, as opposed to the intentions of authors, we may pose questions we otherwise might not pose. In this sense, I have found it useful to draw on the archaeological framework of Foucault. My aim, to be sure, has not been to provide an exhaustive account of underlying *discursive formations* or *epistemes*. It has been, however, to suggest that the meaning of an utterance, what Foucault calls *the statement*, always presupposes other statements, and must be understood as situated within "a whole adjacent field".[88] It has been to presuppose that if words like 'the assembly', 'people' or 'democracy' possess, for a given context, a regularity in what they mean,[89] it is because there are certain rules which dictate how such words can be used. It also presupposes that the meaning of these words is not entirely the invention of the authors who use them, but follows from rules which "operate not only in the mind or consciousness of individuals, but in discourse itself".[90] The methodological principle then implies that interpretation ought not to privilege uncovering the intentions behind a statement, but to ask of those statements "what it means to them to have appeared when and where they did – they and no others".[91]

To return to the question of how to interpret Hobbes' *argumentum ad absurdum* on the democratic assembly, the point to which I alluded earlier is that this argument precisely presupposes an entire field of statements which give meaning to concepts like 'state', 'people' and 'sovereign'. Certainly, we may interpret

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[86] Skinner, "Interpretation and the understanding of speech acts," 113.

[87] Skinner has himself frequently noted the overlap between his approach and that of Foucault, and points out that, contrary to the emphasis placed on the author implied by the study of *intentions*, "our main attention should fall not on individual authors but on the more general discourse of their times", Skinner, "Interpretation and the understanding of speech acts," 118. J. G. A. Pocock similarly suggests that an understanding of the intentions of the author must be preceded by taking note of the vocabulary available with which to express those intentions, since "only after we have understood what means he had of saying anything can we understand what he meant to say", Pocock, *Politics, Language, and Time: Essays on Political Thought and History*, 25. Compare Reinhart Koselleck's "methodologically minimal claim: that past social and political conflicts must be interpreted and decoded in terms of their contemporary conceptual boundaries, and the self-understanding on the part of past speakers and writers of their own language-use", Koselleck, *Futures Past: On the Semantics of Historical Time*, 80.

[88] Foucault, *The Archaeology of Knowledge*, 97.

[89] Foucault, *The Archaeology of Knowledge*, 74.

[90] Foucault, *The Archaeology of Knowledge*, 63.

[91] Foucault, *The Archaeology of Knowledge*, 109.

Hobbes' intentions in invoking this field as an answer to a question – as for instance to dispute the theory of popular sovereignty. But, Hobbes' *argumentum ad absurdum*, to use Foucault's terminology, is also a branch on an entire "tree of enunciative *derivation*".[92] If we wish to understand the argument, we ought to attempt to understand the tree of which it is a branch. This derivation does not aim to uncover the inner life of Hobbes, or to reconstruct the logical edifice of his theory. It is rather to attempt to see which other statements any given statement presupposes, and in what way. The statement, in this sense, is the branch of a tree composed of other statements, some held to be fundamental and accepted as truthful, and others regarded as hypothetical or doubtful, some expressing fundamental axioms, others descriptions or definitions, linked through inferences, deductions, refutations, and so on. It is a tree which imposes on the objects of the political world, be it the association of the state or the forms of government, a certain order which divides, distinguishes, and relates them to one another, and which gives to concepts like 'the state', 'people' or 'sovereignty' their meaning.[93] To understand the statement, that is, what an utterance *means*, then, is to attempt to understand from what other statements, and in what way, it is derived. The aim, in short, is to attempt to understand what made Hobbes' argument *meaningful*. The democratic assembly, then, is a prism in which are reflected the central concepts of modern political thought. And if philosophers like Hobbes and Filmer could pose an *argumentum ad absurdum* that was meaningful, it was because it was an argument derived, in a meaningful way, from equally meaningful statements.

While I have structured each chapter around one or a few central thinkers, my aim has not been to reconstruct their political theory as a self-enclosed edifice, or to regard them as manifestations of an underlying *episteme*. Rather, I have focused on those, often few and scattered, statements which touch upon the problem which is the subject of this thesis. The method, then, has been to attempt to interpret them precisely as branches of a tree, *derived* from other, more fundamental statements, themselves perhaps derived from those statements that "put into operation rules of formation in their most extended form".[94] This tree of derivation, certainly, does not necessarily begin and end with the individual author, or the book. Its roots, in fact, may be only implicitly present in the text itself as an

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[92] Foucault, *The Archaeology of Knowledge*, 147.

[93] This description is a summary of Foucault's description of the discursive formation, the object of archaeological analysis, Foucault, *The Archaeology of Knowledge*, 40-76.

[94] Foucault, *The Archaeology of Knowledge*, 147.

unproblematically assumed axiom, articulated explicitly only in the work of another author.[95] While I have structured the chapters around certain thinkers and texts, the analysis thus is only provisionally circumscribed by that author and the text. In this sense, I have, as Skinner similarly advices, sought to read the texts and authors here contextually. Similarly, the intention has not been to reconstruct the theories of these thinkers as a coherent logical edifice. Where statements appear as contradictory or in tension, the aim has instead been to try to understand what different, and possibly incompatible, fundamental statements they are derived from.[96] To follow this derivation, then, is to ask of these statements why they appeared when and where it did.

These rules of discourse will not be precisely the same throughout the period under study, and terms like 'state', or 'power', will not mean precisely the same thing in Hobbes as they do in, say, Locke. Nevertheless, neither are they all entirely different, and as I hope to show, if authors continued to struggle with the same fundamental problems, it is because at a fundamental level, these rules of discourse did not altogether change. Though Locke does not use words like 'state' or 'power' precisely as Hobbes does, he nevertheless does assume, as did Hobbes, that political order demands the more or less continuous presence of the state. Indeed, if only hinted or implied at, all the thinkers enumerated here continued to assume the same thing. And if we now employ certain concepts unselfconsciously, it is arguably because we too continue to assume the same thing.

The intent to study the problem of presence historically, admittedly, does imply a tension with the prospect of such a history having any theoretical, or philosophical intent, in the way Skinner implies. If concepts acquire meaning historically, it would seem to make impossible the philosophical intent to have the meaning of concepts determined with reference to the real world.[97] The problem here specifically concerns the central concept of this thesis, 'presence'. While the thinkers treated in this thesis certainly do use this concept, the intent here has not been to simply follow its history. Rather, the concept here functions analytically. It refers to the regularity of a problem which, while it appears in slightly different ways in the thinkers treated here, nevertheless appears with a certain uniformity.

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[95] Foucault cautions against unduly assuming the unity of the book or the *oeuvre* of an author, Foucault, *The Archaeology of Knowledge*, 23, 60.

[96] Foucault, *The Archaeology of Knowledge*, 151. On a similar interpretation of contradictions in intellectual history, see Keith Michael Baker, *Inventing the French Revolution* (Cambridge: Cambridge University Press, 1990), 15.

[97] Jens Bartelson, "Philosophy and History in the Study of Political Thought," *Journal of the Philosophy of History* 1, no. 1 (2007).

While thinkers may use different terms or linguistic forms, such as speaking of 'power in being', or power being 'always ready and able', and so forth, the problem remains, fundamentally, the same. It is to this regularity that the concept of 'presence' thus refers. And, if there is a point at which history and philosophy do converge,[98] the aim of this concept is to link our modern theoretical concerns with those of history. Since we do still speak of presence as a problem, the concept, as I have used it in this thesis, is meant to clarify the problem which history and our modern thought, in some sense, share.

Though my intention has not been to exhaustively describe underlying discursive formations or *epistemes*, the scope conditions of the history recounted here do nevertheless assume that early modernity marks something of a discontinuity in political thinking. Specifically, I have here suggested that the concept of 'sovereignty' does mark such a discontinuity. This concept, I argue, came to fundamentally affect political thought, and by implication, the conception of democracy. While we might be tempted to assume that what early modern writers meant by democracy mirrored that of ancient writers, the attribute of 'sovereign' does caution against such an interpretation.[99] Rousseau's democratic assembly, and subsequently our own conception of it, owes arguably as much to the concept of sovereignty as it does to antiquity. In this sense, I argue that the concept of sovereignty, indeed, inaugurates a new way of thinking about politics in general, and democracy in particular. Thus, the concept of sovereignty, and early modernity, marks the beginning of the history recounted here. While there is arguably no corresponding discontinuity in our thinking to mark the end of the history recounted here, it is clear that the emergence of the term 'representative democracy' at the end of the eighteenth century, marks a point at which the problem of presence in its early modern framing largely disappears. Here, the problem acquires its familiar spatial narrative form, and for various reasons the problem of time never returns as an explicit concern. Thus, the end of the eighteenth century marks the end of the history recounted here.

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[98] Bartelson, "Philosophy and History in the Study of Political Thought," 124.

[99] When Cornelius Castoriadis describes Athenian democracy as one in which the "community of citizens – the demos – proclaims that it is absolutely sovereign *(autonomos, autodikos, autoteles,* self-legislating, self-judging, self-governing, in Thucydides' words)*", there is arguably a measure of anachronism, Castoriadis, "The Greek Polis and the Creation of Democracy," 98. On this kind of anachronism, see Mogens Herman Hansen, *The Athenian Assembly in the Age of Demosthenes* (Oxford: Basil Blackwell, 1987), 105; Simon Hornblower, "Democratic Institutions in Ancient Greece," in *Democracy the Unfinished Journey: 508 BC to AD 1993*, ed. John Dunn (Oxford: Oxford University Press, 1992), 6.

Though the period which is the subject of this history is delimited, it also encompasses far more relevant thinkers and texts than I have been able to include. While I have, as mentioned, sought as far as possible to situate the thinkers and texts selected contextuality, I have nevertheless structured the text around certain *key figures* and *classical texts* of the early modern period. Thus, pride of place is afforded Hobbes, Locke, and Rousseau, as well as central figures in the development of the idea of representative democracy. While this selection, in part, has been motivated by the centrality of these thinkers in the history of political thought, and not least their continuing theoretical influence, their centrality in the text itself is ultimately motivated by the extent of their treatment of the problem which this history aims to recount. Thus, the centrality of theoretical, or philosophical works, largely reflects the simple fact that it is in these works extensive reflection on what is, after all, a somewhat theoretical problem, is to be found.

The period of history, and the thinkers included in this study, also coincide with what is called the social contract tradition. Almost without exception, the thinkers treated in this thesis invoked the idea of the social contract as a means of explaining political society. This does pose the question of whether it is a tradition which we ought to recover unreflexively. As Carole Pateman, for instance, has demonstrated, it is one which cannot be separated from its justificatory role in the subordination of women.[100] Indeed, with the possible exception of Hobbes,[101] all the thinkers enumerated here assumed the political exclusion of women.[102] These

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[100] Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), 40.

[101] The exception of Hobbes in this regard is one which Pateman frequently notes, Pateman, *The Sexual Contract*, 41. As Anna Becker has demonstrated, while early modern thought typically relied on a strict distinction between public and private, and thus excluded women from political life, such boundaries were a great deal more precarious than the conventional narrative would suggest, Anna Becker, "Gender in the History of Early Modern Political Thought," *The Historical Journal* 60, no. 4 (2017). Pateman alludes to something similar: "Both sides in the seventeenth-century controversy [on patriarchalism] – unlike contemporary political theorists – were well aware that the new doctrine of natural freedom and equality had subversive implications for *all* relationships of power and subordination", Carole Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (Cambridge: Polity Press, 1989), 39.

[102] In addition to Pateman, see Susan Moller Okin, *Women in Western Political Thought* (Princeton, New Jersey: Princeton University Press, 1979); Jean Bethke Elshtain, *Public Man, Private Women: Women in Social and Political Thought* (Princeton, New Jersey: Princeton University Press, 1981); Iris Marion Young, "Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and Political Theory," in *Feminism as Critique: Essays on the Politics of Gender in Late-Capitalist Societies*, ed. Seyla Benhabib and Drucilla Cornell (Cambridge/Oxford: Polity Press, 1987); Alison Assiter, "Citizenship Revisited," in *Women, Citizenship and Difference*, ed. Nira Yuval-Davis and Pnina Werbner (London/New York: Zed Books, 1999); Pnina Werbner and Nira Yuval-Davis, "Introduction: Women and

points certainly do cast doubts on the merit of recovering this tradition, at least unreflexively. The aim here, however, has not been to recover the social contract tradition itself. The significance of this tradition, rather, resides in the fact that it allowed the problem of presence to appear with particular clarity. Within this tradition, the point of departure of political thinking was the idea that the state is an *artificial* construct, that it is something created by human beings, and which humans bring into the world. It is, I suggest, for this reason that the problem of how this artifice can be made to endure, and be made present in the world, came to appear in a way it would no longer do, for instance, under the organic conception of the state of the nineteenth century. While the period under study does coincide with the social contract tradition, and while this tradition does constitute a condition of possibility for the appearance of the discourse which is the subject of this study, it is not the social contract tradition itself which this thesis aims to recover.

Even so, it is certainly the case that our modern democratic thinking now must consider a host of concerns which early modern thinkers said little or nothing about, such as the question of the boundaries of 'the people',[103] its composition, and the tension between pluralism and cohesion in the modern state.[104] Whatever we might hope to recover from early modern thought, these concerns will certainly remain our own. But insofar as the question of what kind of order we ought to have, and who is present to shape it, are questions which we now continue to

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the New Discourse of Citizenship," in *Women, Citizenship and Difference*, ed. Nira Yuval-Davis and Pnina Werbner (London/New York: Zed Books, 1999).

[103] Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," *Nomos* 25 (1983); Sofia Näsström, "The Challenge of the All-Affected Principle," *Political Studies* 59 (2011); Ludvig Beckman, "Citizenship and Voting Rights: Should Resident Aliens Vote?," *Citizenship Studies* 10, no. 2 (2006); Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory."; Honig, *Emergency Politics - Paradox, Law, Democracy*; Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004).

[104] Olson, *Imagined Sovereignties: The Power of the People and other Myths of the Modern Age*; Keenan, *Democracy in Question: Democratic Openness in a Time of Political Closure*; Young, *Inclusion and Democracy*; Iris Marion Young, "Communication and the Other: Beyond Deliberative Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, New Jersey: Princeton University Press, 1996); Jane Mansbridge, "Using Power/Fighting Power: The Polity," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, New Jersey: Princeton University Press, 1996); Will Kymlicka, "Liberal Multiculturalism as a Political Theory of State–Minority Relations " *Political Theory* 46, no. 1 (2018); Charles Taylor, "Interculturalism or multiculturalism?," *Philosophy and Social Criticism* 38, no. 4-5 (2012); Charles Taylor, "The Dynamics of Democratic Exclusion," *Journal of Democracy* 9, no. 4 (1998).

pose, and whose significance scholars of feminism and multiculturalism have continued to emphasize,[105] there is yet reason to argue that the problem which early modern thought posed will remain, if sufficiently abstractly framed,[106] our own.

The thesis is structured as follows. In the second chapter, which focuses on the political thought of Thomas Hobbes, I address the thesis that Hobbes unequivocally refuted the notion that the *people*, or in Hobbes' terms, the *multitude*, could ever be present to itself as a unified collectivity absent some constituted form. The people, Hobbes held, does not precede the act by which the sovereign is authorized to represent it, and does not exist absent this representation. For Hobbes, *all* governments are, in this sense, representative. In the chapter, I suggest that while this is certainly the case, it does not entirely resolve the question of presence. As paradoxical as it may seem, Hobbes insisted that even the democratic assembly is *representative*. Resolving this apparent paradox, I suggest that Hobbes, rather than provide the means by which we can eschew direct democracy, in fact posed a fundamental problem of the democratic form of government. Since the *state*, Hobbes suggested, must be continuously *present*, the one who *carries* it, whether a monarch or a democratic assembly of all, must be so to.

In chapter III, I pose the question of whether the problem formulated by Hobbes figures in the political thought of more conventional theorists of popular

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[105] On the significance of *who* is present, see Phillips, *The Politics of Presence*. For an overview of the views of Phillips, Young and Mouffe on this point, Kate Nash, "Beyond liberalism?: Feminist theories of democracy," in *Gender, Politics and the State*, ed. Vicky Randall and Georgina Waylen (London: Routledge, 2002).

[106] While the questions which preoccupy contemporary democratic thought are not those of early modern thought, the latter are not necessarily obviated. For instance, on the question of gender and the state, see Ursula Vogel, "The State and the Making of Gender: Some Historical Legacies," in *Gender, Politics and the State*, ed. Vicky Randall and Georgina Waylen (London: Routledge, 2002); Georgina Waylen, "Feminism and the State: An Overview," in *Gender, Politics and the State*, ed. Vicky Randall and Georgina Waylen (London: Routledge, 2002). This alludes to the contentious issue of whether there are perennial problems in the history of political thought. While Skinner has cautioned against the assumption that there are, he does concede that, if "sufficiently abstractly framed", one can certainly speak of perennial problems, Skinner, "Meaning and Understanding in the History of Ideas," 52. As David Runciman similarly notes, while concepts like 'the state' certainly is not a perennial idea, "it does not follow that there are no perennial problems in the history of ideas", Runciman, *Pluralism and the Personality of the State*, 265. On this question, see also Patrick Riley, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge, Massachusetts and London, England: Harvard University Press, 1982), xi. I am here not suggesting that the problem which is the subject of this thesis is a perennial one. But, it may be, if sufficiently abstractly framed, one which will remain relatively permanent, at least as long as we continue to orient our thinking around the fundamental concepts history as bequeathed on us.

sovereignty. Focusing on the political thought of John Locke, I suggest that while Locke argues for the possibility of revolutionary action by *the people* against *the state*, there is an irresolvable tension between the two, and that this tension ought to be understood as occasioned by the question of presence. Although beset by the ever-present possibility of revolutionary action by *the people*, I suggest that Locke's state, embodied primarily by an *intermittent* legislative power and a *continuously present* executive power, remains the inescapable point of reference which defines *the people* as a revolutionary subject.

These themes are then taken up in chapter IV, which focuses on the manner in which the theoretical difficulties and inexorable problems outlined so far appear in the political theory of Jean-Jacques Rousseau. I here take up the thesis that Rousseau in particular represents the *metaphysics of presence* which underpins contemporary romanticization of direct democracy. I suggest that while there is much to support such an interpretation, we must also acknowledge Rousseau's deeply ambiguous view of democracy. In the chapter, I argue that Rousseau's problem of presence is one quite different from that of Hobbes. Rousseau's aim is to render present a *general will*, rather than a sovereign will *per se*. As I attempt to show, however, Hobbes' problem of presence does nevertheless remain more or less implicit in Rousseau's political theory, and in the tension between these two problems resides Rousseau's deeply ambiguous relation to democracy.

Chapter V concludes the historical part of the thesis by treating some of the central theories of representative democracy to emerge during the revolutionary period by the end of the eighteenth century. I here take up the thesis that representation was designed primarily to solve a *spatial* problem. I argue that while the problem was predominantly framed in such terms, the problem was in fact a more substantial one. What the representative form of government was primarily meant to do, I argue, was to ensure the *continuous presence* of political bodies capable of acting, and to do so in the name of *the people*. This people, I suggest, ought to be understood neither as the absent sovereign body of the people, or the aggregate of concrete citizens. I suggest that this body may be understood as a *third body*, which the representative organs of the state continuously make present. In the distinction between this body and the body of concrete citizens, I suggest, resides the paradox of representation.

The concluding chapter will bring the historical argument to bear on the theoretical questions with which I opened the thesis. I will suggest that the paradox of representative democracy in the end must be understood as underpinned by the perceived necessity of the state's continuous presence. This, I suggest, is the problem of presence which defines modern democracy. While there is no simple

way of resolving the problem of presence, I argue that only a self-conscious understanding of it will make it possible to respond to it democratically.

Chapter II: The Artificial Assembly

The idea of an immediately present sovereign people, as we saw, encounters a far more pressing theoretical than practical problem. Such a presence, preceding legality and constituted form, confronts us with an ontological, rather than a practical problem. The people cannot *be* something if we cannot say of it that it is this rather than that, if we cannot speak of the constituted form which endows an otherwise random collection of individuals with its being as a unity. Neither can we expect a common will to issue from it unless we can say by what means such a will might be formed out of the multitude of wills which make up such a collection. A people, in short, is never simply present to itself as a unified collectivity. Arguably, no one has argued this point more forcefully than Thomas Hobbes. As Mónica Brito Vieira has emphasized, those "fictions of presence, authenticity and immediacy" which still underpin the ideal of a more genuine form of democracy, "Hobbes rightly exposed as a flawed foundation for both society and politics".[1] For Hobbes, government is either "representative, or no government at all", and this is "true of monarchies as well as democracies".[2] This, however, confronts us with the rather curious fact that when Hobbes defined the democratic form of government, he did not speak, as we now do, of *representative* democracy, but of a form of government in which sovereignty resides in an "Assembly of All that will come together".[3] Such a form of government, furthermore, was for Hobbes a perfectly valid form of government, and while his preference was clearly for monarchy, the superiority of that form of government was, as he acknowledged in the preface to *De Cive*, "the only thing in this book which I admit is not demonstrated but put with probability".[4] How, then, do we reconcile these seeming disparities?

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[1] Mónica Brito Vieira, *The Elements of Representation in Hobbes* (Leiden/Boston: Brill, 2009), 250.

[2] Vieira, *The Elements of Representation in Hobbes*, 7.

[3] Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), 129.

[4] Thomas Hobbes, *On the Citizen*, ed. Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), 14.

It is true that all governments, for Hobbes, are representative – although not in our modern sense. It is, however, equally true that in one form of government, democracy, *all* may be *present* to exercise sovereignty. While seemingly a contradiction, a closer reading of Hobbes reveals that both statements are perfectly compatible and the logical outcome of his rigorous political theory. In fact, what Hobbes so eloquently demonstrated, was that democracy precisely resists the dichotomy which opposes the immediate presence of the people with representation. It demonstrates precisely the recalcitrance of the problem of presence.

This problem, admittedly, is one which Hobbes does not treat particularly extensively, and which therefore must be gleaned from several scattered remarks. Indeed, the most expansive of Hobbes' remarks occurs not in the more well-known *Leviathan*, but in the earlier *De Cive*. As I hope to show in this chapter, however, these remarks, when situated within Hobbes' general political theory, does paint a picture of a genuine theoretical problem. Though much of Hobbes' political theory, certainly, has been extensively studied, this problem, it seems, has nevertheless been unduly neglected.[5] And Hobbes' reputation as an anti-democratic writer notwithstanding, there is reason to suggest that in situating these remarks within his general political theory, what appears is a problem which has lost none of its contemporary relevance. The aim of this chapter, then, is to set out the theoretical problem Hobbes posed. The chapter will conclude by briefly treating Samuel Pufendorf's reiteration of this problem. Having challenged Hobbes' political theory on many of its central points, this iteration by Pufendorf, I will argue, indicates how intractable the problem which Hobbes posed was. Before turning to Hobbes' formulation of this problem, however, it may be worthwhile to resolve the apparent disparity above by reviewing briefly his theory of representation.

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[5] While Hobbes' remarks on this problem are occasionally hinted at in the literature, they have, to my knowledge, generally been afforded little theoretical interest, see for instance Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988), 42f. The exception here is Alan Apperley, who does note that, on the democratic form of government, it "is not the *scale* of the meetings that worries Hobbes but rather their *frequency*". Apperley, however, does leave the theoretical implications of this point largely unexplored, Alan Apperley, "Hobbes on Democracy," *Politics* 19, no. 3 (1999): 168.

The Seat of Power

In what sense are all governments, for Hobbes, representative? In answering this question, it is important to note that Hobbes rigorously distinguishes between two terms: a *multitude* and a *people*.[6] A people quite simply possesses that which a multitude does not: *unity*. The distinction then is between a mere collection of individuals, acting on their disparate wills, and a people acting through one will. This distinction, as it happens, is also the distinction between the *state of nature* and *the state*. The transition of the multitude from the state of nature, the first instrument of which is the covenant, is effected precisely by that which allows them to "reduce all their Wills, by plurality of voices, unto one Will".[7] In Hobbes' terms, the multitude thus becomes transformed into a *Person*, or, which amounts to the same thing, a *State*: "This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS. This is the Generation of that great LEVIATHAN, or rather (to speake more reverently) of that *Mortall God*, to which wee owe under the *Immortal God*, our peace and defence".[8] To put it in modern terms, a random assemblage of individuals in no way possesses, in the absence of some constituted form, a unity of will such that it constitutes a defined collectivity.[9] Prior to the state, there is nothing which could possibly unite such an assemblage. No innate sociability can account for the purely artificial construction of the state. Where there is a state, there is a *people*; where there is not a state, there is only a disorganized *multitude*.

So far, however, there is still no element of representation in Hobbes' account of how a multitude becomes a people. As Hobbes, however, makes clear, "A Multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular". Thus, a multitude becomes a person when they are represented by one person whose will is taken for the will of all, for "it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*", and

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[6] Hobbes in particular emphasized this point in an annotation to *De Cive*, Hobbes, *On the Citizen*, 76.

[7] Hobbes, *Leviathan*, 120.

[8] Hobbes, *Leviathan*, 120.

[9] Though Hobbes argued that he "could never see in any Author, what a Fundamentall Law signifieth", he admitted that one might conceive those laws which determine the form of government – the violation of which would entail the dissolution of the state – as fundamental laws, Hobbes, *Leviathan*, 199.

"*Unity*, cannot otherwise be understood in Multitude".[10] This, however, brings us into Hobbes' rather complex – and somewhat debated – theory of *personhood*.[11] While Hobbes describes the state as a *Person*, he offers a few different accounts of what precisely a *person* is, or can be. The most important distinction Hobbes makes is between *natural persons*, whose words and actions are considered their own, and *artificial persons*, "representing the words and actions of an other".[12] Hobbes, however, also introduces *persons by fiction*. This is the case when the thing personated is an inanimate object, "as a Church, an Hospital, a Bridge", where someone is appointed to represent it *as though* it was a person.[13] The question which modern commentators have disputed then is what kind of person Hobbes' state is. Though there is an element of terminological slippage in Hobbes' own text, there is a compelling argument to be made that Hobbes' state is a person by fiction. It is an entity incapable of acting on its own, and thus in need of being represented. Yet, whoever represents it, does not *own* its actions, but acts on behalf of the unity of the multitude whose name is the State. The person of the state must be, in Hobbes' terms, *carried* by an *artificial person*, and "he that carryeth this Person, is called SOVERAIGNE, and said to have *Soveraigne Power;* and every one besides, his SUBJECT".[14] Here, then, the element of representation enters Hobbes' account of how a multitude becomes a person. Through the covenant, the multitude decides to "appoint one Man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himself to be the Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concern the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgement".[15]

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[10] Hobbes, *Leviathan*, 114.

[11] Skinner, " Hobbes and the Purely Artificial Person of the State."; David Runciman, "What Kind of Person is Hobbes's State? A Reply to Skinner," *Journal of Political Philosophy* 8, no. 2 (2000); David Runciman, "The concept of the state: the sovereignty of a fiction," in *States & Citizens: History, Theory, Prospects*, ed. Quentin Skinner and Bo Stråth (Cambridge: Cambridge University Press, 2003); Runciman, *Pluralism and the Personality of the State*; Sean Fleming, "The two faces of personhood: Hobbes, corporate agency and the personality of the state," *European Journal of Political Theory* 20, no. 1 (2021); Brian T. Trainor, "Hobbes, Skinner and the Person of the State," *Hobbes Studies* 14 (2001).

[12] Hobbes, *Leviathan*, 111.

[13] Hobbes, *Leviathan*, 113.

[14] Hobbes, *Leviathan*, 121.

[15] Hobbes, *Leviathan*, 120.

The sovereign, whether a single individual or an assembly, is an artificial person, whose words and actions are attributable to the fictional person of the state. The sovereign does not own its own words and actions, but merely represents the fictional person of the state, itself as incapable of speaking and acting as if it were a bridge or a hospital. Admittedly, the distinction between the *person of the state*, and the *person of the sovereign*, is a very subtle one. While there is much to suggest the importance of distinguishing them,[16] it is arguably difficult to disentangle them entirely. The person of the state "is separate, but not freestanding".[17] It does not have, by itself, the "capacity to doe any thing, but by the Representative (that is, the Soveraign;)".[18] While the sovereign merely represents the person of the state, "the state that he personates, the *civitas*, only exists as a person through his personation".[19] In effect, the multitude becomes a person by authorizing the sovereign to will on behalf of them all. In this way, and only in this way, does it become a *unity*. Here then, it becomes clear in what manner Hobbes regards all forms of government as representative. Representation does not make present an already existing entity, but constitutes it in the act of representation,[20] an argument modern democratic theorists have since repeated. This was also the clever subterfuge by which Hobbes sought to undermine those contending notions of popular sovereignty which posited the people as a corporate entity, collectively superior to the monarch.[21] Perhaps in particular, the argument was directed at the likes of *parliamentarians* like Henry Parker, who contended that the power of monarchs was "secondary and derivative", and that "the fountaine and efficient cause is the people".[22] Against such arguments, Hobbes could simply refute the

[16] Quentin Skinner, "The sovereign state: a genealogy," in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, ed. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2010), 45.

[17] Vieira, *The Elements of Representation in Hobbes*, 166.

[18] Hobbes, *Leviathan*, 184.

[19] Annabel S. Brett, *Changes of State – Nature and the Limits of the City in Early Modern Natural Law* (Princeton and Oxford: Princeton University Press, 2011), 141; also Annabel Brett, "'The Matter, Forme, and Power of a Common-wealth': Thomas Hobbes and Late Renaissance Commentary on Aristotle's Politics," *Hobbes Studies* 23, no. 1 (2010): 83.

[20] Vieira, *The Elements of Representation in Hobbes*, 1.

[21] Quentin Skinner, "Hobbes on Representation," *European Journal of Philosophy* 13, no. 2 (2005): 172. As Otto Gierke already noted: "It was universally held, until Hobbes dealt a death-blow to the idea, that the People possessed a separate personality", Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, 44.

[22] Henry Parker, *Observations upon some of His Majesties late answers and expresses* (London: na, 1642), 2. For an overview of the *parliamentarian* argument, see, in addition to Skinner's article

contention that such a thing as *the people* preceded representation by the monarch. Having equated the people with the state, Hobbes could, without logical contradiction, assert that in "every commonwealth the *People* Reigns; for even in *Monarchies* the *People* exercises power [*imperat*]; for the *people* wills through the will of *one man*".[23] In short, we *own*, or are the *authors* of, whatever the artificial person of the sovereign does, through whose actions we are a people in the first place. Hobbes thus refuted the contention that the people may resist the unjust commands of the sovereign. To resist or refute the commands of the sovereign, as Brito Vieira eloquently puts it, "is to fight one's own reflection in a mirror, which, Hobbes insists, is patently absurd".[24]

Now, *who* this artificial person is, Hobbes leaves, as mentioned, relatively open. It may be *one individual*, in which case the form of government is a monarchy, or *an assembly*. If it is an assembly of a select group of people, then the form of government is an aristocracy; if it is an assembly of all, then it is a democracy.[25] Of these, democracy, clearly is the most intriguing. For it is certainly not intuitive in what sense an assembly of all is a representative. The assembly must be a person, which it is not naturally. Being composed of a multitude of natural persons, it does not naturally speak with one voice, nor possess one will. For this reason, as has frequently been noted, Hobbes imposes on it the fundamental condition that it adopt the principle of majority decisions.[26] Only in this way does it become, in an artificial way, a person possessed of a single will.

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on Hobbes and representation, Lorenzo Sabbadini, "Popular Sovereignty and Representation in the English Civil War," in *Popular Sovereignty in Historical Perspective*, ed. Richard Bourke and Quentin Skinner (Cambridge: Cambridge University Press, 2016); Eric Nelson, "Prerogative, Popular Sovereignty, and the American Founding," in *Popular Sovereignty in Historical Perspective*, ed. Richard Bourke and Quentin Skinner (Cambridge: Cambridge University Press, 2016); Michael Mendle, "Parliamentary Sovereignty: a Very English Absolutism," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993).

[23] Hobbes, *On the Citizen*, 137.

[24] Vieira, *The Elements of Representation in Hobbes*, 179.

[25] Hobbes, *Leviathan*, 129.

[26] Runciman, "What Kind of Person is Hobbes's State? A Reply to Skinner," 270. As David Copp has suggested, what really matters is not that the assembly adopts the procedure of majority decisions, but simply that it adopts *some* decision-making procedure, David Copp, "Hobbes on Artificial Persons and Collective Actions," *Philosophical Review* 89, no. 4 (1980): 599. Philip Pettit has accused Hobbes of overlooking the problem with majority decisions, the so-called *discursive dilemma*, Philip Pettit, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton and Oxford: Princeton University Press, 2008), 82. As Runciman correctly notes,

Hobbes does, however, impose on it something more, which is at the heart of the argument suggested here, and which has tended to be omitted in treatments of Hobbes' political theory. This imposition, admittedly, Hobbes does not spell out fully, and its clearest expression, as mentioned, occurs not in the *Leviathan*, but in the earlier *De Cive*. In this earlier work, Hobbes describes the initial meeting through which the multitude gathers to create the state as "almost by the very fact that they have met, a *Democracy*".[27] For the state to continue in such a form, however, the further condition which must be met is that "a certain time and place is publicly known and appointed, on which those who so wish may convene". In the absence of such appointed times, the citizens will instead "convene at various times and places in factions or not at all". If that happens, it is no longer a people, "but a disorganized crowd, to which no *action* or *right* may be attributed".[28]

Where the fictional person of the state is carried by an assembly of all, this assembly must, in order to fulfil this task, convene on agreed upon times and places. Only on these stated times and places does it become an artificial person capable of carrying the fictional person of the state. While arguably an obvious point, the intricacies of Hobbes' reasoning here are worth spelling out in their entirety: when I covenant with others to be represented by an assembly of all, I agree that on certain appointed times, in a particular appointed place, I may be present to become part of the artificial person who carries the person of the state. As soon as I leave this assembly, as soon as it is dissolved, this artificial person ceases to exist, and I lose the persona which I, within that assembly, carried. Outside it, I and my fellow citizens, are no more than a disorganized crowd of subjects, and whatever group or collection of individuals decides, in the intervals of this assembly, to convene separately, is nothing but a mere faction to which neither right nor action can be attributed.

The assembly, in short, must only convene on stated times and places, such that it becomes possible to discern when the duly authorized sovereign truly speaks in the name of the state. This, however, posits another problem, which is the central problem at the heart of this thesis: it must also be present *often enough* to fulfil the task for which the state itself exists. Being a person by fiction, Hobbes'

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however, the decisive point for Hobbes is that it is the assembly, not its members, that is sovereign, Runciman, *Pluralism and the Personality of the State*, 10, n. 8.

[27] Hobbes, *On the Citizen*, 94.

[28] Hobbes, *On the Citizen*, 94.

state must, as Runciman notes, "have a presence in the real world".[29] This *presence*, I suggest, must be a very *literal* presence indeed. For since the people exists as a sovereign person only on the appointed times and places on which the citizens convene, it can speak and act, that is, carry the person of the state, only on those appointed times. Thus, while the initial meeting resembles a democracy, Hobbes is careful to point out that "if they split up, and the convention is dissolved without deciding on a time and place for meeting again, the situation returns to *Anarchy* and to the condition in which they were before they convened, i.e., to the condition of the war of all against all".[30] For the assembly to be a person, in short, there has to be, in addition to some decision-making procedure, "an uninterrupted schedule of meeting".[31] The assembly must be *present*. If the physical presence of the people thus constitutes the *sine qua non* of the democratic form of government, it does so not by virtue of its intrinsic authenticity, but by virtue simply of the fact that only through this presence can the assembly *represent* and *carry* the fictional person of the state. Nor is this all. For the people to "retain *sovereign power*, it is not enough to have settled times and places for meeting". In addition, "the intervals between the meetings must not be so long that something could happen in the meanwhile which (for lack of *sovereign Power*) would endanger the commonwealth".[32] However obvious Hobbes' point may seem, it begs the very same question which Robert Filmer's critique of democracy occasioned: why *cannot* sovereignty "rest in the aire, or in the walls of the Chamber, where they were Assembled"?[33] Of all of Hobbes' critiques against democracy,[34] this one poses the truly interesting question of why a *lack of sovereign power* should be a problem in the first place.

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[29] Runciman, "What Kind of Person is Hobbes's State? A Reply to Skinner," 274.

[30] Hobbes, *On the Citizen*, 94.

[31] Hobbes, *On the Citizen*, 94.

[32] Hobbes, *On the Citizen*, 94.

[33] Filmer, *Observations upon Aristotles Politiques*, preface, unnumbered.

[34] Deborah Baumgold notes Hobbes' insistence on the importance of appointed times and places, but does not include it in her treatment of his arguments against democracy, Baumgold, *Hobbes's Political Theory*, 42, 75ff. On Hobbes' critiques of democracy generally, and his arguments in favour of monarchy, see Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), 196; Pettit, *Made with Words: Hobbes on Language, Mind, and Politics*, 121; Richard Tuck, *Philosophy and Government 1572-1651* (Cambridge: Cambridge University Press, 1993), 311. As mentioned, Apperley does emphasize this point, but leaves the theoretical implications somewhat unexplored, Apperley, "Hobbes on Democracy," 168.

The Sovereign Assembly

Before attempting to answer this question, it may first be worth addressing the argument that the image of democracy painted by Hobbes and Filmer was little more than "an *argumentum ad absurdum*, to pour scorn on the very idea of the whole people acting in unison as one sovereign entity".[35] In short, did Hobbes pose a genuine theoretical problem, or should we read him as merely positing so outlandish a proposition that the absurdity of such a form of government would be beyond dispute? The question of Hobbes' opinion of democracy, it should be noted, has somewhat confounded modern commentators. While some have held him to have been genuinely sympathetic to it, others have been more sceptical.[36] Rather than attempting to resolve this impasse, the argument I wish to make here is simply to note the structure of the language Hobbes uses. Regardless of his intentions and sympathies, the question is whether his treatment of democracy was the outcome of his systematic political thinking. If that is the case, then the problem which Hobbes posed, regardless of his intentions and sympathies, ought perhaps to be treated as a genuine theoretical problem.

The first question one may then ask, is where Hobbes' definition of democracy came from.[37] While it may be tempting to suggest that this definition merely re-iterated that of Aristotle, there are compelling reasons for bracketing such an

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[35] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 318, 05. For a similar argument, see Philip Pettit, "Democracy Before, In, and After Schumpeter," *Critical Review* 29, no. 4 (2017).

[36] Tuck, "Hobbes and democracy."; Hoekstra, "A lion in the house: Hobbes and democracy."; Creppell, "The democratic element in Hobbes's' Behemoth'." The question of Hobbes' status as a proponent of popular sovereignty remains equally contentious. Lee, despite his reservations about Hobbes' treatment of democracy, suggests that Hobbes "deserves to be recognized as the preeminent English theorist of popular sovereignty", Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 275. Others, like Hont and Forsyth, have similarly seen in Hobbes the precursor of Sieyès' popular sovereignty, Murray Forsyth, "Thomas Hobbes and the Constituent Power of the People," *Political Studies* 29, no. 2 (1981): 191; Istvan Hont, *Jealousy of Trade - International Competition and the Nation-State in Historical Perspective* (Cambridge, Massachusetts, London: The Belknap Press of Harvard University Press, 2005), 489. Skinner on the other hand is more sceptical, and argues that Hobbes directly opposed the parliamentarian language of popular sovereignty, Skinner, "Hobbes on Representation," 170. Sabbadini similarly makes the point that "[w]ith Hobbes we may have strayed far from popular sovereignty", and that Hobbes may have rather been the "unlikely conduit" of the *parliamentarian* and Leveller conception of it, Sabbadini, "Popular Sovereignty and Representation in the English Civil War," 186.

[37] On this question, see Tuck, "Hobbes and democracy."; Hoekstra, "A lion in the house: Hobbes and democracy."

uninterrupted continuity in the meaning of democracy. Not least, Hobbes articulated his distinction between the three forms of government in explicit contrast to that of Aristotle.[38] In one respect in particular, Hobbes' definition differed from that of Aristotle. The idea of *ruling and being ruled in turns*, which Aristotle treated as peculiar to democracy,[39] Hobbes does not mention. This omission, which Filmer in fact noted,[40] is itself revealing. And, arguably, the decisive concept underpinning this departure from the Aristotelian classification was the concept of *sovereignty*. Indeed, Hobbes' arguments against Aristotle largely mirrors those of Jean Bodin.[41] Whether Bodin was, as he himself claimed, the first to define the concept of sovereignty,[42] the point here is that his use of the concept fundamentally affected his conception of democracy, and by implication, that of Hobbes. To bring us back to Hobbes' definition of democracy, and the question of the sincerity of his treatment of it, we may then briefly consider that of Bodin.

To Bodin, the source of Aristotle's confusion in his treatment of the different forms of government was to "hath mistaken the manner and forme of the gouernment of a Common-weale, for the soueraigne state thereof".[43] What mattered, for Bodin, was where *sovereignty* resided, and since such a definitive locus of political authority was the *sine qua non* for any well-ordered state, only three forms of government existed. Democracy, then, meant a form of government "wherin all or most part of the people togeather commaundeth in soueraignetie ouer the rest

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[38] Hobbes, *On the Citizen*, 92.

[39] Aristotle, *The Politics*, ed. Carnes Lord (Chicago and London: The University of Chicago Press, 1984), VI.II.183f [1317b].

[40] Robert Filmer, *Observations concerning the originall of Government - upon Mr. Hobs Leviathan, Mr. Milton against Salmasius, H. Grotius De Jure Belli* (London: Printed for R. Royston, at the Angel in Ivie-Lane, 1652), 5.

[41] On Bodin's critique of Aristotle, see Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 173.

[42] Jean Bodin, *The six bookes of a common-weale*, trans. Richard Knolles (London: Printed by Adam Islip impensis G. Bishop, 1606), I.VIII.84; see also Melissa Lane, "Popular sovereignty as control of office-holders," in *Popular Sovereignty in Historical Perspective*, ed. Richard Bourke and Quentin Skinner (Cambridge: Cambridge University Press, 2016), 53; F. H. Hinsley, *Sovereignty*, 2 ed. (Cambridge: Cambridge University Press, 1986). For an overview of Bodin's position within the Roman Law Tradition, see Lee, *Popular Sovereignty in Early Modern Constitutional Thought*; see also Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973); Julian H. Franklin, "Sovereignty and the Mixed Constitution: Bodin and his Critics," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press 1991), 301.

[43] Bodin, *The six bookes*, II.VII.249.

altogether, and ouer euerie one in particular".[44] That is, sovereignty, in a democracy, had to be unequivocally localized in an *assembly*. Admittedly, once sovereignty was in this manner localized, the *government* of the state could be organized in a variety of ways. Thus, for instance, "if all or the greatest part of the people hauing the soueraigntie, shall giue the honorable offices and preferments indifferently to all, without respect of person, or by lot bestow the same upon all the citisens: a man might wel iudge that estate not onely popular, but also to be most popularly gouerned".[45] The use of the lot, and of governing in turns, then had its place. However, in no way ought this, in Bodin's view, to be confused with sovereignty; an error which, he argued, characterized Athens, which meant that "this state was more truly a lottery than a democracy, since power was granted in accordance with the favor of the lot, not of the people".[46]

The point then, is that once Bodin had made the question of sovereignty the decisive question, the question of democracy came to be centred on the assembly as the locus of this sovereignty.[47] In short, if the people is sovereign, then by what other form than a democratic assembly can it exercise this sovereignty? If it is true that Filmer and Hobbes then pursued this reasoning to its, perhaps absurd, logical conclusion, the point is that these conclusions *were* logical. If democracy meant the sovereignty of the people, the question which Filmer and Hobbes could pose was what it truly meant to speak of *the people* exercising *sovereignty*. Thus Filmer, with his keen eye for the ambiguous way in which the idea of popular sovereignty,

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[44] Bodin, *The six bookes*, II.VII.244.

[45] Bodin, *The six bookes*, II.VII.249.

[46] Jean Bodin, *Method for the Easy Comprehension of History*, trans. Beatrice Reynolds (New York: Columbia University Press, 1945), 193.

[47] Marsilius of Padua – who played a crucial role in the proliferation of Aristotelian political philosophy – still followed Aristotle closely in making government by turns a defining characteristic of *polity*, defined as a "type of tempered principate in which every citizen has some share in the principate or councillor function, in turn and according to his rank, means or condition", Marsilius of Padua, *The Defender of the Peace*, ed. Annabel Brett (Cambridge: Cambridge University Press, 2005), 41f. Marsilius, like Aquinas, followed Aristotle in describing *democracy* as the tyrannical rule of the poor, Quentin Skinner, "The Italian City-Republics," in *Democracy the Unfinished Journey: 508 BC to AD 1993*, ed. John Dunn (Oxford: Oxford University Press, 1992), 60. Perhaps an indication of how decisive this conceptual transformation was, can be gleaned from the fact that James Harrington, one of the most prominent republican writers of the seventeenth century, argued that appointment of offices by suffrage, rather than lots, was not only commensurable with democracy, but rather precisely indicated the sovereignty of the people, James Harrington, *The Political Works of James Harrington*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1977), 549.

which he lamented is "the onely Theme now in fashion",[48] was espoused, even seized on Bodin's ambiguities on this point. Bodin had suggested that it did not really matter whether, in a democracy, *all* or a *major part* hold sovereignty, "for it may be that of threescore thousand citizens in a citie, fortie thousand may haue the soueraigntie, and twentie thousand be excluded: where, for that the greater part beareth the sway, it shal be a popular state".[49] To this, Filmer remarked that "I must tell him, though fifty nine thousand, nine hundred, ninety nine of them govern, yet it is no popular estate, for if but one man be excluded, the same reason that excludes that one man, may exclude many hundreds, and many thousands, yea, and the major part it selfe".[50] Filmer's argument was, indeed, a *reductio ad absurdum*. His patriarchal theory of the *divine right* of kingship, set out most famously in his *Patriarcha* published posthumously in 1680, laid out the claim that the only true source of political power was the original patriarchal power with which God had imbued Adam, from whom all subsequent monarchs were descended.[51] His was manifestly not a defence of democracy. It was, however, a forceful comment on those who, though they "talke big of the people, yet they take up and are content with *a few Representors* (as they call them) *of the whole people*".[52] Although perhaps without the acerbic tone of Filmer, Hobbes' definition of democracy amounted to the same thing: an assembly to which *all* are admitted, exercising sovereignty.

Neither were Hobbes and Filmer, in fairness, the only ones to draw the idea of popular sovereignty in this direction. It may certainly be true to say that the idea of popular sovereignty, against which Filmer and Hobbes articulated their arguments, was originally a *negative*, rather than *positive* argument, the purpose of

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[48] Filmer, *Observations upon Aristotles Politiques*, 13.

[49] Bodin, *The six bookes*, II.I.196. Julian Franklin argues that Bodin's conception of democracy did not, as did Hobbes', employ a conception of the *people* as a fictional person, and thus could not accommodate a definition in which all are sovereign and none are subjects, Franklin, *Jean Bodin and the Rise of Absolutist Theory*, 29.

[50] Filmer, *Observations upon Aristotles Politiques*, 22.

[51] Robert Filmer, *Patriarcha: or the Natural Power of Kings* (London: Printed, and are to be sold by Walter Davis Book-binder, in Amen-Corner, near Pater-noster-row, 1680), I. 11ff, 19. It is not certain when the book was actually composed, "though the notion that it was written after the outbreak of the English Civil War is difficult to sustain", J. P. Sommerville, "Absolutism and royalism," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 358.

[52] Filmer, *Observations concerning the originall of Government*, 14. This was an explicit commentary on the English republican John Milton's invocation of the sovereignty of the people, see John Milton, *A Defence of the People of England* (1695 [1651]).

which was primarily "to show to whom sovereignty should *not* belong".[53] In such an interpretation, popular sovereignty meant only to indicate that those who exercise sovereignty do not personally possess it. However, not only Hobbes and Filmer drew the idea of popular sovereignty towards democracy. For instance, Henry Parker, like Hobbes, conceded that "[t]he truth is, both Monarchy, and Aristocracy, are derivate formes, and owe a dependance upon Democracy, which though it be not the best, and most exact forme for all nations and Empires at all times, yet it is ever the most natural, and primarily authenticall".[54] Not that Parker had any intention of espousing such a form of government. Like Hobbes, he invoked representation, but did so in the form of the representative role of Parliament, which he argued "is indeed nothing else, but the very people it self artificially congregated", and which "in power, in honour, in majestie, in commission", "ought not at all to be divided, or accounted different as to any legal purpose".[55] The point, however, is that democracy for Parker was the most natural and authentical form of government. Indeed, the idea that democracy is the *original* form of government, preceding logically and temporally all other forms of governments, had appeared before Hobbes.[56]

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[53] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 14.

[54] Henry Parker, *Jus populi, or, A discourse wherein clear satisfaction is given as well concerning the right of subiects as the right of princes* (London: Printed for Robert Bostock, dwelling in Pauls Church-yard at the Signe of the King Head, 1644), 61.

[55] Parker, *Jus populi*, 18f. On the *parliamentarian* conception of representation, see Skinner, "Hobbes on Representation," 160; Nelson, "Prerogative, Popular Sovereignty, and the American Founding," 195; Sabbadini, "Popular Sovereignty and Representation in the English Civil War," 165; Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 293.

[56] Fransisco Suárez in *Defense of the Catholic and Apostolic Faith* argued that "democracy could be without positive institution, by purely natural institution or emanation", Fransisco Suárez, *Defense of the Catholic and Apostolic Faith Against the Errors of Anglicanism*, trans. Peter Simpson (www.sydneypenner.ca/suarez, 2012), III.II.6.286. (Simpson's translation remains the only available English translation of the relevant chapter). On this argument, see Brett, *Changes of State*, 127; also Manfred Walther, "Potestas multitudinis bei Suárez und potentia multitudinis bei Spinoza. Zur Transformation der Demokratitheorie zu Beginn der Neuzeit," in *Die Ordnung der Praxis: Neue Studien zur Spanischen Spätscholastik*, ed. Frank Grunert and Kurt Seelmann (Tübingen: Max Niemeyer Verlag, 2001). John Selden made the same argument in his *Titles of Honor*, suggesting that "out of nature it selfe, and that inbred sociablenesse, which euery man hath as his character of Ciuilitie, a Popular state first rais'd it selfe, which, by its owne iudgement, afterward was conuerted into a *Monarchie*", John Selden, *Titles of Honor* (London: By William Stansby for Iohn Helme, and are to be sold at his shop in S. Dunstans Church-yard, 1614), I.I.3. On this point, see J. P. Sommerville, "From Suarez to Filmer: A Reappraisal," *The Historical Journal* 25, no. 3 (1982): 444f.

Perhaps more to the point, arguably none of the proponents of popular sovereignty made the case that sovereignty did not need to be exercised *at all*. Although a trivial point, it is decisive if we wish to understand Hobbes' argument. That is, the relevant question to pose of those theorists of popular sovereignty whose arguments Hobbes and Filmer supposedly turned into an *argumentum ad absurdum*, is why sovereignty, "though it resides immediately in the community", must nevertheless be conferred "upon kings or princes or senators".[57] Why, in short, must sovereignty be *exercised* at all? This, it seems to me, is the decisive question which Hobbes, however much he chose to ignore the subtleties of the argument for popular sovereignty, posed. If Hobbes pursued the image of a people exercising its sovereignty "to its logical conclusion",[58] the point again is that this conclusion *was* logical. If the sovereignty of the people was to mean anything, Hobbes suggested, then the democratic form of government, in which all citizens are present to actually exercise sovereignty, would be the appropriate form it would have to assume. And if it was, so it would invariably encounter the problem recounted here.

We may now return to Hobbes' specific formulation of this problem. By virtue of the inevitably intermittent assembly of the people, there always attends to such a form of government the possibility of a *lack* of sovereign power since, in the

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[57] Fransisco Suárez, *Selections From Three Works*, ed. Thomas Pink (Indianapolis: Liberty Fund, 2015), 449; also Robert Bellarmine, *On Temporal and Spiritual Authority*, ed. Stefania Tutino (Indianapolis: Liberty Fund, 2012), 22. The sixteenth-century resistance theorists, typically known by the epitaph *monarchomachs* ('king-killers'), although they argued for popular sovereignty, did not oppose monarchy as such. Similarly, by *the people*, they did not mean "that beast of many heads", but "only those which hold their authority from the people, to wit, the Magistrates", and "the Assembly of the Estates, which is nothing else but an Epitomy, or briefe collection of the Kingdome, to whom all publique affaires have special and absolute reference", Junius Brutus, *Vindiciæ contra Tyrannos: A Defence of Liberty against Tyrants. Or, Of the lawfull power of the Prince over the people, and of the people over the Prince* (London: Printed by Matthew Simmons, and Robert Ibbitson, in Smithfield, neer the Queens-head Tavern, 1648), 28; also François Hotman, *Francogallia*, trans. J. H. M. Salmon (Cambridge: Cambridge University Press, 1972); George Buchanan, *De jure regni apud Scotos, or, A dialogue concerning the due privilege of government in the kingdom of Scotland betwixt George Buchanan and Thomas Maitland. Translated out of the Original Latine into English* (London: Printed for Richard Baldwin, 1689). For the *monarchomach* conception of popular sovereignty, see J. H. Burns, "George Buchanan and the Anti-Monarchomachs," in *Political Discourse in Early Modern Britain*, ed. Nicholas Philipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993); J. H. M. Salmon, "Catholic resistance theory, Ultramontanism, and the royalist response, 1580-1620," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991); Daniel Lee, "Private Law Models for Public Law Concepts: The Roman Law Theory of Dominium in the Monarchomach Doctrine of Popular Sovereignty," *The Review of Politics* 70 (2008).

[58] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 305.

intervals of the assembly, sovereign power is simply not exercised. When the people are absent, in short, nothing is done. Hobbes, admittedly, does not specify precisely the risk which the democratic form of government incurs by separating its meetings by longer intervals of time. His only remark is that these intervals should be sufficiently short, so that nothing may happen which would endanger the commonwealth. Neither the length of these intervals, nor what might, in the meantime, happen, Hobbes spells out. The only point Hobbes makes is that the *absence* of the sovereign, its *lack*, will potentially bring the state closer to dissolution and anarchy. Similarly, while Hobbes argues that it is an advantage of monarchy that "the actual exercise of power" can "occur at any time and place", since the monarch, "who is one by nature, is always ready and able [*in potentia proxima*] to perform acts of government",[59] he does not specify precisely what the monarch should be always ready and able to *do*. To fill in the gaps thus requires some conjecture. We may, however, perhaps fill in some of the gaps by returning to Hobbes' conception of *sovereignty*, and try to sketch out in more detail precisely what Hobbes took this concept to mean.

On Right and Wrong, and the Sun and the Stars

Hobbes' enumeration of the essential attributes of sovereignty largely mirrored that of Bodin, and included, principally, the right to legislate and appoint officers and magistrates.[60] Rather than recounting these marks in full, however, it may perhaps be more worthwhile simply to try to follow the problem to which Hobbes' conception of sovereignty was meant to be a solution.

We may here begin by posing the question of to what problem the legislative powers of the sovereign are meant to be the solution. In his depiction of the *state of nature*, arguably one of the most startling aspects is Hobbes' apparent eschewing of morality: "notions of Right and Wrong, Justice and Injustice have there no

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[59] Hobbes, *On the Citizen*, 97.

[60] Bodin, *The six bookes*, I.X.163-77. As Skinner has remarked, Bodin's enumeration of the 'marks' of sovereignty were, all in all, somewhat superfluous. Sovereignty simply signified the source and fountain of all political power in the state, and could not be reduced to any given set of marks, Skinner, *Foundations – vol 2*, 288. Although Hobbes does not mention Bodin in *De Cive* or *Leviathan*, he approvingly references Bodin's notion of the indivisibility of sovereignty in his earlier *Elements*, Thomas Hobbes, *The Elements of Law*, 2nd ed., ed. Ferdinand Tönnies (London: Frank Cass & Co. Ltd, 1969), 172.

place".[61] To put the argument in its starkest form: in the absence of positive law, there simply is no such thing as *right* or *wrong*, *justice* or *injustice*, *mine* or *thine*. This, of course, is somewhat hyperbolic, and as Hobbes makes clear, there is even in such a state, the *laws of nature*. However, if Hobbes thus was rooted in the natural law tradition,[62] he was so in a somewhat peculiar sense. For, before any other moral considerations, Hobbes asserts, the fundamental right of nature is the liberty each human being has "to use his own power, as he will himselfe, for the preservation of his own Nature".[63] This principle of *self-preservation*, Hugo Grotius had already posited as a principle sufficiently universal to counter the charge of moral scepticism: on this principle, so Grotius' argument in effect went, we can all, regardless of culture and circumstance, agree.[64] Hobbes' contribution in many ways was to pursue that principle to its logical conclusion: ultimately, in the state of nature, each one of us must be judge as to what this principle necessitates.[65] While what is truly universal is the right of self-preservation, in the end, *I* must be the one to judge "what are the aptest means thereunto".[66] Hobbes admittedly does derive, from this principle, a code of morality, or laws of nature, which are "Immutable and Eternall".[67] But, it is clear what the point Hobbes attempts to make is: in the absence of some authoritative judgement on what is to count as

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[61] Hobbes, *Leviathan*, 90.

[62] Howard Warrender, in particular, has emphasized that the obligation to obey the sovereign is ultimately premised on natural law, Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford: Clarendon Press, 1957), 250. The interpretation has, however, been criticized for overstating the centrality of natural law in Hobbes' account, Johann P. Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* (Basingstoke and London: The Macmillan Press, 1992), 79.

[63] Hobbes, *Leviathan*, 91.

[64] As Tuck notes, Grotius addressed this point in the introduction to *The Rights of War and Peace*. Here, the sceptical argument was put in the form of Carneades, according to whom laws "*were instituted by Men for the sake of Interest; and hence it is that they are different, not only in different Countries, according to the Diversity of their Manners, but often in the same Country, according to the Times. As to that which is called* Natural Right, *it is a mere Chimera*", Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck from the edition by Jean Barbeyrac [1738] (Indianapolis: Liberty Fund, Inc, 2005), 79; Richard Tuck, "The 'Modern' Theory of Natural Law," in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 109.

[65] Tuck, *Philosophy and Government 1572-1651*, 306.

[66] Hobbes, *Leviathan*, 91.

[67] Hobbes, *Leviathan*, 110.

right and wrong, justice and injustice, only a multiplicity of individual, and presumably conflicting, judgements exist.

The limitation of natural law, as Hobbes describes it, is not merely its lack of *self-enforcement*, but its lack of *specificity*: "*Theft, Murder, Adultery* and all *wrongs* [*injuriae*] are forbidden by the laws of nature, but what is to count as a *theft* on the part of a citizen or as *murder* or *adultery* or a *wrongful act* is to be determined by the *civil*, not the *natural*, *law*".[68] The natural laws not only lack, in the absence of positive laws, enforcement, but are in fact, as Norberto Bobbio points out, "too generic to be useful at all".[69] While the state, then, exists to give force to the natural laws, this unavoidably also entails the authoritative interpretation of what those natural laws mean, which in no way depends "on the books of Morall Philosophy".[70] To return to Hobbes' conception of the state as a *person*, the decisive point for Hobbes is that whatever *unity* the state creates, it is only an *artificial* unity fashioned out of diversity, unlike the kinds of natural communities we see in bees and ants, which Aristotle had described as *political creatures*.[71] Though Hobbes does not precisely express it in those terms, we may perhaps say that the entire problem of the state resides in the fact that we differ in our opinions about what is right and wrong, of what constitutes justice and injustice, and so on. In the end, the state must draw these distinctions, and it must do so without a great deal of guidance from natural law. The sovereign, then, must be able to prescribe what is good and evil, lawful and unlawful; that is, to exercise *legislative power*.[72] While Hobbes did not entirely abandon the natural law tradition, he came, as Bobbio puts it, very close to legal positivism.[73]

The point here is that *sovereignty*, in Hobbes' conception, signifies, in part at least, a response to the problem of moral relativism.[74] While these facets of Hobbes' theory are very familiar, the point here is that they allow us to fill in some of the gaps in what the *absence* of sovereignty signifies. Where the sovereign is not

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[68] Hobbes, *On the Citizen*, 86.

[69] Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition* (Chicago & London: The University of Chicago Press, 1993), 131.

[70] Hobbes, *Leviathan*, 191.

[71] Hobbes, *Leviathan*, 119f.

[72] Hobbes, *Leviathan*, 125.

[73] Bobbio, *Thomas Hobbes and the Natural Law Tradition*. While Warrender is somewhat reluctant to position Hobbes within legal positivism, he does concede that the label is somewhat apposite, Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 323.

[74] Hampton, *Hobbes and the Social Contract Tradition*, 99.

present, any occurrence which the sovereign has not already through law provided for, and which is of public concern, will occasion the moral question of what ought to be done. In the absence of law or the sovereign, only the plurality of individual judgements exists, and with it, the potentiality at least of conflict. The *private judgement of good and evil*, after all, as Hobbes warns us repeatedly, is one of the causes of the weakening or dissolution of the state.[75] Admittedly, Hobbes does acknowledge the possibility of *gaps* in the legal order, to be filled by the judges using natural law – which, as Bobbio points out, somewhat differentiates Hobbes' position from that of modern legal positivism.[76] Nevertheless, we may see why Hobbes might insist on the presence of the sovereign.

This then brings us to the role of *magistrates*, or *ministers*, in Hobbes' political theory. Like Bodin before him, Hobbes regarded the appointment of subordinate magistrates as one of the central marks – alongside legislative power – of sovereignty. The existence of magistrates, however, does somewhat undermine Hobbes' image of the indivisibility of the sovereign. Given that the sovereign, whether a monarch or a democratic assembly, cannot practically take every political decision in the state, the existence of magistrates is a necessary acquiescence. Indeed, it has been suggested that Hobbes in this regard had to concede to an unavoidable element of *division* of power.[77] Others, however, have cautioned against such an interpretation. While the sovereign admittedly must partly act through magistrates, the important point is that these remain, so to speak, "constrained by his implied presence".[78] Whatever autonomy the magistrate possesses, it remains within the bounds of the sovereign's concession.

While there is much to recommend the latter interpretation, there is nevertheless reason, I would suggest, to make the claim that this autonomy *does* constitute a problem for Hobbes, and that the question turns not only on the sovereign's *implied* presence, but in fact on its *actual* presence. That is, since the sovereign cannot be present everywhere and all the time, magistrates must be present in its place. This concession, though, comes with a cost: the sovereign cannot know for certain whether the magistrates present in its place will act as the sovereign would have done, had it been present. Certainly, the implied presence of the sovereign

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[75] Hobbes, *Leviathan*, 223.

[76] Bobbio, *Thomas Hobbes and the Natural Law Tradition*, 132. On the question of *gaps*, see Kelsen, *Pure Theory of Law*, 246.

[77] David P. Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford: Clareondon, 1969), 167.

[78] Vieira, *The Elements of Representation in Hobbes*, 203.

curtails the autonomy of the magistrate. But, in the end, it is only the actual presence of the sovereign which does away with the risk this autonomy entails. As Hobbes points out, the magistrates of the state hold, to a greater or lesser degree, a measure of authority resembling that of the sovereign. However, "though they shine some more, some lesse, when they are out of his sight; yet in his presence, they shine no more than the Starres in presence of the Sun".[79] This passage, then, alludes to the fact that not only the implied presence of the sovereign, but also its actual presence, matters. The passage, in fact, is almost verbatim a quote of Bodin, although Hobbes makes no mention of him. For, Bodin had argued, "as the force and strength of all riuers and flouds is together with their names lost and swallowed up when they once fall into the Sea; and as the other heauenly lights, as well the planets as other starres, lose their light in the presence of the Sunne, or as soone as he approacheth the horizon, in so much as that they seeme againe to render unto him the whole light that they had before borowed of him; euen so likewise all the authoritie of the Senat, and all the commaund and power of Magistrats cease in the presence of the prince".[80] The same, argued Bodin, was true of democracies, where the magistrates, standing before the seated people, made account of the exercise of their power and demonstrated that "in their presence they had no power at all to commaund".[81] The principle was in all cases the same: "the power of the inferior should be holden in suspence, in the presence of the superiour".[82]

What this entails in practice, neither Bodin nor Hobbes spell out. The suggestion presumably is that the magistrate cannot invoke its authority against that of the sovereign in cases where the latter seizes on a matter directly. Where the sovereign takes a direct interest in a matter normally falling under the purview of a magistrate, the sovereign clearly has the last word. While thus perhaps little more than a statement on the necessity of hierarchies of power, two important implications suggest themselves. First of all, the inability of the sovereign to be omnipresent occasions the problem of the *lack* of power: where the sovereign is absent, no act is undertaken unless a magistrate has been authorized to act in its place. Secondly, where a magistrate acts in the place of the sovereign, nothing ensures that the magistrate will act precisely as the sovereign would have done, had it been present. The implied presence of the sovereign may, certainly, increase the

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[79] Hobbes, *Leviathan*, 128.

[80] Bodin, *The six bookes*, III.VI.344.

[81] Bodin, *The six bookes*, III.VI.344.

[82] Bodin, *The six bookes*, III.VI.345.

likelihood that things are done as the sovereign wishes, but only the actual presence of the sovereign guarantees it. Again, while Hobbes does not precisely spell out the argument, he occasionally hints at it. In a somewhat ambiguous passage in *De Cive*, Hobbes distinguishes between the *right* of sovereignty and its *exercise*, and compares the sovereign to God who, under normal circumstances, governs the world mainly through *secondary causes*. Here Hobbes adds: "when he who has the right to reign wishes to participate himself in all judgements, consultations and public actions, it is a way of running things comparable to God's attending to every thing, contrary to the order of nature".[83] Whether or not Hobbes regarded such a sovereign as normatively desirable, it is easy to see why he should have emphasized that the monarch is "always ready and able [*in potentia proxima*] to perform acts of government".[84] While even a monarch, like God, normally governs through secondary causes – through laws and magistrates – he is always ready and able to intervene directly, should the occasion arise.

This, then, brings us back to Hobbes' treatment of the problem of presence in the democratic form of government. It is certainly true that Hobbes does acknowledge that the people in a democracy may, during the intervals of its assembly, devolve "the exercise of sovereign power on some *one* man or *one* assembly for the intervening period".[85] Indeed, as Tuck has pointed out, the people may also retain their sovereignty by electing a *time-limited monarch*, and thus become, as it were, a *sleeping sovereign*.[86] From the preceding, however, it is clear that such a monarch will be both free and necessitated to take many decisions over which the people will have no control. This also brings to the fore Hobbes' criticism of the notion of popular sovereignty. For while some individual or group may claim that whoever exercises sovereignty has done so in a manner which violates the condition of the grant, we do not know, absent some criteria by which *the people* as a subject is to be identified, whether that individual or group speaks on its behalf. Again, as in the case of democracy proper, so in the case of the *time-limited monarch*, it is only within the assembly, whose appointed times and places of meeting must be settled beforehand, that such a thing as *the people* exists at all, and absent such appointments, "the *people* is no longer a *person* but a disorganized

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[83] Hobbes, *On the Citizen*, 143.

[84] Hobbes, *On the Citizen*, 97.

[85] Hobbes, *On the Citizen*, 95.

[86] Tuck, *The Sleeping Sovereign*, 89.

crowd".[87] The people, in short, becomes a sleeping sovereign at its own peril, and over that which the monarch does during its sleep, it will have no control until it is again, on a pre-determined date, awakened. Similarly, the people who appoints magistrates to be present in the intervals of its democratic assembly must trust only to its implied presence, and the foresight with which it has, by law, authorized them. In the end, only one who is present can carry the person of the state.

The Moral Assembly

Before concluding this chapter, I want to briefly turn to another early modern thinker whose reflections on the democratic form of government deserve mention: Samuel Pufendorf. That the problem which Hobbes had posed of the democratic form of government should appear again, almost word for word, in the works of Pufendorf ought perhaps not to be surprising. Hobbes, as becomes clear from even a cursory reading of Pufendorf's major work *On the Law of Nature and Nations*, looms very large indeed. However, regardless of whether Pufendorf should be viewed as little more than a *disciple* of Hobbes,[88] these iterations are not insignificant. Pufendorf's indebtedness to Hobbes was certainly very great, but so was his attempt to arrive at something different from the rather pessimistic view of the Englishman. The fact then that a theorist who took such pains to refute Hobbes' pessimism about the nature of social life and of morality should have ended up with such remarkably similar pronouncements on the nature of politics, indicates how intractable the problem which Hobbes posed is.

As mentioned, one of the most startling aspects of Hobbes' theory is its moral relativism. In the absence of the state, there simply is no such thing as right or wrong, justice or injustice. The state, or more accurately the sovereign, ultimately must determine what constitutes theft, murder, injury and, more generally, good and evil, right and wrong, justice and injustice. However, followed to its logical conclusion, this position leads us into the potentially absurd implications of legal positivism, implications which Pufendorf was careful to point out. As a case in point, Pufendorf notes, we might simply imagine a state which dictates, "for instance, that it is unlawful to keep one's word, that one need not give a man his due, or live an honest life, that every person may injure another as much as he

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[87] Hobbes, *On the Citizen*, 98.

[88] Skinner, "The sovereign state: a genealogy," 38.

can, &c".[89] Since such a state could not possibly endure for any length of time, there must be certain fundamental bonds of morality within which all social life, including the state, must operate if it is to function and persist. If we admit the existence of such bonds, Pufendorf suggests, then there is more to natural law than Hobbes was prepared to concede. These bonds, Pufendorf argues, in fact follow from the fundamental characteristics of human nature, which, contrary to Hobbes' description, paints a picture of the human being not as a bellicose *wolf to man*, but as a creature "exposed to want, unable to exist without the help of his fellow-creatures".[90] Having made human beings dependent on the help of their fellow-creatures, God had, Pufendorf suggests, imposed on humankind a fundamental natural law more extensive than simply *seeking peace*: "And so it will be a fundamental law of nature, that 'Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude, which is peaceful and agreeable at all times to the nature and end of the human race'".[91] God, in short, has imposed *sociality* on humankind.[92] Natural law might not provide the positive laws with any kind of detailed content, but impels them to take on such a form that social life is preserved. Natural law, in Pufendorf's view, is essentially, as James Tully puts it, "a *social* theory".[93]

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[89] Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo*, trans. C. H. Oldfather, W. A. Oldfather, and Walter Simons, ed. James Brown Scott (Oxford University Press 1934), VIII.i.5.1139.

[90] Pufendorf, *De Jure Naturae*, II.iii.15.207f.

[91] Pufendorf, *De Jure Naturae*, II.iii.15.208.

[92] Pufendorf, of course, was not the first to argue that man was an intrinsically social being, and Hugo Grotius – who looms equally large in Pufendorf's writings – had already suggested that "*amongst the Things peculiar to Man, is his Desire of Society, that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his Understanding*", Grotius, *The Rights of War and Peace*, 80f. Pufendorf's innovation was to have premised the Grotian principle of *sociality* on a more solid foundation than mere observation, Istvan Hont, "The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the 'Four-Stages Theory'," in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 262; Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996), 42f. There is some debate among modern commentators as to whether the principle of *sociality* is entirely distinguishable from *self-preservation*. Kari Saastamoinen argues that this is the case, and that Pufendorf's theory is a genuine "divine command theory of morality", Kari Saastamoinen, *The Morality of the Fallen Man: Samuel Pufendorf on Natural Law* (Helsinki: SNS, 1995), 18.

[93] James Tully, "Introduction," in *On the Duty of Man and Citizen According to Natural Law*, ed. James Tully (Cambridge: Cambridge University Press, 1991), xxiii.

For this reason, the state occupies a somewhat ambiguous position in Pufendorf's theory. It is not the absolute precondition of social life, absent which we necessarily must endure the war of all against all. Contrary to Hobbes, Pufendorf suggests that "it is not proper to oppose a state of nature to a social life, since even those who live in a state of nature can, and should, and frequently do, lead a mutually social life".[94] In Pufendorf's state of nature, there can indeed be social life, commerce, and even smaller associations, like the family.[95] The question then is "why men have not been content with those first small associations [*societas*], but have constituted larger associations which go by the name of states [*civitas*]".[96] It is the question of what is particular to this kind of association, the purpose of which is neither the satisfaction of the love of society, which "can be satisfied by simple societies and by friendship with one's equals",[97] nor the satisfaction of material wants, "which the family (where desires are limited) seems capable of relieving".[98] Part of the answer resides merely in the lack of self-enforcement of natural law. The obligation of the state then is in part to give the natural laws "the force and effectiveness of civil law".[99] Here, the image that we get of the state is almost Lockean. The state simply does what the natural laws by themselves do not have the force to do. However, the problem of relativism is one which Pufendorf is unable to entirely evade. Thus, the state is necessitated not only by human beings' "indolence, and disinclination to do what is useful, when there is no compulsion to force them",[100] but also by "the diversity of inclinations and judgements in

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[94] Pufendorf, *De Jure Naturae*, II.ii.5.166. Pufendorf's somewhat wavering conception of the state of nature is detailed in Fiammetta Palladini, "Pufendorf disciple of Hobbes: The nature of man and the state of nature: The doctrine of socialitas," *History of European Ideas* 34, no. 1 (2008).

[95] Tully, "Introduction," xxix. This corporatist, and even organicist, facet of Pufendorf's theory, as pointed out by Dieter Wyduckel, even ends up undermining his own individualist conception of legal subjectivity: the only parties to the contract which brings the state about are the heads of families – women, children and servants subsumed by the former's will, Dieter Wyduckel, "Die Vertragslehre Pufendorfs," in *Samuel Pufendorf und die europäische Frühaufklärung*, ed. Fiammetta Palladini and Gerald Hartung (Berlin: Akademie Verlag, 1996), 157.

[96] Samuel Pufendorf, *On the Duty of Man and Citizen Accordning to the Law of Nature*, trans. Michael Silverthorne, ed. James Tully (Cambridge: Cambridge University Press, 1991), 132.

[97] Pufendorf, *De Jure Naturae*, VII.i.3.952.

[98] Pufendorf, *On the Duty*, 118.

[99] Pufendorf, *On the Duty*, 155.

[100] Pufendorf, *On the Duty*, 136.

discerning what is of most advantage to a common end".[101] Thus for Pufendorf, as for Hobbes, unity of will can no otherwise be achieved than "for every individual to subordinate his will to that of one man, or of a single council, so that whatever that man or council shall decree on matters necessary to the common security, must be regarded as the will of each and every person".[102] As has been suggested by modern commentators, Pufendorf thus ends up in a position fairly close to that of Hobbes, in which the sovereign possesses the "sole discretion to determine how the natural law should be enacted in the state's positive laws".[103] While only a state commensurable with the fundamental law of *sociality* can endure, we might then say that Hobbes' fundamental problem still remains: natural law remains too generic, too open to the diversity of judgements, for social life to persist on any scale absent this peculiar *association*.[104] This, I would suggest, is what brings Pufendorf into the very same problem of presence as Hobbes.

Pufendorf's state does, however, differ in some subtle ways from Hobbes'. While Pufendorf's state too is a *person*, it is not a *fictional* person, but "a compound moral person".[105] The subtleties of Pufendorf's conception of the state as a *moral person* are somewhat beyond the scope of the argument here.[106] The point, however, is that Pufendorf's theory of *moral persons* does show up in intriguing ways in his, surprisingly neglected, treatment of democracy, and is, I will suggest, what allowed him, in theoretical terms, to articulate the problem, which Hobbes had hinted at, perhaps more precisely than Hobbes himself had done.

By *moral persons*, Pufendorf has in mind certain *attributes*, or *modes*, "superadded, at the will of intelligent entities, to things already existent and physically

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[101] Pufendorf, *De Jure Naturae*, VII.ii.5.971.

[102] Pufendorf, *De Jure Naturae*, VII.ii.5.972.

[103] Ian Hunter, *Rival Englightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001), 149. In Hochstrasser's interpretation, the secularization of Pufendorf's concept of natural law, and his pessimistic notion of human nature, meant that he, in the end, came fairly close to Hobbes, Tim J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2004), 105.

[104] To take one concrete example, while marriage, in Pufendorf's view, was indeed a dictate of natural law – as a prerequisite for procreation – the specific form, including the nature of familial authority, could vary according to the civil laws. Thus, Pufendorf conceded, "it is clear that there are marriages also among the most advanced peoples, in which either no authority is yielded one over the other, or the husband himself is subject to the full civil authority of the wife", Pufendorf, *De Jure Naturae*, VI.i.9.854f.

[105] Pufendorf, *De Jure Naturae*, VII.ii.13.984.

[106] For an extended treatment, see Ben Holland, *The Moral Person of the State: Pufendorf, Sovereignty and Composite Politics* (Cambridge: Cambridge University Press, 2017).

complete".[107] In short, we are moral persons in the sense that we, in addition to our physical bodies, impose upon ourselves certain *roles*, or modes of being in the moral world ("in his house the head of a family, in parliament a senator, in a court of justice a lawyer").[108] This, Pufendorf argues, made Hobbes' concept of *fictional* persons somewhat redundant, since while "a man may frequently represent the person of an inanimate object, which in itself is not a person, such as a church, a hospital, a bridge, &c", it was in Pufendorf's view simpler to conceive of the person whose duty it is to care for such things as a *moral person*, being in that capacity imputed with certain duties.[109] The question we may then pose, using Pufendorf's vocabulary, is: what kind of moral persons are we in the state, and, more specifically, in a democracy?

We ought first to note that in his account of the emergence of the state, Pufendorf introduces an intermediate stage into Hobbes' single contract, one in which the multitude first agrees unanimously to be a people, before settling on the form of government.[110] Though this initial contract has "somewhat the form of a democracy",[111] it is not, as Hobbes had maintained in *De Cive*, an actual democracy. A truly democratic form of government, Pufendorf argues, like the other forms of governments, has to be established by a decree by the members of the future state, followed by a contract between the people and the sovereign. In a democracy, then, the people – having contracted with one another – decrees the form of

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[107] Pufendorf, *De Jure Naturae*, I.i.4.6.

[108] Pufendorf, *De Jure Naturae*, I.i.14.14.

[109] Pufendorf, *De Jure Naturae*, I.i.12.12.

[110] Tuck, *The Sleeping Sovereign*, 112ff; Noel Malcolm, "Hobbes and Spinoza," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press 1991), 573. The character of this "people" as Michael J. Seidler notes – with a reference to Gierke – somewhat seems to waver between medieval organicism and modern collectivism. Its existence, however, as Seidler notes, was important insofar as it allowed Pufendorf to incorporate in his theory a right of resistance. Where a monarch entirely abandons the second contract, the interregnum reverts not to a state of nature, but to a kind of "temporary democracy". Thus, Pufendorf, Seidler argues, interpreted the Glorious Revolution of 1688, and James' 'abdication', in such terms, Michael J. Seidler, "'Turkish Judgement' and the English Revolution: Pufendorf on the Right of Resistance," in *Samuel Pufendorf und die europäische Frühaufklärung*, ed. Fiammetta Palladini and Gerald Hartung (Berlin: Akademie Verlag, 1996), 91, 92, 102; Pufendorf, *De Jure Naturae*, VII.vii.7.1090.

[111] Pufendorf, *De Jure Naturae*, VII.v.6.1029. While Richard Tuck notes this distinction, and Pufendorf's reluctance to entertain the Hobbesian and Bodinian distinction between sovereignty and government, he does not appear to seize the relevance of this point; that "the actual governmental structure" is in fact what is significant, and that this is precisely a question of *presence*, Tuck, *The Sleeping Sovereign*, 116.

government to be democratic, and then contracts with itself as the sovereign. In this case, then, the latter pact, admittedly, "does not appear so clearly, since the same individuals are in different respects both rulers and subjects".[112] Nevertheless, since a pact requires two parties, such parties have to be assumed. Here then, Pufendorf's conception of moral persons becomes clear. For, he points out, the people as individuals and the assembly "do not differ only in bare respect alone, but are actually different persons, although of a different kind, to whom belong a distinct will, distinct acts, and distinct rights".[113] The assembly, thus, is a *moral person*, and just as the individuals which compose it assume different moral personas in their lives – as husbands, fathers, lawyers in a court – they assume the moral persona of *bearer of sovereignty* only within this assembly. Hence, Pufendorf could reiterate the distinction which Hobbes drew between a *people* and a *multitude*. For no individual possesses part of the sovereignty, only the moral quality of possessing "the right to vote in the assembly in which is vested the supreme sovereignty".[114] Similarly those who command and those who obey are, in the democratic form of government, distinguished "not in a physical but only in a moral respect".[115] To spell out the argument Pufendorf, as I understand it, makes here: in a democracy, it is *within* the assembly, and only within it, that I pass from being the moral person of a *subject* to being the moral person of the *sovereign*, which I am only together with the other citizens. This, of course, amounts to the same point Hobbes had already made. However, Pufendorf's vocabulary was in many ways more apt for expressing it. It gives concrete expression to the difference in moral quality I possess inside and outside the assembly. Similarly, in distinguishing the initial meeting of the first pact from an actual democratic form of government, Pufendorf could make the argument that the necessity of the recurring meetings of the assembly constitutes an intrinsic part of the democratic form of government. A singular meeting simply does not make a democratic form of government. Thus, it is among "the prime necessities of a democracy" that "a certain place and time be set for the meetings, where they must deliberate and decide upon the affairs of state". Where the members instead meet in factions, at different times and in different places, or not at all, there is no people, "but a

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[112] Pufendorf, *De Jure Naturae*, VII.ii.8.975.

[113] Pufendorf, *De Jure Naturae*, VII.ii.8.975.

[114] Pufendorf, *De Jure Naturae*, VII.ii.8.975.

[115] Pufendorf, *De Jure Naturae*, VI.vii.1.1084.

scattered multitude, to which can be attributed neither the action nor the right belonging to one person".[116]

Again, this was virtually a quote from Hobbes, and in both *On the Duty* and *On the Law of Nature*, Pufendorf mirrors Hobbes' assertion that "monarchy has a marked advantage over the other forms, in that deliberation and decision, that is, the actual exercise of authority [*imperium*], does not require stated times and places but may occur at any time and place; consequently a monarch is always in full readiness to perform acts of authority".[117] However, regardless of how closely Pufendorf followed Hobbes in these passages, in certain ways Pufendorf's entire theory was more suited to bring out this problem. Whereas Hobbes could speak of the state as a person by fiction, like a bridge or hospital, Pufendorf's theory of moral persons was premised on the precise assertion that only physical individuals can be moral persons. Though Hobbes' state, as we saw, could acquire reality only through such physical individuals, representing by fiction the person of the state, Pufendorf's entire theory, as Ben Holland notes, was premised on the fact that the moral qualities which human beings invent in the world are attributes of physical substances.[118] To the point I have been trying to make here: while our physical presence in a particular place, at a given time, has no intrinsic value, it is nevertheless only through this physical presence that the moral quality upon which political life depends becomes actual. Thus, it is through the presence of physical individuals in a particular place, at a particular time, that the democratic assembly becomes a moral person. And it is in it, that these individuals become moral persons as members of that assembly. Thus, in the democratic form of government, there are not only the reciprocal duties of obedience and care and protection which attend life in the state.[119] In this particular form of government, there is "yet a greater obligation": since those who command and obey are the same physical individuals, their obligations as moral persons must include the obligation to exert all their strength for the care of the state, *and* to "attend the assembly frequently enough".[120]

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[116] Pufendorf, *De Jure Naturae*, VII.v.7.1030.

[117] Pufendorf, *On the Duty*, 142; Pufendorf, *De Jure Naturae*, VII.v.9.1033.

[118] As Ben Holland points out, the concept of *person* for both Hobbes and Pufendorf implied the performance of a role. However, unlike Hobbes' fictional persons, "Pufendorf's moral persons are subtended by natural human beings and cannot exist absent that basis", Holland, *The Moral Person of the State*, 86.

[119] Hunter, *Rival Englightenments*, 187.

[120] Pufendorf, *De Jure Naturae*, VII.ii.8.976.

All of this being said, Pufendorf, like Hobbes, alludes to the possibility of the assembly appointing, during the intervals of its meetings, magistrates to exercise authority in the interim. Since the business of the state "is concerned with daily occurrences and minor matters", and since it is not "convenient for a whole people to be in constant session in council to attend to the former concerns, or at such frequent intervals that none of those matters can escape their attention, it is therefore necessary for certain magistrates to be established, as delegates, to carry on the daily business with the authority of the entire people, to examine more fully into matters of importance, to lay before the assembly any affair of serious consequence, and at the same time to execute the decrees of the people, since any large gathering of men is almost entirely unsuited to that duty".[121] Indeed, in distinguishing between *minor matters* and *affairs of serious consequences*, Pufendorf was more detailed on this point than was Hobbes. Nevertheless, neither Pufendorf nor Hobbes addressed the question occasioned by such an arrangement: whose will is it that is in fact pronounced when the people are *absent*? This question, I would argue, is not unduly imposed on Pufendorf. The distinction between minor matters and affairs of serious consequences, though Pufendorf does not specify it, clearly implies that the will of the sovereign assembly, and the will of the magistrates present in its place, cannot be *a priori* assumed to be identical. While minor matters can be entrusted to magistrates, present in the place of the people, entrusting affairs of serious consequences to the same implies a measure of risk. The people, not being present, will ultimately lack the power to take cognizance of what such an affair necessitates, or indeed, whether a matter is, in the first place, a minor one or one with serious consequences. Indeed, that this question is not unduly imposed on Pufendorf can be gleaned from the centrality which it occupies in his distinction between *absolute* and *limited* sovereignty.

One of the particular features of Pufendorf's *two-contract theory*, was that it opened the possibility of a *limited* sovereignty. It is, Pufendorf argues, perfectly possible for a monarch to be granted sovereignty subject to having made certain fundamental promises, or on condition that he consult a council representing the people on those issue "over the disposal of which he has not been accorded absolute power".[122] The conditions of that grant, then, may be in the form of a mere

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[121] Pufendorf, *De Jure Naturae*, VII.v.7.1030f.

[122] Pufendorf, *De Jure Naturae*, VII.vi.10.1070. The distinction between absolute and limited sovereignty, Pufendorf points out, does not strictly apply to the democratic form of government. "Indeed, in democracies the distinction between absolute and circumscribed sovereignty is apparently not so clearly discoverable. For although in every democracy there must exist certain institutions established by custom, or sanction by written laws, namely, when and by whom the people shall be called to assembly, and the public business laid before them, and turned

promise, or, where the king is "more strictly limited", by obligating him to consult a council on certain issues.[123] In particular the latter arrangement has been interpreted as a novel, and influential, aspect of Pufendorf's political theory, and one which followed directly from his conception of the state as a *moral person*. Specifically, Holland has suggested, Pufendorf had here formulated a form of government in which sovereignty is continuously exercised by the concurrence of monarch and council.[124] However, it is worth noting Pufendorf's treatment of such an arrangement. Specifically, a "more thorough understanding of the nature of limited monarchies" requires that we must distinguish between two kinds of matters "which come up in the administration of a state". The first are those that "can be decided in advance", the second those upon which judgement can be reached "only at the time they arise, because it cannot be foreseen what circumstances will attend them".[125] A people that have settled on a limited form of monarchy must be mindful of both, so that "no hurt be done the state". It is, however, naturally the second kind of matter which is the more pressing issue. Thus, if the monarch is limited by mere promises, the monarch is absolved of those promises where necessity – as the highest natural law – requires it: "For if the king says that the safety of the people, or the real welfare of the state, demands that (and such a presumption always attends the acts of a king), the citizens have nothing to reply, since they have not the power to take cognizance as to whether or not the necessity of the state demands such measures".[126] It is, admittedly, a different matter when

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over for execution (for a state cannot be understood without such provisions), yet since that council in which is vested the supreme sovereignty is composed of the entire body of citizens, and so no one outside it secures any right from its decisions, nothing will prevent the same people being able to abrogate and modify them at any time", Pufendorf, *De Jure Naturae*, VII.vi.8.1064.

[123] Pufendorf, *De Jure Naturae*, VII.vi.10.1069f.

[124] Holland, *The Moral Person of the State*, 92. Susan Moller Okin, in fact, has suggested that Hobbes came close to espousing a similar idea in his later writings, such as his *Dialogue between a Philosopher and a Student of the Common Laws of England*, Susan Moller Okin, ""The Soveraign and His Counsellours": Hobbes's Reevaluation of Parliament," *Political Theory* 10, no. 1 (1982); Thomas Hobbes, "A Dialogue between a Philosopher and a Student of the Common Laws of England," in *The English Works of Thomas Hobbes of Malmesbury*, ed. William Molesworth (London: John Bohn, Henrietta Street, Covent Garden, 1840).

[125] Pufendorf, *De Jure Naturae*, VII.vi.11.1072.

[126] Pufendorf, *De Jure Naturae*, VII.vi.10.1069. This passage Michael J. Seidler interprets as an expression of Pufendorf's reluctance towards inscribing too strong a right of resistance: the people simply do not possess the faculty to discern the matter, and obedience is the option most conducive to social stability, Seidler, "'Turkish Judgement' and the English Revolution: Pufendorf on the Right of Resistance," 83. Within the context in which the passage appears,

the monarch is limited in such a way that it is obliged to consult the people, or their representatives, on such matters. On this point, Pufendorf is arguably somewhat opaque. Nevertheless, he remarks that such an arrangement must be understood not "to lead to the commission of anything which would prejudice the common safety of all, and the public welfare, or lead to the overthrow or dissolution of the state".[127] Where some truly pressing issue arises, Pufendorf seems to suggest, it will be incumbent upon the monarch to correct the arrangement. In such cases, "it would be agreeable, if the matter admits of delay, that such a proposal be made in the gathering of the people or estates; and if this is impossible the king will be empowered carefully to correct pacts which are destined to lead to the destruction of the state".[128] In short, the entire question here concerns that of *presence*. Where no council is present, the people simply *lack* the power to take cognizance of whether the necessity was actual or not, and whether the monarch acted in a manner conformable to the will of the people. We seem then to return to the problem which Pufendorf had posed of the democratic form of government. While the democratic assembly can, and must, appoint magistrates present during its intervals, it does so, in some sense, at its own peril. It must do so with the knowledge that many things happen which cannot be foreseen, and in the end the judgement of whether such a thing is a minor matter or a matter of serious consequence, ultimately, must be the judgement of whoever is present.

Conclusion

It is certainly true to say that for Hobbes, all governments are representative, and that to speak of the unmediated sovereignty of the multitude is to speak in obscure and metaphysical terms. As I have sought to argue, however, this in no way obviated, for Hobbes, the question of *presence*. While "the Seat of Power"[129] is

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however, I interpret the absence of such a faculty rather to be strictly a practical matter; where no council is present, the people simply lack the faculty with which to take cognizance of the matter.

[127] Pufendorf, *De Jure Naturae*, VII.vi.12.1076.

[128] Pufendorf, *De Jure Naturae*, VII.vi.12.1076. On the interpretation of this passage, I have partly relied upon Basil Kennett's translation, see Samuel Pufendorf, *Of the Law of Nature and Nations*, trans. Basil Kennett, ed. Jean Barbeyrac (London: Printed by J. Walthoe, R. Wilkin, J. and J. Bonwicke, S. Birt, T. Ward, and T. Osborne, 1729), VII.vi.12.701.

[129] Hobbes, *Leviathan*, 3.

occupied only, as Skinner puts it, "by the disembodied and fictional Person whose generic name is the State",[130] it must also be occupied by very physical persons indeed. Only through the presence of such physical persons can the fictional person of the state be made present to act and speak in the world. And this it must be as often as something happens in relation to which a judgement on behalf of all is necessitated. In a world characterized by innumerable occurrences about which there will be as many judgements as there are people, and on which the natural laws give little guidance, it is only through this presence that a unity – however artificial it may be – can be effected. As often as something happens, the nature of which concerns our living together with our fellow human beings, this peculiar association must be *present*. To its *absence* inevitably attends the precarious possibility that something will, in the meantime, happen over which we will have no control. The problem of presence, thus, for Hobbes was a problem of time. Whether the seat of power is occupied by a monarch or an assembly of all, that seat of power cannot but be occupied as long as we demand of the state that it be present to judge on behalf of us all. While it is true that no such thing as *the people* exists absent some constituted form, and some form of representation, this, in Hobbes' conception, amounts to no more than an argument for the necessity of some criteria by which we can judge who is entitled to speak on behalf of all. While it precludes someone, or some group, from disregarding those criteria, it does not tell us what those criteria ought to be. Hobbes, of course, is at pains to argue that whether "a Common-wealth be Monarchicall, or Popular, the Freedome is still the same",[131] thus refuting the republican claim that only popular states are free.[132] Monarchy, Hobbes asserts, is no less free than democracy. The point, however, is that the democratic assembly, with appointed times and places of meetings and a decision-making procedure, no less satisfies those criteria. As long as a democracy has a decision-making procedure, and a series of scheduled meetings, it is not the rule of the multitude.

The democratic assembly in Hobbes' theory, thus, is not the pure democracy of contemporary political thought. It does not oppose itself to constitutionalism, but in fact, presupposes it. It presupposes settled and agreed-upon times and

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[130] Skinner, "Hobbes on Representation," 178.

[131] Hobbes, *Leviathan*, 149.

[132] On the concept of *liberty*, and the distinction between Hobbes' conception and the republican, see Skinner, *Liberty Before Liberalism*, 6; Tuck, *Philosophy and Government 1572-1651*, 328. On the role of *civic virtues* in Hobbes' political theory, see Mary G. Dietz, "Hobbes's Subject as Citizen," in *Thomas Hobbes and Political Theory*, ed. Mary G. Dietz (Lawrence: University Press of Kansas, 1990).

places in which the assembly is legitimately present as a sovereign person. If Hobbes thus insists on the literal presence of the people, it is not because of some belief in the intrinsic authenticity or truth of the will which might emerge from it. It is only that where all are allowed to be present, only through this presence, on stated times and places, does the state have a will at all. To the absence of this assembly, however brief, attends the possibility that the lack of power will leave things which concern political order unaddressed. And while those intervals may be filled by magistrates present in the place of the assembly, these will have only the ever-fallible foresight with which the assembly pronounces the law to guide them.

The choices with which Hobbes' theory presents us may, of course, seem overly restrictive, and the question may be posed whether we need, after all, to accept Hobbes' definition of democracy in the first place. As I have sought to indicate, the image of the democratic assembly, in which the entire citizenry exercises sovereignty, may not be a *true*, or *genuine*, form of democracy. In this sense, there is much to recommend Lee's assertion that this image probably owes a great deal to its critics. As such, there is something to be said for the effort to *think beyond* it, perhaps even to recover the idea that democracy might mean ruling and being ruled in turns.[133] However, if we are indeed captives of those concepts which Bodin, Hobbes and Pufendorf laid down, and if the modern state "is truly the monstrous power and the enormous machine which Hobbes described",[134] the image of the sovereign democratic assembly may still be a prism in which are reflected concepts we have yet to think beyond. After all, though all governments are representative, in this form of government alone is it the concrete body of actual citizens who represent, and make present, the person of the state. Only in this form of government does the body of concrete citizens coincide with the body of the fictional *people* in whose name they speak. Between the incessant need for this fictional people to be made present often enough in the world, and the practical problem of assembling the concrete body in time and space to fulfil this task, resides for Hobbes the problem of presence. And while subsequent thinkers eschewed – on practical and normative grounds – Hobbes' democratic assembly, this problem was one which they could not entirely avoid.

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[133] On the disappearance of the lot as a democratic device, Manin, *The Principles of Representative Government*, 9.

[134] Bobbio, *Thomas Hobbes and the Natural Law Tradition*, 101.

Chapter III: Power in Being

In the last chapter, I suggested that regardless of whether Hobbes intended his treatment of the democratic form of government to be a kind of *reductio ad absurdum*, there is nevertheless in it something more than a mere rhetorical flourish. If the mirror which Hobbes and Filmer held up to the conventional conception of popular sovereignty reflected back a somewhat disconcerting portrait, the point was that this portrait did have meaning. And if it did have meaning, it was precisely because it brought into focus the ambivalence of a discourse which spoke of the sovereignty of the people in equivocal terms. While there is, then, reason to regard Hobbes as having posed a genuine theoretical problem, the question nevertheless remains of how fundamental it was. That is, to what extent is the problem which we recounted in the previous chapter one which imbues the political thought of those who did *not* treat the idea of popular sovereignty as a *reductio ad absurdum*?

In his *Two Treatises of Government*, John Locke suggested that "there can be but *one Supream Power*, which is *the Legislative*, to which all the rest are and must be subordinate".[1] He, however, also suggested that "there remains still *in the People a Supream Power*".[2] That is, beneath the *supreme* power of the *state*, or *political society*, there is, additionally, a *supreme* power localized nowhere in the state itself, but inhering inalienably in the people. In short, those who *exercise* power do not possess it, it does not belong to them, and whatever power they exercise may be taken away from them. Locke's conception of the state, as Skinner points out, thus differed in substantial ways from that of Hobbes. In Locke's 'populist' theory of the state, the state is not its own person, but always only the expression of the entity which precedes it: the sovereign people.[3] Locke was, admittedly, not the

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[1] John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 366f.

[2] Locke, *Two Treatises of Government*, 367.

[3] Quentin Skinner, *From Humanism to Hobbes: Studies in Rhetoric and Politics* (Cambridge: Cambridge University Press, 2018), 361.

first to make that argument. If, however, he followed it further than others had done, we might take his *Two Treatises* as the focal point through which we might address the question above. For in what, precisely, resides the distinction between these two supreme powers? That is, what is this distinction between *the state* and *the people* which resides beneath it? Does Locke leave the seat of power *empty* where Hobbes filled it? If so, how does Locke solve the problem of presence? These are the questions which I will attempt to answer in this chapter.

Before doing so, however, it may be worth remarking briefly on the reading of the *Two Treatises* suggested here. As Richard Ashcraft in particular has emphasized, the largely philosophical tone of the *Two Treatises* ought not to obscure the radical political intent of the text.[4] Indeed, the often considerable overlap between Locke's *Two Treatises* and English republican political thought – though Locke did not precisely speak the same language[5] – does merit reading Locke in context. While acknowledging this argument, the reason that the *Two Treatises* nevertheless is the focal point of this chapter is precisely because of its philosophical tone. While not a purely philosophical work, it is a work which articulates themes common to other radical thinkers of his time in an abstract and philosophical manner. In particular, as I hope to show, Locke was a political thinker intensely sensitive to the question of *time*, and the theoretical implications of it. However much Locke's *intentions* were shared by the radicals of his time, it is this theme, on which Locke – because of his philosophical tone – is uniquely explicit, which will form the focus of this chapter. It is, as we will see, the question around which, I would argue, the distinction between the state and the people is articulated throughout the *Two Treatises*. In this sense, while Locke's political thought differed substantially from that of Hobbes, the fundamental structure of the problem of presence was one which Locke not only had to acknowledge, but one which imbues his entire political theory.

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[4] Richard Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 9, 392; Richard Ashcraft, "Revolutionary Politics and Locke's Two Treatises of Government: Radicalism and Lockean Political Theory," *Political Theory* 8, no. 4 (1980): 468. Ashcraft's work is a continuation of that by Peter Laslett, which showed that the *Two Treatises* were written prior to, and not as previously thought, after the Glorious Revolution of 1688, Peter Laslett, "Introduction," in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 61.

[5] Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 424.

Always to be Present

We may here begin with the state, and its supreme legislative power. What brings this distinct form of power into being? Why in short, does such a thing as *political society*, or the *state*, come into being? The question, although Locke suggests that "'tis obvious to Answer",[6] is a somewhat puzzling one. It is puzzling for the same reason that Pufendorf's answer to that question is somewhat puzzling. Locke, like Pufendorf, depicts the state of nature as one in which each of us are, or at least ought to be, guided by the laws of nature. Though it is a state of liberty, it is "*not a State of Licence*".[7] Indeed, according to what Locke calls his "strange Doctrine", in the state of nature, "*every one has the Executive Power* of the Law of Nature".[8] If this is the case, the question then is why the law of nature, which "be plain and intelligible to all rational Creatures",[9] should not be satisfactory for people to live by. Why, in short, should we need the state? Locke's natural law theory, it should be noted, has somewhat confounded modern scholars. Not least, in light of the philosophy of knowledge Locke set out in his *Essay Concerning Human Understanding*, Locke "seemed to be casting doubt on the existence of any justifiable universal morality".[10] Neither does Locke, in the *Two Treatises*, present a detailed

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[6] Locke, *Two Treatises of Government*, 350.

[7] Locke, *Two Treatises of Government*, 270.

[8] Locke, *Two Treatises of Government*, 275. As Tuck points out, it was an argument which Grotius had already, in a sense, made, Tuck, *Philosophy and Government 1572-1651*, 177; Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), 63.

[9] Locke, *Two Treatises of Government*, 351.

[10] J. B. Schneewind, "Locke's moral philosophy," in *The Cambridge Companion to Locke*, ed. Vere Chappell (Cambridge: Cambridge University Press, 1994), 201; W. von Leyden, "John Locke and Natural Law," in *John Locke: Critical Assessments*, ed. Richard Ashcraft (London and New York: Routledge, 1991), 6; Martin Seliger, "Locke's Natural Law and the Foundations of Politics," in *John Locke: Critical Assessments*, ed. Richard Ashcraft (London and New York: Routledge, 1991), 39; James W. Byrne, "The Basis of Natural Law in Locke's Philosophy," in *John Locke: Critical Assessments*, ed. Richard Ashcraft (London and New York: Routledge, 1991), 55; James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), 281ff; John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969), 187-99. Locke's epistemology was premised on the rejection of *innate* ideas. While morality can, Locke suggests, be demonstrated, certain epistemological difficulties does attend it, John Locke, *An Essay Concerning Human Understanding*, ed. Peter H. Nidditch (Oxford: Clarendon Press, 1975), 104, 549. In his *Essays on the Law of Nature*, Locke similarly refutes the idea that knowledge of the Law of Nature is

account of what the content of the law of nature is. What he does suggest is that "GOD having made Man such a Creature, that, in his own Judgement, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into *Society*".[11] If this argument resembles that of Pufendorf,[12] the question here too poses itself of why we are driven into a specifically *political* society. Setting aside Locke's natural rights theory, we may note that Locke *does* address, in the *Two Treatises*, the question of why "*Civil Government* is the proper remedy for the Inconveniencies of the State of Nature",[13] and enumerates three principal reasons. The first is that, while the law of nature is plain and intelligible, "yet Men being biassed by their Interest, as well as ignorant for want of study of it, are not apt to allow of it as a Law binding to them in the application of it to their particular Cases". That is, what is missing is a "settled, known *Law*, received and allowed by common consent to be the Standard of Right and Wrong". The second reason is the absence of a distinct and impartial judge. The third is the absence of a common power to ensure the execution of the laws of nature.[14]

Here then, we are presented with a somewhat ambiguous account. Having painted his picture of the state of nature as peaceful, it seems that "Locke demolishes it as his argument proceeds".[15] The principal point Locke appears to make, is that the cause of the uncertainty which attends the enjoyment of our rights in the state of nature, is attributable to a lack of knowledge of, and disinclination to adhere to, the law of nature. The ambiguity, however, resides in the question of whether the purpose of the state is merely to put into execution the law of nature. At times, Locke seems to suggest as much. For, he at one point contends, where each person quits "his Executive Power of the Law of Nature", and resigns "it to the publick, there and there only is a *Political, or Civil Society*".[16] That is, what creates the state is merely the creation of a common executive power of the laws

innate, John Locke, "Essays on the Law of Nature," in *Locke: Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 94.

[11] Locke, *Two Treatises of Government*, 318.

[12] Tully, *An Approach to Political Philosophy: Locke in Contexts*, 282. On Pufendorf's influence on Locke, Haakonssen, *Natural Law and Moral Philosophy*, 52.

[13] Locke, *Two Treatises of Government*, 276.

[14] Locke, *Two Treatises of Government*, 351.

[15] Leo Strauss, "On Locke's Doctrine of Natural Rights," in *John Locke: Critical Assessments*, ed. Richard Ashcraft (London and New York: Routledge, 1991), 164.

[16] Locke, *Two Treatises of Government*, 325.

of nature. Of the legislative power, Locke is somewhat opaque, suggesting that its role is merely to set down "what punishment shall belong to the several transgressions which they think worthy of it".[17] That is, other than putting into positive form the law of nature, and affixing to it definitive punishments, Locke leaves the question of what the legislative power of the state is meant to do somewhat open.

This does however pose the question of in what sense it then is *supreme*? For, as is clear from the *Two Treatises*, this power is not incidental. It is, for instance, that which defines the form of government, since, "according as the Power of making Laws is placed, such is *the Form of the Common-wealth*".[18] Indeed, Locke also contends, it is "*the Soul that gives Form, Life, and Unity* to the Commonwealth",[19] and the power "which has a right *to direct* how *the Force of the Commonwealth* shall be imploy'd for preserving the Community and the Members of it".[20] That is, while positive law must be "conformable to the Law of Nature",[21] it seems clear that for Locke, as for Pufendorf, it is something more than merely affixing to the transgression of the laws of nature appropriate punishments. In the end, as Patrick Riley has put it, "the social contract, for Locke, is necessitated by natural law's inability to be literally 'sovereign' on earth, by its incapacity to produce 'one society'".[22] Whether the inconvenience of the state of nature resides primarily in the recalcitrance of people to adhere to the precepts of natural law, a failure to understand them, or, to the lack of specificity in those precepts, it is clear that the problem, no less than for Hobbes and Pufendorf, is one of how *unity* is accomplished out of diversity. Even if we do not accept the stark moral relativism of Hobbes, it seems that the problem remains our fundamentally human plurality and diversity. Whether our problem resides in our disinclination to adhere to what is plain and intelligible, or whether the specificities of actual life will always be too specific for the precepts of natural law to be perfectly guiding, a common life seems, at the very least, precarious in the absence of that particular association called the state, and the legislative power through which this common life is to be directed. In the end, it is this problem to which the legislative power

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[17] Locke, *Two Treatises of Government*, 324.

[18] Locke, *Two Treatises of Government*, 354.

[19] Locke, *Two Treatises of Government*, 407.

[20] Locke, *Two Treatises of Government*, 364.

[21] Locke, *Two Treatises of Government*, 358.

[22] Riley, *Will and Political Legitimacy*, 69; also A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton: Princeton University Press, 1993), 63; Seliger, "Locke's Natural Law and the Foundations of Politics," 46.

corresponds: "the *Essence and Union of the Society* consisting in having one Will, the Legislative", it is this which "has the declaring, and as it were keeping of that Will".[23]

I have here somewhat glossed over Locke's account of the formation of the state, to which it will be necessary to return. My point, however, has been to indicate how for Locke the state becomes, as it did for Hobbes and Pufendorf, the remedy which addresses the inconvenience which the diversity of inclinations and judgements occasions in the state of nature. Whatever form of *society* may exist in the state of nature, Locke is clear that it is in *political* society alone that "a number of men", "make one People, one Body Politick".[24] That is, however much we are by natural law driven to society, there is a sense in which for Locke, the state is a distinctly *artificial* creation. Thus, as we will see, it is for Locke, as it was for Hobbes and Pufendorf, one which is beset by the question of *time*. This, we will see, pervades the entirety of the *Two Treatises*. While it presents itself particularly clearly in Locke's articulation of the parts of the state, that is, the *legislative* and *executive* powers, it does in fact present itself already in his account of the formation of the state, to which we may now return.

The central point which Locke sought to make, arguably, was that a political society can be legitimately created in no other manner than by *consent*.[25] Thus, whenever "any number of Men have so *consented to make one Community* or Government, they are thereby presently incorporated, and make *one Body Politick*".[26] To this, however, Locke quickly introduces an important caveat. For, "it being necessary to that which is one Body to move one way; it is necessary the Body should move that way whither the greater force carries it, which is the *consent of the majority*: or else it is impossible it should act or continue one Body, *one Community*".[27] As has been noted by modern commentators, Locke spends little time justifying this principle, other than as an expedient alternative to unanimity.[28]

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[23] Locke, *Two Treatises of Government*, 407.

[24] Locke, *Two Treatises of Government*, 325.

[25] On the complex question of what *consent* means for Locke, see John Dunn, "Consent in the Political Theory of John Locke," in *John Locke: Critical Assessments*, ed. Richard Ashcraft (London and New York: Routledge, 1991); Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 90.

[26] Locke, *Two Treatises of Government*, 331.

[27] Locke, *Two Treatises of Government*, 332.

[28] Riley, *Will and Political Legitimacy*, 94; Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 94.

The point which it seems to me worth emphasizing, and which has not perhaps been sufficiently emphasized – presumably because of its obviousness – is the problem which Locke here poses about the *continuation* of the state. In fact, Locke addresses this question quite explicitly in his arguments against *unanimity* and *individual consent*. For instance, if unanimity would be required, it is certain that "Infirmities of Health, and Avocations of Business", necessarily will "keep many away from the publick Assembly". In addition, "the variety of Opinions, and contrariety of Interests, which unavoidably happen in all Collections of Men",[29] would preclude such unanimity. Indeed, in a rare allusion to Hobbes,[30] Locke asserts that would unanimity be required for all acts of political society, "this would make the mighty *Leviathan* of a shorter duration, than the feeblest Creatures; and not let it outlast the day it was born in".[31] The point, then, is that while the initial consent of all is required to form a state, this moment must immediately pass over into majoritarianism, by which the state becomes capable of acting, to which it is called by the inability of natural law to be, literally, sovereign. The majority, in short, must decide on a *form* of government. That is, it must decide in whose hands the legislative and executive powers of the state should be placed, through which it can act in the world. Here, then, is a first indication of how central the question of time was to Locke.

The question indeed assumes an important place in Locke's elaboration of the parts of the state, that is, the legislative and executive powers, to which we may now turn. One of the notable aspects of Locke's account of the formation of the state is the manner in which he, from the outset, distinguishes these two forms of power. Rather than speaking of *sovereignty*, which Locke rarely does in the *Two Treatises*,[32] he suggests that with the formation of the state, "we have the original of the *Legislative* and *Executive Power* of Civil Society".[33] While, as we saw in the previous chapter, the execution of law does figure in the political theory of Hobbes and Bodin, both subsumed this aspect under the heading of *magistracy*. For Locke, however, the executive is clearly something more. Whereas Bodin and Hobbes, as

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[29] Locke, *Two Treatises of Government*, 332f.

[30] The question of Locke's relation to Hobbes is a contentious one in modern scholarship. While Locke's allusions to Hobbes are few, there seems to be reason to believe that he had in fact at least read Hobbes, Felix Waldmann, "John Locke as a Reader of Thomas Hobbes's Leviathan: A New Manuscript," *The Journal of Modern History* 93 (2021); Laslett, "Introduction," 74.

[31] Locke, *Two Treatises of Government*, 333.

[32] Tully, *An Approach to Political Philosophy: Locke in Contexts*, 37.

[33] Locke, *Two Treatises of Government*, 325.

we saw, regarded the boundary between sovereignty and magistracy as somewhat floating, and even precarious, for Locke the two powers of legislation and execution are, from the outset, clearly delineated. The question, then, is what Locke meant by this? Why, in short, does Locke speak of legislative and executive power, rather than sovereignty and magistracy? In a sense, as we have seen, Locke's account of the executive is fairly straightforward: the executive power of the state is merely the collective exercise of the executive power each of us holds in the state of nature. This does not, however, particularly tell us why Locke does not subsume this function under magistracy. Why, in short, is the executive such a distinct and prominent power in Locke's state?

However obvious the existence of an executive power is to a modern reader, the question is worth reflecting on. From where, precisely, the idea of an executive power comes, is somewhat open to debate within modern scholarship. While Harvey Mansfield suggests that the idea can be found as early as in the philosophy of Aristotle, his account is somewhat teleological and anachronistic.[34] More or less a *force*, always barely contained but everywhere reluctantly acknowledged as indispensable, Mansfield's executive power is arguably projected backwards into history. In J. H. Burns' account, Bodin's distinction between *sovereignty* and *government*, which we mentioned briefly in the preceding chapter, could be seen as prefiguring Locke's distinction.[35] While there is something to be said for such an interpretation, the two do not precisely overlap. The simpler, it seems to me, explanation is a somewhat structural one. To speak, as Locke does, of the executive as a distinct power in its own right, in the end, presupposes an equally distinct and exclusively *legislative* power. That is, it is against a power exclusively concerned with acts of legislation that the executive, in Locke's political theory, acquires the character of a distinct power endowed with responsibilities beyond mere application of law. In particular, as we will see, it is against an *intermittently present* legislative, that the executive comes to be endowed with a distinct will of its own. In this sense, there is reason to here posit the English *mixed constitution* as the immediate context of Locke's conception of executive power. For instance, Philip Hunton had, in his treatment of the mixed constitution, already distinguished the "Power of Magistracie" into "*Nomotheticall* or *Architectonicall* and

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[34] Harvey C. Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power* (New York: The Free Press, 1989), 1.

[35] While Burns argues that "it seems clear that 'government' in Bodin's terminology refers to executive power", it should be noted that Bodin does not refer to it as such, J. H. Burns, ""Regimen Medium": Executive Power in Early-Modern Political Thought," *History of Political Thought* 29, no. 2 (2008): 222.

Gubernative or *Executive*". While the former resided in Parliament as a whole, the latter, Hunton suggested, was the prerogative of the king.[36] Indeed, the distinction does appear in English seventeenth-century republicans' conception of the English constitution as a kind of mirror of the *mixed constitution* espoused by renaissance republican thinkers.[37] In this view, while Locke speaks in the abstract of *executive power*, not the king's prerogatives, there is every reason to read it as being an abstracted treatment of the English constitution.[38]

So, in what sense is the executive, for Locke, a distinct power? The answer which most readily presents itself, is arguably that Locke was making an argument for the *separation of powers*.[39] There is much to merit such an interpretation, and

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[36] Philip Hunton, *A treatise of monarchie* (London: Printed for John Bellamy, and Ralph Smith, and are to be sold at the three golden Lions in Corn-hill, 1643), 5; M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1967), 41. The idea, in fact, was expressed by Charles I himself. While, he suggested, "[i]n this Kingdome the Laws are joyntly made by a King, by a House of Peers, and by a House of Commons chosen by the People", the "Government according to these Laws is trusted to the King", *His Majesties Answer to the Nineteen Propositions of both Houses of Parliament*, (Cambridge: Printed by his Majesties speciall command by Roger Daniel Printer to the famous Universitie, 1642), 12. On the significance of this address, see David Lieberman, "The mixed constitution and the common law," in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), 319; Robert Shackleton, "Montesquieu, Bolingbroke, and the Separation of Powers," *French Studies* 3, no. 1 (1949): 27. As J. G. A. Pocock points out, this address was a "disastrous tactical error in royalist polemic", Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 361.

[37] Blair Worden, "English Republicanism," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 447; Skinner, *Liberty Before Liberalism*, 55. For the 'mixed constitution' in renaissance republican thought, see Maurizio Viroli, *From Politics to Reason of State: The Acquisition and Transformation of the Language of Politics 1250-1600* (Cambridge: Cambridge University Press, 1992), 203.

[38] Again, as Ashcraft suggests, there is reason to read the *Two Treatises* as a revolutionary text, intended as a direct comment on contemporary political issues. Locke was however, as Pocock points out, quite unique for being all but uninterested in the historical questions which preoccupied most English writers on politics at the time, J.G.A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge University Press, 1987), 237; also Skinner, *Foundations – vol 1*, xiv.

[39] Though it is generally agreed that the doctrine of the separation of powers, conventionally attributed to Montesquieu, evolved from this functional distinction implied by the idea of the mixed constitution, there is some debate as to how this development occurred. While there is some dispute on the precise path, the influence of Locke and Bolingbroke are typically asserted, Malcolm P. Sharp, "The Classical American Doctrine of "The Separation of Powers"," *The University of Chicago Law Review* 2, no. 3 (1935): 389; Shackleton, "Montesquieu, Bolingbroke, and the Separation of Powers," 29; W. B. Gwyn, *The Meaning of the Separation*

Locke does indeed explicitly make the claim that "it may be too great a temptation to human frailty apt to grasp at Power, for the same Persons who have the Power of making Laws, to have also in their hands the power to execute them".[40] Again, this was a point which republican writers like Marchamont Nedham had already made, considering it an 'error in policy' to permit "the Legislative and Executive Powers of a State, to rest in one and the same hands and persons".[41] However, Locke's reiteration of this point appears intermingled with another reason for why the legislative and executive powers often come to reside in different hands.

The act of legislation, Locke suggests, is at most an intermittent activity. For this reason, and because the laws "may be made in a little time; therefore there is no need, that the *Legislative* should be always in being, not having always business to do".[42] That is, no particular advantage attends to the legislature being perpetually present. However, "because the Laws, that are at once, and in a short time made, have a constant and lasting force, and need a *perpetual Execution*, or an attendance thereunto: Therefore 'tis necessary there should be a *Power always in being*, which should see to the *Execution* of the Laws that are made, and remain in force".[43] That is, while Locke here returns to the problem of presence which Hobbes and Pufendorf had articulated, he does so in a somewhat more detailed and expansive manner. In distinguishing legislation from execution, Locke gives a more detailed account of wherein the problem of presence resides. While legislation necessarily must occur with some regularity – though Locke does not specify this point – what in particular demands the presence of the state is execution. While there is an argument for the separation of power, it is clear that the institutional separation of the legislative and executive power also follows a distinct logic. It is after all, as Locke explicitly points out, because of necessity of the continuous presence of the executive that "thus the *Legislative* and *Executive Power* come often to be separated".[44] The argument, as Locke points out, presupposes the legislature "to consist of several Persons (for if it be a single Person, it cannot but be always in being, and so will as Supream, naturally have the Supream Executive Power,

of Powers (New Orleans: Tulane University, 1965), 91; Vile, *Constitutionalism and the Separation of Powers*, 79.

[40] Locke, *Two Treatises of Government*, 364.

[41] Marchamont Nedham, *The Excellencie of a Free-State* (London: Printed for Thomas Brewster, at the three Bibles neer the West-end of Pauls, 1656), 212.

[42] Locke, *Two Treatises of Government*, 364.

[43] Locke, *Two Treatises of Government*, 364f.

[44] Locke, *Two Treatises of Government*, 365.

together with the Legislative)".[45] While Locke does not spell this out, what he presumably has in mind is a constitution resembling the English, in which the legislative power resides in a representative Parliament, while the executive resides in a monarch.[46]

Again, Locke was not, in fact, the first to allude to this distinction between the presence of the legislature and the presence of the executive.[47] In recounting the origins of Parliament, Hunton had asserted that "because the occasion and need of making new Lawes, and authentick expounding the old, would not be constant and perpetuall [...] they did not stablish these Estates to be constantly existent, but occasionally, as the causes for which they were ordained should emerge and happen to be".[48] Similarly, when Nedham referred to the *arcana imperii* of the executive, it was as a power to be exercised "during the Intervals of their Supreme Assemblies".[49] George Lawson, similarly, responded to the question of whether England was a monarchy by asserting that "it's not a Monarchy, but only in respect of the Executive part in the Intervals of Parliaments".[50] Henry Neville too asserted that "as to what concerns the King's Office in the Intervals of Parliament, it is wholly Ministerial, and is barely to put in Execution the Common Law and the Statutes made by the Soveraign Power, that is, by Himself and the Parliament".[51] Again, what is different about Locke's account then, is rather the abstract and schematic manner in which he presents a somewhat familiar argument. Similarly, after Locke, we find the same abstract structure in the reasoning of Montesquieu, according to whom it would "be useless for the legislative body to be

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[45] Locke, *Two Treatises of Government*, 369.

[46] Laslett, "Introduction," 119.

[47] There is here reason to note what Howard McIlwain has termed the 'riddle of Bracton'. By convention, medieval English jurisprudence had confined the domain of the monarch to *gubernaculum*, or government, as distinguished from *jurisdictio*, or the promulgation and interpretation of law, Charles Howard McIlwain, *Constitutionalism: Ancient and Modern* (Indianapolis: Liberty Fund, 1947), 66ff. As pointed out by J. G. A. Pocock, following McIlwain, the domain of the monarch, was the domain of particularity and contingency, and not the domain of law, whose creator was immemorial custom and providence, Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 30.

[48] Hunton, *A treatise of monarchie*, 44f.

[49] Nedham, *The Excellencie of a Free-State*, 100.

[50] George Lawson, *Politica Sacra & Civilis*, 2 ed. (London: Printed for J. S. and are to be Sold by T. Godwin at the Maidenhead over against St. Dustans Church in Fleet-street, 1689), 163.

[51] Henry Neville, *Plato Redivivus: or, a Dialogue Concerning Government* (London: Printed for S. I. in the Year MDCLXXXI, 1681), 121.

convened without interruption", in contrast then to the executive power, which "is always exercised on immediate things".[52]

While this aspect of Locke's argument has been noted – although often merely in passing – by modern interpreters, there seems to me to be reason to draw out the implications of it, and to somewhat disentangle the differing interpretations offered as to what Locke is actually arguing. Thus, we may turn to the point in Locke's argument at which the legislative and executive powers enter into their most acute tension. This then pertains to the *prerogative*, a concept which has elicited a great deal of comment among modern interpreters. As Locke notes, "the Legislators not being able to foresee, and provide, by Laws, for all, that may be useful to the Community, the Executor of the Laws, having the power in his hands, has by the common Law of Nature, a right to make use of it, for the good of the Society, in many Cases, where the municipal Law has given no direction, till the Legislative can conveniently be Assembled to provide for it. Many things there are, which the Law can by no means provide for, and those must necessarily be left to the discretion of him, that has the Executive Power in his hands, to be ordered by him, as the publick good and advantage shall require: nay, 'tis fit that the Laws themselves should in some Cases give way to the Executive Power, or rather to this Fundamental Law of Nature and Government, *viz.* That as much as may be, *all* the Members of the Society are to be *preserved*".[53] That is, the executive holds, in addition to its power of putting the laws into execution, a "reservoir of authority", as John Dunn calls it,[54] to act in those cases for which the laws have not provided. Indeed, the executive may even act *contrary* to the laws, where the occasion necessitates it. "This Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it, *is* that which is called *Prerogative*".[55] The prerogative, clearly, has somewhat puzzled

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[52] Charles de Secondat Montesquieu, *The Spirit of the Laws*, ed. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), 161f. The same structure also appears in the political thought of Bolingbroke, from whom Montesquieu may have taken inspiration for his thesis of the separation of powers. On the executive power of the king, Bolingbroke contended: "this power is in continual exercise, and may immediately affect, more or less, at one time or at another, every particular man, peer as well as commoner; whereas the other powers are exercised occasionally, are continued or suspended, in great measure, at the will of the prince, and are employed chiefly in matters of general, not particular concern", Henry St John Viscount Bolingbroke, *Political Writings*, ed. David Armitage (Cambridge: Cambridge University Press, 1997), 136.

[53] Locke, *Two Treatises of Government*, 374f.

[54] Dunn, *The Political Thought of John Locke*, 149.

[55] Locke, *Two Treatises of Government*, 375.

modern scholars,[56] for whom the existence of such a discretionary power is somewhat notable in the political theory of a liberal thinker who so much insisted that "*Freedom of Men under Government*, is, to have a standing Rule to live by".[57] How, then, do we understand the existence of the prerogative in Locke's political theory?

The first reading possible here would suggest a strictly legal problem. Specifically, the existence of the prerogative may be understood simply to reflect Locke's acknowledgement of the limitations of the rule of law. Simply put, the rule of law relies upon the ability to foresee the possible cases which the "*promulgated standing Laws*" are meant to subsume.[58] Since such a foresight will never be perfect, however, neither will the rule of law apply without exception.[59] In this sense, though disquieting, the incorporation of the prerogative into Locke's political theory reflects merely his acquiescence to the limitations of the rule of law. Clement Fatovic, thus, suggests that the prerogative may be understood as little more than "an extra-legal means of promoting the same ends that the law advances in normal circumstances: it allows the executive to bring an inherently fallible (because humanly constructed) constitutional order into conformity with the ends it was designed to serve".[60] Dunn, in his treatment, is somewhat more expansive, suggesting that the "fact that there are many cases to which the rules do not apply would not in itself necessitate a special form of treatment for such cases. It is because the sorts of political action which cannot be adequately prescribed by general rules may be, indeed characteristically *are*, those in which the ends of political society are most at risk, those which demand the deployment of force, that there *has* to be a special power of this sort".[61] In either case, such a reading focuses on the abstract legal problem to which Locke's prerogative is meant to be the solution.

A second reading, however, would suggest that this legal problem also appears intermingled with a practical problem: *who*, in the end, acts where law no longer can simply be applied? It is in relation to this question that the problem of *time* appears. While, as mentioned, modern scholars have noted the centrality of the

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[56] Lee Ward, "Locke on Executive Power and Liberal Constitutionalism," *Canadian Journal of Political Science / Revue canadienne de science politique* 38, no. 3 (2005): 719.

[57] Locke, *Two Treatises of Government*, 284.

[58] Locke, *Two Treatises of Government*, 358.

[59] Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010), 385.

[60] Clement Fatovic, "Constitutionalism and Contingency: Locke's Theory of Prerogative," *History of Political Thought* XXV, no. 2 (2004): 279; for a similar argument, Ward, "Locke on Executive Power and Liberal Constitutionalism," 739.

[61] Dunn, *The Political Thought of John Locke*, 150.

question of time in Locke's treatment of the executive in general, and the prerogative in particular, in what precisely this centrality resides, it seems is somewhat open to different interpretations. Specifically, a recurring interpretation suggests that the problem which Locke here alludes to is one of *efficiency*. The legislature, it is suggested, is "too large, and therefore too slow, for the execution of the law",[62] it is "too slow and too cumbersome to be effective".[63] In the end, the prerogative is exercised by the executive for the simple reason that it is, generally, not a collective body, and therefore capable of acting more quickly. Locke *does*, to be sure, make this argument, pointing out that the legislature "is usually too numerous, and so too slow for the dispatch requisite to Execution".[64] However, there is another facet to the problem of time worth emphasizing: the problem of presence. While Locke does mention the efficiency argument, there is reason to distinguish this argument from Locke's assertion that the "Law-making Power is not always in being".[65] While Locke invokes both arguments, it is clear that the theoretical implications are not quite identical. After all, only what is *present* can act, whether or not it does so in an efficient manner.

As I hope to argue, it is, in many ways, the question of presence which is the more significant in Locke's theory. For, as it turns out, the question of who exercises the prerogative is not merely a question of efficiency. For instance, Locke elsewhere does suggest that it is incumbent upon the executive to convoke the legislative when, between its scheduled meetings, exigencies demand it. For, "it not being possible, that the first Framers of the Government should, by any foresight, be so much Masters of future Events, as to be able to prefix so just periods

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[62] Vile, *Constitutionalism and the Separation of Powers*, 61.

[63] Fatovic, "Constitutionalism and Contingency: Locke's Theory of Prerogative," 295; see also Gwyn, *The Meaning of the Separation of Powers*, 77; Sharp, "The Classical American Doctrine of "The Separation of Powers"," 388. Generally, on the question of efficiency or speed and executive primacy, see Eric A. Posner and Adrian Vermeule, *The Executive Unbound: After the Madisonian Republic* (New York: Oxford University Press, 2011), 7; Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, 38.

[64] Locke, *Two Treatises of Government*, 375.

[65] Locke, *Two Treatises of Government*, 375. While both Gwyn and Mansfield allude to this argument, neither draw out the implications of it, Gwyn, *The Meaning of the Separation of Powers*, 78; Mansfield, *Taming the Prince: The Ambivalence of Modern Executive Power*, 201; also Ward, "Locke on Executive Power and Liberal Constitutionalism," 733. William Scheuerman suggests that "[t]he traditional liberal democratic separation of powers also includes a decisive temporal subtext: legislation is prospective, or future oriented; judicial activity is fundamentally retrospective, or past oriented; and the executive is contemporaneous, or present oriented in its fundamental orientation", Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, 28. This, however, is not an argument Locke makes explicit.

of return and duration to the *Assemblies of the Legislative*, in all times to come, that might exactly answer all the Exigencies of the Commonwealth; the best remedy could be found for this defect, was to trust this to the prudence of one, who was always to be present, and whose business it was to watch over the publick good".[66] Here, the presence of the legislature is necessitated in cases of unforeseen exigencies, and it is entrusted to the judgement of the executive, *always to be present*, to decide whether such a necessity is at hand. In the case of the prerogative, however, Locke does not allude to any responsibility on the part of the executive to convoke parliament. As Pasquale Pasquino has pointed out, the executive is not, in making use of the prerogative, authorized by parliament, but authorizes itself.[67] In either case, the executive, as the only one present, must exercise a measure of independent judgement. As Pasquino also notes, "the branch that exercises the executive function is not reducible to a machine that applies the law; it is endowed with its own will and responsibility that permit it to face the unpredictable".[68] The point I wish to add to this interpretation is that what makes the executive more than a machine, and which imbues it with a will of its own, in the end is that, in many cases, it will simply be the only one present.

Does this independence of judgement then constitute a problem for Locke? While he seems to imply that the judgement which the executive must exercise in convoking the legislature and in exercising the prerogative is an unproblematic trust, Locke does however note "[t]he old Question" which "will be asked in this matter of *Prerogative*, But *who shall be Judge* when this Power is made a right use of?".[69] In many cases, Locke suggests, the independent judgement of the executive will be relatively unproblematic, and the people will be merely "acquiescing in it when so done".[70] However, where the executive misuses the prerogative, and also holds the power to convoke the legislature, problems might ensue. That is, as long as the executive is the only one present, no power exists to judge its actions. Except, that is, the revolutionary power of the people. For, "tho' the *People* cannot be *Judge*, so as to have by the Constitution of that Society any Superiour power, to determine and give effective Sentence in the case; yet they have, by a Law antecedent and paramount to all positive Laws of men, reserv'd that ultimate

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[66] Locke, *Two Treatises of Government*, 371.

[67] Pasquale Pasquino, "Locke on King's Prerogative," *Political Theory* 26, no. 2 (1998): 202.

[68] Pasquino, "Locke on King's Prerogative," 202.

[69] Locke, *Two Treatises of Government*, 379.

[70] Locke, *Two Treatises of Government*, 377.

Determination to themselves, which belongs to all Mankind, where there lies no Appeal on Earth, *viz.* to judge whether they have just Cause to make their Appeal to Heaven".[71] That is, ultimately, the final judgement of the executive's use of the prerogative can only be the resistance of the people. To this, then, we may now turn.

The Ordinary and the Extraordinary

As I have sought to argue, Locke's state must be *present*, in part through an intermittent legislative power, in part through an executive power always in being. Through these distinct powers, the state acts in a world of continuously unfolding, and to a greater or lesser extent, anticipated events. The question, then, brought into focus in particular by the prerogative, is what imbues these acts with their content. That is, who is *present* to decide what ought to be done? As is clear, Locke acknowledges the difficulty involved. The fallibility of foresight can only be remedied by presence. What the law has failed to anticipate must remedied by the discretion of whoever is present, as and when the occasion arises. Yet, this same presence, by the discretion which this fallibility occasions, is a precarious one. The remedy, then, resides in the check which such discretion must be subject to, and which ultimately – and this is perhaps the truly novel aspect of Locke's political thought – must reside in the people's *judgement*. Having thus outlined Locke's conception of the state, it is time to turn to his conception of *the people* and its *supreme* power.

As mentioned, the distinction between the *supreme* power of the state, and that of *the people*, is not a distinction Locke was the first to make. Hugo Grotius had already distinguished what he called the *common* and the *proper* subject of sovereignty. That is, he suggested that while "the common Subject of Supreme Power is the State", its exercise would reside in a proper subject.[72] He was, however,

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[71] Locke, *Two Treatises of Government*, 379f. See, Tully, *An Approach to Political Philosophy: Locke in Contexts*, 41.

[72] Grotius, *The Rights of War and Peace*, 259. The relation between the two, however, is quite complex. As Knud Haakonssen has put it, sovereignty in Grotius' conception "is not a power that rulers have over subjects, but one that they exercise on behalf of the corporate body", Knud Haakonssen, "Hugo Grotius and the History of Political Thought," *Political Theory* 13, no. 2 (1985): 244. Annabel Brett makes a similar argument, in that the effect of Grotius' construction of sovereignty was "that sovereignty *as actually exercised* has no necessary location in the people (*populus*) that it governs", Annabel Brett, "The subject of sovereignty: Law, politics and moral reasoning in Hugo Grotius," *Modern Intellectual History* (2019): 20. On the

careful to "reject their Opinion, who will have the Supreme Power to be always, and without Exception, in the People; so that they may restrain or punish their Kings, as often as they abuse their Power".[73] The more immediate influence on Locke's distinction may however be, as Julian Franklin has suggested, George Lawson.[74] In his *Politica Sacra & Civilis*, published in 1660, Lawson had distinguished between *real* and *personal* sovereignty. As he argued, "Real is in the Community, and is greater than Personal, which is the power of a Common-wealth already constituted".[75] What was decidedly new in Lawson's version, Franklin suggests, is "his emphatic and consistent denial that the powers of real majesty, or constituent authority, can be transferred to a representative assembly as one of its ordinary powers".[76] That is, once constituted, the personal sovereign is admittedly *sovereign*. However, "the Personal Sovereign hath no power to make fundamental Laws concerning the constitution, but only for the administration".[77] This constituent authority, therefore, can belong only to the *community*, "[f]or according to the general principles of Government, the right of Constitution, Alteration, Abolition, Reformation is the right of real Majesty".[78] Furthermore, this constituent authority cannot, in Lawson's account, be alienated from the community. The community, as Franklin notes, is "not absorbed within the commonwealth. It retains its corporate identity, and also its capacity to act".[79] The strict logic of Lawson's argument is here worth emphasizing. Unlike earlier resistance theorists, for whom parliament *was*, for all practical purposes, *the people*, Lawson insists on that distinction. Certainly, Lawson suggests, "the People may make use of such

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influence of Grotius on Locke's resistance theory, see Martin Van Gelderen, "'So Meerly Humane': Theories of Resistance in Early-Modern Europe," in *Rethinking The Foundations of Modern Political Thought*, ed. Annabel Brett and James Tully (Cambridge: Cambridge University Press, 2006), 167f.

[73] Grotius, *The Rights of War and Peace*, 260f.

[74] Julian H. Franklin, *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution* (Cambridge: Cambridge University Press, 1978), 89.

[75] Lawson, *Politica Sacra & Civilis*, 57.

[76] Franklin, *John Locke and the Theory of Sovereignty*, 73.

[77] Lawson, *Politica Sacra & Civilis*, 67.

[78] Lawson, *Politica Sacra & Civilis*, 382. As Salmon has pointed out, Grotius' "*subjectivum commune* became the *subjectivum constitutivum*", J.H.M. Salmon, "The Legacy of Jean Bodin: Absolutism, Populism or Constitutionalism?," *History of Political Thought* XVII, no. 4 (1996): 521.

[79] Franklin, *John Locke and the Theory of Sovereignty*, 71.

an Assembly as a Parliament, to alter the former Government, and constitute a new; but this they cannot do as a Parliament, but considered under another Notion, as an immediate Representative of a Community, not of a Commonwealth".[80] That is, the people may bestow on parliament a constituent power. But it then ceases to be a parliament, that is, a constituted power. In addition to its constituent power, Lawson added – also with a reference to earlier resistance theorists – that "[a]s this Community hath the power of constitution, so it hath of dissolution, when there shall be a just and necessary cause".[81] That is, the community has a revolutionary power with which it can revoke the grant of authority bequeathed to the personal sovereign.

This, then, is the idea upon which Locke expanded and which, no doubt, is one of the most significant aspects of his political thought.[82] As Locke points out, the *supreme* power of the legislature is only "a Fiduciary Power to act for certain ends", it is a power "*given with trust*". When abused, "the trust must necessarily be forfeited, and the Power devolve into the hands of those that gave it", and therefore, "the *Community* may be said in this respect to be *always the Supream Power*".[83] As James Tully has emphasized, upon this revolutionary power is premised Locke's entire political system, which obviates the existence of a concretely localized sovereign.[84] Since all political authority is merely a trust, what prevents it from becoming sovereign, ultimately, is the revolutionary power by which the people may revoke that trust.

So what, then, does this power imply? Or, to return to the question which I posed in the introduction to this chapter: what is the relation of this power and the *state*? The first point to note is the manner in which Locke insists upon the distinction between the two. So, while the people do retain a *supreme* power, they do not do so "as considered under any Form of Government, because this Power of the People can never take place till the Government be dissolved".[85] That is,

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[80] Lawson, *Politica Sacra & Civilis*, 59.

[81] Lawson, *Politica Sacra & Civilis*, 58.

[82] James Tully suggests, contra Franklin, that Locke was in this respect more radical than Lawson, for whom the dissolution of government meant that power was devolved not to the people, but to their natural representatives, Tully, *An Approach to Political Philosophy: Locke in Contexts*, 19.

[83] Locke, *Two Treatises of Government*, 367.

[84] Tully, *An Approach to Political Philosophy: Locke in Contexts*, 38.

[85] Locke, *Two Treatises of Government*, 367.

"*the Legislative can never revert to the People* whilst the Government lasts".[86] What then, does Locke have in mind when he refers to the government as *dissolved*? Whereas Hobbes would have regarded the dissolution of government as bringing about anarchy and the state of nature, Locke is here ambiguous. He begins by distinguishing the *dissolution of government* from the *dissolution of society*.[87] The former need not, Locke insists, entail the latter. The assertion, however, is ambiguous. For, as Locke does insist, those who lack a "common Appeal, I mean on Earth, are still in the state of Nature".[88] Where government is dissolved, clearly, such a common appeal does not exist, and we would seem to find ourselves back in the *state of nature*. Whether the dissolution of government entails a lapse back into the state of nature, and if so, whether this state of nature is commensurable with some form of society, thus has confounded modern interpreters.[89] The suggestion offered by A. John Simmons, is that the "[d]issolution of government returns persons to the state of nature *with respect to their governors*, but *not with respect to their fellow citizens*".[90] Whatever the intricacies of Locke's theoretical edifice, his point does seem to be that where government is dissolved, the people remains a *society*, and "at liberty to provide for themselves, by erecting a new Legislative".[91]

This interpretation does, however, pose the question of what precisely this *society*, absent a government, *is*. Or, to put the question in modern terms: what gives the people this identity in the absence of some constituted form? This is not entirely unduly anachronistic question to impose on Locke. As we have seen, it is one which Hobbes too posed. It is, I would suggest, one which also does manifest itself in Locke's ambiguities. The question which I have in mind here, then, is not the question with which Ashcraft is concerned, that is, whether Locke by the term *people* had any particular social strata in mind.[92] Rather, it is the question of what imbues *the people* to which Locke attributes a fundamental *supreme* power with

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[86] Locke, *Two Treatises of Government*, 428.

[87] Locke, *Two Treatises of Government*, 406.

[88] Locke, *Two Treatises of Government*, 324.

[89] Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government*, 575; Laslett, "Introduction," 116.

[90] Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 171.

[91] Locke, *Two Treatises of Government*, 411.

[92] Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government*, 305.

some form of collectivity and unity, absent constituted government.[93] The first point to note about Locke's thesis about the dissolution of government, is that he enumerates only cases in which the people *react* to what government does.[94] Locke enumerates only such cases where government – whether in the legislative or the executive – acts against the trust reposed in them. It is, furthermore, a power which is activated "not upon every little mismanagement in public affairs", but only through "a long train of Abuses, Prevarications, and Artifices".[95] The people is not, Locke seems to imply, an entity which is capable of spontaneously manifesting its will other than by *reacting* to a long train of abuses. There is here a further ambiguity noted by Simmons. For since the dissolution of government is occasioned by government abusing its trust, the question is: do the people, by *acting*, dissolve it, or do the people merely react to a dissolution which the government *itself*, through its wrongful acts, brings about?[96]

These questions, then, may be pursued further by attempting to discern what image of *the people* Locke paints, once government is dissolved. That is, assuming the government to be dissolved by the revolutionary reaction of the people to its abuses, what precisely follows upon it? Locke, to be sure, is somewhat opaque on this point. In Simmons's interpretation, society, in such cases, reverts to a kind of "perfect democracy".[97] That is, once government is dissolved, the residual society now takes the form of a perfect democracy. The question, then, is whether this is truly the case. Locke's definition of democracy, it should be noted, is exceedingly brief, and his remarks in the *Two Treatises* confine themselves to defining it: "The Majority having, as has been shew'd, upon Mens first uniting into Society, the whole power of the Community, naturally in them, may imploy all that power in making Laws for the Community from time to time, and Executing those Laws

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[93] As Tully notes, without however pursuing the point further, the people in this instance remains a 'corporate body', Tully, *An Approach to Political Philosophy: Locke in Contexts*, 40.

[94] As Martin Seliger points out, the power which the people possess is a *negative* one. It is not necessarily capable of defining what is right or wrong, but capable of defining what constitutes violations of certain fundamental rights, Martin Seliger, "Locke's Theory of Revolutionary Action," in *John Locke: Critical Assessments*, ed. Richard Ashcraft (London and New York: Routledge, 1991). It seems to me that Seliger's point can be extended. For such a negative power presupposes a primary act by the government to which the people react.

[95] Locke, *Two Treatises of Government*, 415.

[96] Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 163, n. 34.

[97] Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 167. Tully seems to have something similar in mind, noting that the people, once government is dissolved, will remain a corporate body retaining the principle of majority rule, Tully, *An Approach to Political Philosophy: Locke in Contexts*, 40.

by Officers of their own appointing; and then the *Form* of the Government is a perfect *Democracy*".[98] Possibly, this is the form of government which Locke envisaged as following the dissolution of government, whether continually or as an intermediary stage for some other form of government. The question I wish to pose here, however, is whether this really is the supreme power of the people? If Simmons' interpretation is correct, we are clearly in a *form of government*, and as Locke pointed out, the supreme power of the people cannot take place under any form of government. The point being that a form of government, even a perfect democracy, requires acts of legislation *from time to time*, and execution of the laws by officers which, as we saw, need to be *always in being*. That is, part of the opacity of the image Locke paints for us of the supreme power of the people, arguably resides in the fact that, whatever it is, it must be of an almost infinitely short duration, immediately to pass over into *some* constituted form. The point, in fact, had been made already by Lawson. For the community which precedes constituted form, he suggested, "is like a matter without form in respect of something that it must receive, yet a matter and a subject disposed and *in proxima potentia* to receive a form to perfect it: and this form is that we call a Common-wealth, a Polity, a State".[99] The question, in short, is what precisely a *formless matter* is? Why is it that this matter *must* receive a form? Part of the answer, if there is some merit to the interpretation I have offered here, is that the distinction, which so imbues Locke's *Two Treatises*, is the distinction, in Lawson's terms, between the *ordinary* and the *extraordinary*. For "[w]hat may be done in extraordinary cases is one thing, what may be done in an ordinary way another".[100] It is as if the incessant unfolding of concrete life which characterizes the ordinary, and the variety of opinions and contrariety of interests which it occasions, impels the supreme, but extraordinary, power of the people, into a *form*. To put the argument I have sought to make here as succinctly as possible: while constituted form remains a trust, revocable by the revolutionary power of the people, this people remains a formless matter, seemingly incapable of subsisting as such for any duration. It must, as it were, be brought into *time*, which it can do only through the form by which the continuous presence of political power is ensured. If, then, the portrait Locke gives us of the people in the dissolution of government remains somewhat opaque, Locke's text itself in a sense gives us the reason for why that might be. Political society, after all, exists in time. It, in fact, exist for the very reason that

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[98] Locke, *Two Treatises of Government*, 354.

[99] Lawson, *Politica Sacra & Civilis*, 46.

[100] Lawson, *Politica Sacra & Civilis*, 163.

life continuously unfolds in a world of moral uncertainty, where natural law simply cannot be sovereign on earth. That political society, or the state, then, must be continuously present, through an intermittent legislative and a continuously present executive. This is what political society, or the state, in fact, *is*.

With this in mind, we are now in a position to return to the question of the prerogative, and to formulate the dilemma more precisely. The fact that political life necessarily occurs in time, in the continuously unfolding events of concrete life, means that political power must be *present*. Only that which is present, ultimately, can decide on what political society ought to do in response to these unfolding events, and must do so with only the limited guidance which fallible foresight can afford. While those decisions will be little more than *provisional*, subject ultimately to the judgement of *the people,* there is a sense in which this judgement, if it arrives at all, will always arrive "too late".[101] Only what is present can, in the end, decide. In this sense, the dilemma Locke formulates goes deeper than the question of efficiency. Efficiency, after all, presupposes some value against which it is measured. The deeper dilemma Locke formulates is that, in the end, only what is present can decide what value is to inform those acts by which political society intervenes in the world. And while those decisions can always be challenged, the precarity resides in the fact that only a long train of abuses might be enough to stir the sleeping *supreme* power of the people into action, and that even if they awaken, they will in some sense find their arrival to be too late.

Again, imposing on Locke these theoretical problems may be somewhat uncharitable. However, I have sought to argue that these difficulties do reside in the text itself. Furthermore, they were, to some extent, recognized by Locke's contemporaries. For instance, as has been pointed out by modern scholars, Locke's thesis about the dissolution of government was, in a manner, an unwelcome one within the context of the Glorious Revolution of 1688. For, the question was whether government, with the 'abdication' of James II, was truly *dissolved*, and if so, whether the *Convention parliament* truly had the authority to settle the royal succession.[102] The dilemma was put, for instance, by William Atwood who, citing the anonymous author of the *Two Treatises* – whom he otherwise lauded – argued

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[101] Locke, *Two Treatises of Government*, 411.

[102] Franklin, *John Locke and the Theory of Sovereignty*, 104; Mark Goldie, "The Roots of True Whiggism, 1688-94," *History of Political Thought* 1, no. 2 (1980); Robert Beddard, "The Unexepcted Whig Revolution of 1688," in *The Revolutions of 1688*, ed. Robert Beddard (Oxford: Clarendon Press, 1991); James Tully, "Locke," in *The Cambridge History of Political Thought. 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 639.

that the author "seems not to have attended to the duplicity or other particular nature of the Contract, in relation to the *English* Government".[103] Here, Atwood maintained, it was imperative to "distinguish upon the word *Form*".[104] Referencing Pufendorf's two-contract theory – and Grotius' distinction between the *common* and *proper* subject of sovereignty – he argued that the English constitution "depends not upon a single Contract between the People, and a Prince and his Heirs", but that "there plainly was a farther Contract among themselves, to prevent Anarchy and Confusion".[105] Government was not, then, dissolved, and while the throne was vacant England was still a monarchy. Almost a century later, William Blackstone remarked, in a more theoretical manner, on the legal problem which Locke's thesis on the dissolution of government, and the revolutionary power of the people, entailed. Without refuting it, he pointed out that "we cannot practically adopt it, nor take any *legal* steps for carrying it into execution". Locke's revolutionary check on constituted powers, he argued, necessarily "includes in it a dissolution of the whole form of government established by that people; reduces all the members to their original state of equality; and, by annihilating the sovereign power, repeals all positive laws whatsoever before enacted". In the absence of such a total dissolution of government, no legal remedies existed to check Parliament, and in practice, "the power of parliament is absolute and without control".[106] The difficulties which Locke's political theory highlighted, then, are difficulties with which his contemporaries too were concerned, and which, indeed, concern us today as well. What I have sought to argue here, is that whether Locke's attempt to solve them are convincing or not, his text tells us a great deal about wherein these difficulties reside.

I have, in this chapter, said little of Locke's conception of democracy, for the simple reason that, on this form of government, Locke in the *Two Treatises*, "said

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[103] William Atwood, *The Fundamental Constitution of the English Government. Proving King William and Queen Mary our Lawful and Rightful King and Queen* (London: Printed by J. D. for the Author, 1690), 101.

[104] Atwood, *The Fundamental Constitution*, 100.

[105] Atwood, *The Fundamental Constitution*, 9, 102.

[106] William Blackstone, *Commentaries on the Laws of England* (Philadelphia: J. B. Lippincott Company, 1893), I.II.161. On Blackstone's role in the gradual disappearance of notion of constituent power in British constitutional thought after 1688, see Martin Loughlin, "Constituent Power Subverted: From English Constitutional Argument to British Constitutional Practice," in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007), 43.

next to nothing".[107] Having outlined Locke's political theory, it seems to me nevertheless worth concluding by saying something about the conception of democracy as it figured among Locke's contemporaries. For, among contemporary radicals and theorists of popular sovereignty, their arguments – which often overlap with those of Locke – such a conception figured as an important *negative* argument, as something which one did *not* advocate. In part, the argument was, as has frequently been noted, *aristocratic*.[108] John Milton, for instance, insisted on putting political power in the hands of "the better part of the People", which, he added, "I should not scruple to call by the Name of, and take them for all the People".[109] There was indeed a recurring aversion to a *pure* form of democracy, in which "the wisdom of the better sort is made useless by the fury of the People",[110] and where "the unrestrained licentiousness of the multitude will beget confusion and anarchy".[111] In their characterization, however, there was, in addition to the reticence of putting power in the hands of the lower classes, also an allusion to a form of government in which the people perform *all* acts of government. This, for instance, is what Neville referred to as "Extream of Democracy, which is called Anarchy", in which "the People not contented with their Share in the Administration of the Government, (which is the right of Approving, or Disapproving of Laws, of Leagues, and of making of War and Peace, of Judging in all Causes upon an Appeal to them, and chusing all manner of Officers) will take upon themselves the Office of the *Senate* too, in manageing Subordinate Matters of State, Proposing Laws Originally, and assuming Debate in the Market place, making their

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[107] Seliger, "Locke's Theory of Revolutionary Action," 602.

[108] Skinner has noted the aristocratic and anti-democratic sentiments of the seventeenth-century English republican writers, their commitment to 'popular government' notwithstanding, Skinner, *Liberty Before Liberalism*, 31f. For similar arguments in the volume edited by Cesare Cuttica & Markku Peltonen, see for instance, Rachel Foxley, "Imagining Citizenship in the Levellers and Milton," in *Democracy and Anti-democracy in Early Modern England 1603–1689*, ed. Cesare Cuttica and Markku Peltonen (Leiden/Boston: Brill, 2019); Hannah Dawson, "The Place of Democracy in Late Stuart England," in *Democracy and Anti-democracy in Early Modern England 1603–1689*, ed. Cesare Cuttica and Markku Peltonen (Leiden/Boston: Brill, 2019); Cesare Cuttica, "The Spectre Haunting Early Seventeenth-Century England (ca. 1603–1649): Democracy at Its Worst," in *Democracy and Anti-democracy in Early Modern England 1603–1689*, ed. Cesare Cuttica and Markku Peltonen (Leiden/Boston: Brill, 2019).

[109] Milton, *A Defence of the People of England*, 169.

[110] Neville, *Plato Redivivus*, 68.

[111] John Trenchard and Thomas Gordon, *Cato's Letters: Or, Essays on Liberty, Civil and Religious, And other Important Subjects*, vol. 2, ed. Ronald Hamowy (Indianapolis: Liberty Fund, 1995), 504.

Orators their leaders; nay, not content with this, will take upon them to alter all the Orders of the Government when they please; as was frequently practised in *Athens*, and in the Modern State of *Florence*".[112] Algernon Sidney, for his part, laconically concluded merely that "[a]s to Popular Government in the strictest sense, (that is pure Democracy, where the People themselves, and by themselves, perform all that belongs to Government) I know of no such thing; and if it be in the World, have nothing to say for it".[113] The point here is that this image of pure democracy, whether it be in the world or not, was at least a theoretical possibility. In fact, it was almost entirely a theoretical possibility, one to which not even Athens unequivocally corresponded. If this image then was not occasioned by historical example, the question is where it came from. Possibly, it was indeed the image which figures like Filmer and Hobbes had conjured up as a *reduction ad absurdum*. Regardless, it was one which thinkers, otherwise disposed to popular government, felt compelled to address – if only to ridicule. The people, none excluded,[114] being continuously assembled to perform all acts of government, was a theoretical possibility, and one whose infeasibility had to be, to some extent, argued. If Locke did not precisely engage with this image, it is clear in what sense his own conception of a well-ordered state differed from it. And, as we will see in the next chapter, it is one whose implications Rousseau directly concerned himself with.

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[112] Neville, *Plato Redivivus*, 67f.

[113] Algernon Sidney, *Discourses concerning government* (London: Printed, and are to be sold by the Booksellers of London and Westminster, 1698), 149.

[114] On the question of whether women were excluded, little was said explicitly, and when the question was addressed, it was usually to justify such an exclusion. The point, however, is that such rationalisations were somewhat precarious. A truly perfect democracy, if only a theoretical possibility, could not *a priori* justify such an exclusion. Thus James Tyrrell reiterated almost verbatim Pufendorf's point that, by the exclusion of women and children, a perfect democracy did not, and could not, exist. Thus, if all adult men had a vote in the assembly, this would be as close to a perfect democracy as was feasible: "So that if ever there was any such thing as a Democracy in the world, this would be one", James Tyrrell, *Patriarcha non Monarcha. The Patriarch Unmonarch'd* (London: Printed for Richard Jameway, in Queens-head-Alley in Pater-Noster-Row, 1681), 92. On the question of Locke specifically, Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory*, 120; Elshtain, *Public Man, Private Women: Women in Social and Political Thought*, 125.

Conclusion

To conclude this chapter, the question might be posed: is the *seat* of power for Locke *empty*? In a sense it is. None who exercise political power does so unconditionally. What power they hold is only ever a *trust*, and subject to the possibility of being revoked. There is then a sense in which, as Martin Seliger puts it, "the authority to apply natural law and judge the appositeness of its application, is made a matter of competition between government agencies and between them and the people".[115] This, arguably, is the central point of the *Two Treatises*, and it is worth emphasizing that the entire first treatise is a refutation of a thinker – Robert Filmer – who *did* argue that those who exercise power indeed *possess* it.

However, it is clear that the seat of power is not, for Locke, *literally* empty. On the contrary, it is occupied on the one hand by an *intermittent* legislative power, and on the other by an executive power, *always* to be *present*. Does this presence, then, matter? Locke, at times, seems to imply that it does not, unless, that is, those who are present to exercise political power systematically abuse their trust. The people will typically have little reason to intervene, as long as whoever exercises political power indicates that "he really means the good of his People, and the preservation of them and their Laws together".[116] However, what the *good* is, for Locke, is a question which, in the moment, can only be answered by whoever is at that time *present*. The executive, when it alone is present, must ultimately decide what the good is, and what it necessitates, and must do so with only the fallible foresight of the law. That decision, admittedly, is only a provisional one, and in the end *the people* must be the judge of it. However, even if they do judge, this judgement will in a certain sense always arrive *too late*. If there is a competition between the powers within and without the state, it is worth emphasizing the dilemma which Locke brings out: in the end, there is little competition between a power *present* and a power *absent*.

The question may then be posed whether *the people*, for Locke, can be *present* in the sense employed by modern legal scholars: as a unified entity transcending the legal order. Locke seems to suggest that it can. However, even without anachronistically imposing on him the arguments of modern scholars, Locke's argument poses difficult questions. The image which Locke paints of what such a people, absent a form of government, may be, arguably does remain somewhat opaque, seemingly acquiring its identity either by reacting to the abuses of

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[115] Seliger, "Locke's Natural Law and the Foundations of Politics," 41.

[116] Locke, *Two Treatises of Government*, 405.

government or teleologically anticipating the new form it constitutes. What Locke's theory does give us, is an indication of wherein the difficulty to which modern theorists have alluded resides.

Chapter IV: Foresight and Presence

If there is a political thinker who, more than any other, insisted on the presence of the people at the seat of power, it is Jean-Jacques Rousseau. If there is a thinker who represents the *metaphysics of presence*, it is arguably the one who wished that he had been born in a state where "the People and the Sovereign are the same person". That Rousseau, who wished that he had been born "under a democratic government wisely tempered",[1] should now be considered "vital for the theory of participatory democracy",[2] is thus not particularly surprising.

However, while "almost everybody asserts that Rousseau does father some kind of democracy",[3] precisely what kind of democracy Rousseau fathered, and if he in fact fathered any kind of democracy at all, remains a point of contestation among modern political theorists and interpreters. Rousseau, it is suggested, "proposes to institutionalize the general will's supremacy through a direct democracy".[4] His *Social Contract*, it is suggested, should be read as "the most original and, arguably, radical defense of participatory democracy in the whole history of political thought".[5] Indeed, it has been suggested, "Rousseau gave rise to totalitarian democracy".[6] Proponents and opponents of his political thought alike, have regarded him "as the true prophet, if not the very source and fountain-head of the

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[1] Rousseau, "Second Discourse," 115. On the question of 'presence' more generally in Rousseau's works, Jean Starobinski, *Jean-Jacques Rousseau: Transparency and Obstruction* (Chicago and London: The University of Chicago Press, 1988).

[2] Pateman, *Participation and Democratic Theory*, 22.

[3] Sartori, *The Theory of Democracy Revisited*, 314.

[4] Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford: Oxford University Press, 2010), 16.

[5] Ethan Putterman, *Rousseau, Law and the Sovereignty of the People* (Cambridge: Cambridge University Press, 2010), 1.

[6] J. L. Talmon, *The Origins of Totalitarian Democracy* (Harmondsworth: Penguin Books, 1986), 43. On the teleology of Talmon's study, and the Skinnerian critique of it, see Baker, *Inventing the French Revolution*, 19.

modern democratic state".[7] Yet, it is simultaneously suggested, the characterization of Rousseau as a democrat "is at best misleading",[8] and that "[i]n the *Social Contract*, if not everywhere throughout his political writings, democracy is described merely as a form of government that purports to be sovereign, a confusion equally characteristic, from the opposite end of the spectrum, of oligarchy and tyranny".[9] In the end, "[t]he idea of government by the people cannot be said to have been the main interest or recommendation of Rousseau's political thought".[10] Here, then, a paradox seems to appear, as it so often does in the interpretation of a thinker who revelled in being "a paradoxical man".[11] Indeed, whether Rousseau should be read as a totalitarian democrat and a collectivist, or, by contrast, as a staunch individualist, who conceded that "I have never been truly suited for civil society where everything is annoyance, obligation, and duty and that my independent natural temperament always made me incapable of the subjection necessary to anyone who wants to live among men",[12] continues to confound modern scholars.[13]

In this chapter, my aim is not to resolve this paradox, or to attempt to settle the question of whether, or in what sense, Rousseau was a democratic thinker. It is rather to address the curious fact that, Rousseau's influence on modern democratic theory notwithstanding, so little has been said of the problem of presence which Hobbes and Pufendorf had posed a century before. Why is it that Rousseau's influence, and the romantic spell he bestowed on our conception of direct

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[7] Alfred Cobban, *Rousseau and the Modern State* (London: George Allen & Unwin Ltd, 1964), 18.

[8] Richard Fralin, *Rousseau and Representation* (New York: Columbia University Press, 1978), 5.

[9] Iring Fetscher, "Republicanism and popular sovereignty," in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), 576f.

[10] Frank Marini, "Popular Sovereignty but Representative Government: the Other Rousseau," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006), 64.

[11] Jean-Jacques Rousseau, "Emile: Or on Education," in *The Collected Writings of Rousseau*, ed. Christopher Kelly and Allan Bloom (Hanover and London: University Press of New England, 2010), 226.

[12] Jean-Jacques Rousseau, "Reveries of the Solitary Walker," in *The Collected Writings of Rousseau*, ed. Christopher Kelly (Hanover and London: University Press of New England, 2000), 56.

[13] Ernst Cassirer, *The Question of Jean Jacques Rousseau*, trans. Peter Gay (Bloomington & London: Indiana University Press, 1963), 53; George Kateb, "Aspects of Rousseau's Political Thought," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006), 3.

democracy and presence, has not transmitted to our modern thinking the problem Hobbes articulated? Is this omission an omission on the part of Rousseau or of those who have read him? As I hope to show in this chapter, the answer is in some sense both. The problem which Rousseau set himself to address, was not quite the problem of presence we find in Hobbes. As much as Rousseau insisted on the presence of the people, his was not the problem of anarchy and disorder, but the problem of freedom. In fact, Rousseau represents the point at which the idea of the presence of the people takes on a different, and familiarly modern, meaning. Hobbes' problem of presence begins to be lost from view. The problem is no longer whether there are bodies in space and time, present to speak and act frequently enough to maintain political order. It is, rather, the problem of from which bodies such a thing as a genuine and authentic political will might emerge. After all, Rousseau asks, can we be free to will if we are represented, and someone else wills on our behalf? Need we not, in order to be free, be present? Thus, if we begin our histories with Rousseau, we will find part of the problem of presence already omitted.

However, while the problem which Rousseau set out to address thus was not Hobbes', neither is the latter entirely absent. While the people must be present at the seat of power of the state, we find that, in Rousseau's political theory, they are not unequivocally so. It is in understanding this complex relation between the people and the seat of power of the state, occasioned by the problem of presence, that we may begin to understand why Rousseau's epitaph as a democratic thinker remains such a contentious one.

Only When the People is Assembled

If it is true to say that, throughout Rousseau's political writings, Hobbes figures as a kind of foil, this certainly is true of the assertion which underpins the whole of the *Social Contract*, and Rousseau's reputation as a democratic writer: "[s]overeignty cannot be represented". Whereas Hobbes had insisted that the only escape from the state of nature was for a people to allow a representative to will on their behalf, Rousseau insists that the *general will* "does not admit of being represented". The sovereign people must be *present* to express it, "there is no middle ground".[14] Thus, if one can here speak of a problem of presence, it is arguably one rather different from that which Hobbes formulated.

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[14] Rousseau, "Of the Social Contract," 114.

To understand this, we need to return to a point somewhat glossed over in chapter II. Hobbes, as we saw, argued that *a people* comes into being, or becomes a *person*, when it is by one person represented. Unity, in short, resides in the unity of the representative, not the represented. If this was a powerful argument against traditional conceptions of popular sovereignty, it also contained something of a subterfuge. The unity, or *personality*, of the people, is entirely artificial, and consists merely in the fact that the will of the representative – which Hobbes suggested would preferably be a monarch – is taken to be the will of all.[15] This was the subterfuge Rousseau saw clearly,[16] and if Rousseau came to exert a particularly strong influence on the thinkers of the nineteenth century who argued that the state is in fact a *real* person, it was precisely because they recognized the strength of his critique of Hobbes on this point. Thus, as for instance Otto von Gierke argued, in Hobbes' theory, the personality of the state is altogether subsumed by the sovereign, and "apart from him, the community is a loose heap of individuals".[17] Similarly, Bernard Bosanquet, who drew heavily on Rousseau, could assert "that Hobbes places the unity of political society in a will, and that, in his sense, a real or actual will, but emphatically not in a general will".[18] Thus, if Rousseau's state is, like Hobbes', a *person*,[19] the point is that it had to be a person not in a fictional sense, but in a much more real sense; one in which the political unity comes not from the artifice of having a single representative, but from the genuine will of the actual members themselves.

In this sense, the question for Rousseau is no longer what distinguishes political order from anarchy, but what distinguishes freedom from despotism, and the subterfuge of unity from genuine, and voluntary, unity. This is not to suggest that the problem of Hobbes and Pufendorf had, by this time, entirely disappeared. Through the translations of Barbeyrac, Pufendorf's reflections on democracy indeed made their way, almost verbatim, into the works of Rousseau's contemporary

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[15] There is, as Runciman has pointed out, a fundamental equivocation inherent in Hobbes' political theory of the state as a fictional person. For the state to be a fictional person, there must be, in some sense, certain shared beliefs by which the actions of the sovereign are assessed, and of these the sovereign itself cannot be the author, Runciman, *Pluralism and the Personality of the State*, 31.

[16] Robert Wokler, *Rousseau, the Age of Enlightenment, and Their Legacies*, ed. Bryan Garsten (Princeton and Oxford: Princeton University Press, 2012), 109.

[17] Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, 61.

[18] Bernard Bosanquet, *The Philosophical Theory of the State and Related Texts*, ed. Gerald F. Gaus and William Sweet (South Bend, Indiana: St. Augustine's Press, 2001), 123.

[19] For Rousseau, the state is a "moral person", Rousseau, "Of the Social Contract," 53.

and fellow Genevan Jean-Jacques Burlamaqui.[20] For Rousseau, however, the question is a rather different one altogether. The question is no longer why the state *is*, but why the state is *the way it is*, and what it *ought to be*. The question is not where political order comes from, but why it is that although man is born free, "everywhere he is in chains".[21]

The problem to which Rousseau's social contract "provides the solution",[22] is thus by extension a rather different one from that of Hobbes. The question is no longer one of bringing a multitude from the state of nature to civil society. This has already irrevocably happened, and to the natural state there is no return.[23] Our predicament, rather, resides precisely in "the origin of Society and of Laws, which gave the weak new fetters and the rich new forces, irreversibly destroyed natural freedom, forever fixed the Law of property and inequality, transformed a skillful usurpation into an irrevocable right, and for the profit of a few ambitious men henceforth subjugated the whole of Mankind to labor, servitude and misery".[24] What we must escape is not the state of nature, but society as it has actually come into being. Hobbes, no more than all the other philosophers who had "felt the necessity of going back as far as the state of Nature", had in the end "reached it".[25] He, like all others, "spoke of Savage Man and depicted Civil man",[26] and attributed to natural man qualities only the slow progress of society could have bestowed upon them. Natural man, perfectly independent and isolated, Rousseau insists, came to know social life only through the gradual development of an exploitative social order. Civil society, as Robert Wokler summarizes Rousseau's

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[20] "There is therefore this essential difference between Monarchy and the two other forms of government, that, in Democracies and Aristocracies, the actual exercise of the sovereign authority depends on the concurrence of certain circumstances of time and place; whereas in a Monarchy, at least when it is simple and absolute, the prince can give his orders at all times, and in all places: *It is Rome wherever the Emperor resides*", Jean-Jacques Burlamaqui, *The Principles of Natural and Political Law*, trans. Thomas Nugent, ed. Petter Korkman (Indianapolis: Liberty Fund, 2006), 330.

[21] Rousseau, "Of the Social Contract," 41.

[22] Rousseau, "Of the Social Contract," 50.

[23] Judith N. Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge: Cambridge University Press, 1969), 10; also Louis Althusser, "Rousseau: The Social Contract," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006), 73.

[24] Rousseau, "Second Discourse," 173.

[25] Rousseau, "Second Discourse," 132, 51.

[26] Rousseau, "Second Discourse," 132.

view, "must originally have been founded when men, already socialized by vice, attempted to obtain Locke's political warrant for the morally pernicious institution of private property, which in turn must have occasioned Hobbes's vile state of war, fought over the distribution of property".[27] Rousseau's social contract is meant neither to bring us out of the state of nature, or back to it. Rousseau's state, all his romanticization of nature notwithstanding, in the end, is no less *artificial* than that of Hobbes.[28] What the social contract brings into being is only a different kind of artifice. But it is meant to avoid Hobbes' subterfuge: if the state is to be a unity and a person, it must be so not by the artifice of allowing one representative to will for all, but by making all will the general will. "One must", as the ever paradoxical Rousseau expresses it, "use a great deal of art to prevent social man from being totally artificial".[29] What the social contract seeks to do, then, is "to substitute law for man and to arm the general wills with a real strength superior to the action of every particular will".[30] The "moral and collective body" which the social contract brings into being, "which its members call *State* when it is passive, *Sovereign* when active, *Power* when comparing it to similar bodies",[31] is an artifice, but one designed to substitute a genuine general will for the particular wills which so far have determined the course of all societies.

If one then can speak of a problem of presence in Rousseau, it is to make the general will, rather than sovereignty *per se*, present. On this problem, and how precisely Rousseau sought to resolve it, certainly, a great deal has been written. And as I noted in the introduction, interpretations differ widely on what Rousseau's solution, in fact, amounts to. In this chapter, though, I will suggest a somewhat different approach. While much has been said about Rousseau's problem of presence, the argument I wish to make here is that Hobbes' problem is not entirely absent. To borrow Bosanquet's terms, Hobbes' problem of arriving at a *real* or *actual* will is not entirely supplanted by Rousseau's problem of arriving at a general will. Hobbes' problem, in short, does occasionally appear in Rousseau's political theory, and in understanding the manner in which it figures within it, we can gain a more thorough understanding of some of Rousseau's paradoxes. Before indicating the manner in which Hobbes' problem does reappear in Rousseau's political

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[27] Wokler, *Rousseau, the Age of Enlightenment, and Their Legacies*, 168.

[28] Rousseau, "Of the Social Contract," 41. On this point, as Ernst Cassirer points out, Rousseau did not hesitate to turn to Hobbes, Cassirer, *The Question of Jean Jacques Rousseau*, 101.

[29] Rousseau, "Emile," 485.

[30] Rousseau, "Emile," 217.

[31] Rousseau, "Of the Social Contract," 50f.

theory, we may however begin by attempting briefly to recount Rousseau's problem, and the manner in which he sought to solve it. We may then begin with the intractable question of what precisely the general will *is*.

This question, arguably, remains one of the most contentious questions in Rousseau's political philosophy. Seemingly wavering between the twin poles of majoritarianism and transcendentalism, it at times appears relative and perfectly localizable in the body politic, at times objective and extrinsic to this body. It is "always upright", but, Rousseau adds, "the judgement which guides it is not always enlightened".[32] It can be expressed "only when the people is assembled",[33] but there "is often a considerable difference between the will of all and the general will",[34] and even where the people no longer recognizes it, "it remains constant, unalterable, and pure".[35] The question, in fact, is whether the general will inheres in the body politic at all.[36] Rousseau does, however, appear to insist that this is the case. The general will cannot, for instance, emerge where certain segments of the people are excluded from the sovereign assembly: it "is general or it is not; it is either the will of the body of the people, or that of only a part".[37] Indeed, that the general will is inescapably located *in* the body politic, to some extent follows from Rousseau's reconceptualization of the concept from the manner in which it

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[32] Rousseau, "Of the Social Contract," 68.

[33] Rousseau, "Of the Social Contract," 110.

[34] Rousseau, "Of the Social Contract," 60.

[35] Rousseau, "Of the Social Contract," 122.

[36] It has been suggested that Rousseau's general will ought to be understood in terms of Condorcet's jury theorem, which asserts the probability of a collective body using majority vote to arrive at a 'correct' outcome, Bernard Grofman and Scott L. Feld, "Rousseau's General Will: A Condorcetian Perspective," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006), 268. Richard Tuck, however, argues that little supports such an interpretation, Richard Tuck, "Rousseau and Hobbes: The Hobbesianism of Rousseau," in *Thinking with Rousseau: from Machiavelli to Schmitt*, ed. Helena Rosenblatt and Paul Schweigert (Cambridge: Cambridge University Press, 2017), 49.

[37] Rousseau, "Of the Social Contract," 58. This being said, there is every reason to assume Rousseau to have excluded women from political life, Putterman, *Rousseau, Law and the Sovereignty of the People*, 27. Rousseau's views on women are particularly succinct in the passage on Sophie, Emile's future wife, see Rousseau, "Emile," 532. Though she does not put it in precisely those terms, Susan Moller Okin points out that Rousseau, on the subject of women, inverts his arguments on artifice and nature, asserting the 'natural' inequalities of the sexes, Susan Moller Okin, "Rousseau's Natural Woman," *The Journal of Politics* 41, no. 2 (1979); Okin, *Women in Western Political Thought*, 127; also Elshtain, *Public Man, Private Women: Women in Social and Political Thought*, 148.

had been defined by Denis Diderot in his article *Natural Right* in the *Encyclopédie* from 1755.[38] Certain facets of Rousseau's definition, such as the inherent rectitude of the general will, were already there in Diderot's definition: whereas "particular wills are suspect; they can be good or evil", Diderot argued, "the general will is always good: it is never wrong, it never will be wrong".[39] However, in Diderot's understanding, the general will was an expression of reason common to all of humanity, the expression of "a pure act of understanding that reasons in the silence of the passions about what man can demand of his fellow man and about what his fellow man can rightfully demand of him".[40] In Rousseau's conception, the general will is the expression not of a universal reason, but only the will of the body politic. Although general, the will is not universal, it is not the will of humanity, but always merely that of a particular part of humanity.[41] As Patrick Riley has put it, "Rousseau's *volonté générale* – of Rome, of Sparta, of Geneva – is a great deal more *particulière*".[42] The general will, then, is specific – one might say relative – to a given body politic. It is not *universal*, but simply *general*.

While not universal, neither is it a mere aggregate of particular wills. It is rather, as Alfred Cobban aptly summarizes it, "what the will of the community would be if it were free from distortion by particular interests, and perfect in its enlightenment and goodness".[43] It is not something entirely differentiated from the particular wills and interests of actual citizens, but what "these different interests have

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[38] Wokler, *Rousseau, the Age of Enlightenment, and Their Legacies*, 97.

[39] Denis Diderot, "Natural Right," in *Encyclopedic Liberty – Political Articles in the Dictionary of Diderot and d'Alembert*, ed. Henry C. Clark (Indianapolis: Liberty Fund, 2016), 100.

[40] Diderot, "Natural Right," 101.

[41] Rousseau, "From of the Social Contract or Essay About the Form of the Republic (Known as the Geneva Manuscript)," 158. For Diderot, the general will was the expression of a universal natural law. Rousseau directly countered this article in an unpublished version of the Social Contract, the so-called Geneva Manuscript. On Rousseau's arguments here, and his doubts on the existence of natural law in general, see Robert Wokler's essay "Rousseau's Pufendorf: Natural Law and the Foundations of Commercial Society" in Wokler, *Rousseau, the Age of Enlightenment, and Their Legacies*, 88-112. See also Eve Grace, "Built on Sand: Moral Law in Rousseau's Second Discourse," in *The Challenge of Rousseau*, ed. Eve Grace and Christopher Kelly (Cambridge: Cambridge University Press, 2013), 193; John T. Scott, "Rousseau's Unease with Locke's Uneasiness," in *The Challenge of Rousseau*, ed. Eve Grace and Christopher Kelly (Cambridge: Cambridge University Press, 2013), 303; Roger D. Masters, *The Political Philosophy of Rousseau* (Princeton: Princeton University Press, 1968), 165.

[42] Patrick Riley, *The General Will Before Rousseau: The Transformation of the Divine into the Civic* (Princeton, New Jersey: Princeton University Press, 1986), 204.

[43] Cobban, *Rousseau and the Modern State*, 95.

in common".[44] It is the part of one's will which concerns the common good, which is always there, even where one's self-interest and particular will causes one to ignore it, under the mistaken belief that one's "share of the public evils" appears negligible to the exclusive good one hopes thereby to attain.[45] The general will, the object of which thus is the common good, cannot but be general in object and scope, for "just as a particular will cannot represent the general will, so the general will changes in nature when it has a particular object, and it cannot, being general, pronounce judgement on a particular man or fact".[46] It always appears in the form of *general laws*.

As Riley has argued, many facets of Rousseau's conception of the general will, in fact, may be found in the concept's theological origins in the writings of Nicolas de Malebranche.[47] God, who "knows all, and foresees all",[48] Malebranche had argued, "acts not at all by particular wills" but by a general will.[49] Having foreseen all the consequences of the general laws by which he has ordered the world, God wills them generally, and has no need of the miraculous intervention of his particular will.[50] As Riley notes, there is in Malebranche a great deal which would later recur in Rousseau's conception of the general will: "Here, then, *particularisme* is identified with self-love, rashness, stupidity, and making exceptions to

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[44] Rousseau, "Of the Social Contract," 57.

[45] Rousseau, "Of the Social Contract," 122. Rousseau's general will has been likened to Rawls' veil of ignorance, Tracy B. Strong, *Jean-Jacques Rousseau: The Politics of the Ordinary* (Thousand Oaks: SAGE Publications, 1994), 84. However, Rawls' veil of ignorance only produces an aggregate of individual wills, not a general will, David R. Hiley, "The Individual and the General Will: Rousseau Reconsidered," *History of Philosophy Quarterly* 7, no. 2 (1990): 170f. Also, Patrick Neal, "In the Shadow of the General Will: Rawls, Kant and Rousseau on the Problem of Political Right," *The Review of Politics* 49, no. 3 (1987).

[46] Rousseau, "Of the Social Contract," 62.

[47] Cobban has also noted this influence, see Cobban, *Rousseau and the Modern State*, 94. Indeed, Carl Schmitt pointed to it already in 1922, Carl Schmitt, *Political Theology* (Chicago & London: The University of Chicago Press, 2005), 48.

[48] Nicolas Malebranche, *Treatise on Nature and Grace*, ed. Patrick Riley (Oxford: Clarendon Press, 1992), 210.

[49] Malebranche, *Treatise on Nature and Grace*, 118.

[50] As Riley has pointed out, Rousseau reiterates this aversion to the miracle in his *Letters from the Mountain*: "regarding a specific fact, a miracle is an immediate act of divine power, a tangible change in the order of nature, a real and visible exception to its Laws", Jean-Jacques Rousseau, "Letters Written from the Mountain," in *Letter to Beaumont, Letters Written from the Mountain, and Related Writings – The Collected Writings of Rousseau, vol. 9*, ed. Christopher Kelly and Eve Grace (Hanover and London: University Press of New England, 2001), 173; Riley, *The General Will Before Rousseau*, 192.

general laws – more or less in the manner of Rousseau".[51] Indeed, there is – as we will have reason to return to – something to the resemblance of Malebranche's God, and Rousseau's sovereign. Both act by general laws only: "The Sovereign, having no other force than the legislative power, acts only by means of the laws, and the laws being nothing but authentic acts of the general will, the Sovereign can act only when the people is assembled".[52]

To recapitulate the argument thus far, we may say that Rousseau's problem of presence is a rather different one from that of Hobbes. For Hobbes, as we saw, a democratic assembly can certainly *carry* the person of the state, and make present its sovereign power. In order to do so, all that matters is that it is able to act as a *person*, which it does by the artificial means of majority voting. What matters is not precisely what the will is, but that there *is* a will. For Rousseau, like Hobbes, a *multitude* becomes a *people* when it acts as a *person*, which it does when it wills by the will of *one*. For Rousseau, however, this truly happens not when everyone allows one person to will for all, or even when a democratic assembly carries the person of the state, but only when all will the *general will*. The problem is not to make *a* will present, but to make the general will present. As mentioned, however, there is a point at which these two problems start to appear more indissoluble than at first sight. Specifically, I will suggest, the indissolubility of these two problems starts to appear in the complex and entangled relationship between nature and artifice in Rousseau's political theory.

We may here, then, attempt to begin to disentangle the question of at what point nature becomes artifice in Rousseau's theory. Specifically, we might here address the question of *the people*. If unity does not reside in the representative, but in the people itself, the question then is what accounts for this unity. On this point, we ought first of all to acknowledge that Rousseau's conception is a great deal more complex than a simplistic interpretation might suggest. The people does not simply exist, it is not present to itself as a unified collectivity.[53] As Riley has noted, one of the principle differences between Malebranche's general will and that of Rousseau, is that the former is general by definition, the latter must be

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[51] Riley, *The General Will Before Rousseau*, 34.

[52] Rousseau, "Of the Social Contract," 110.

[53] Rousseau, in fact, pointed to this question precisely in his critique of Grotius' thesis about the alienation of the sovereignty inherent in the people: "Hence before examining the act by which a people elects a king, it would be well to examine the act by which a people is a people", Rousseau, "Of the Social Contract," 49.

made to be general.[54] Indeed, the whole problem which Rousseau attempts to solve, resides precisely in this. The general will must be made general. The more familiar expression of this problem, arguably, is Rousseau's famous *paradox of founding*.[55] While the social contract brings the people into being, and their presence expresses the general will, the problem resides in the fact that the people "would have to be prior to laws what they ought to become by means of them".[56] For the general will to be present, the people must express it. But neither the social contract, nor the mere form of the sovereign assembly, will ensure that it will do so. Indeed, what hope is there, in the modern world, socialized as it is by vice and self-interest, that a people will spontaneously express the general will? This is the paradox which Rousseau's problem confronts.

The solution, thus, as Judith Shklar points out, cannot be intrinsic to the body politic, it must come from without. This it does through the figure of the lawgiver.[57] The lawgiver, Rousseau points out, "is not magistracy, it is not sovereignty".[58] It is not a function within the state, but an extraordinary individual, a Solon or Lycargus,[59] possessed of no power, but simply the authority requisite to convince a nascent people of the virtues of the laws he means to propose. Such an individual, in short, "must feel capable of, so to speak, changing human nature".[60] The lawgiver must be able to "work in one century and enjoy the reward in another",[61] and, in short, affect the transformation by which the people, in time, wills the general will, such that, at some future point in time, one can substitute "the force of habit for that of authority". By this, Rousseau clarifies, is meant

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[54] Riley, *The General Will Before Rousseau*, 245.

[55] Rousseau's paradox has often been taken, by modern political theorists, as an exemplary articulation of the democratic paradox of *founding*, Honig, "Between Decision and Deliberation: Political Paradox in Democratic Theory."; Honig, *Emergency Politics - Paradox, Law, Democracy*; Espejo, *The Time of Popular Sovereignty*, 43; Keenan, *Democracy in Question: Democratic Openness in a Time of Political Closure*, 11.

[56] Rousseau, "Of the Social Contract," 71.

[57] Shklar, *Men and Citizens: A Study of Rousseau's Social Theory*, 20.

[58] Rousseau, "Of the Social Contract," 69.

[59] This figure, Rousseau presumably took from Montesquieu, *The Spirit of the Laws*, 44f. In particular, figures like Lycargus, the lawgiver of Sparta, was a recurring reference in eighteenth-century political thought, exalted for instance by de Mably, see Gabriel Bonnot Abbé de Mably, "Observations on the Greeks," in *Translations from the French* (Lynn: Printed for the Author, by W. Whittingham, 1770), 13.

[60] Rousseau, "Of the Social Contract," 69.

[61] Rousseau, "Of the Social Contract," 68f.

"morals, customs, and above all of opinion", to which "the great Lawgiver attends in secret".[62] If Rousseau is a revolutionary, his revolution, as Pamela K. Jensen points out, is closer to Montesquieu's than that of Robespierre: it is not a sudden transformation of the political order by the people, but the slow transformation of the people itself.[63] As many scholars have pointed out, what Rousseau sought to fuse were two not entirely uncontradictory traditions: the republican traditional emphasis on the common good on the one hand, and the voluntarism of contractualism on the other.[64] In the tension produced by the association of these two traditions, arguably resides much of Rousseau's reputation as a totalitarian thinker. As Riley succinctly notes, "one can reasonably ask: Is will still 'will' (qua moral cause) if it must be transformed?". That is, "[c]an the will be both an autonomous moral cause *and* subject to the rationalizing influence of educative authority?".[65] To put the point in the terms used earlier, the question is where artifice ends and nature begins, or vice versa. As Riley aptly points out, the people in the end seems to resemble Emile, who after having been tutored by Rousseau his whole life, as a grown man finally decides "[t]o remain what you have made me".[66] Indeed, in this tension resides another one of those paradoxes of Rousseau which so has puzzled his interpreters: "whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be free".[67] Whether this paradox is indicative of Rousseau's totalitarianism or not,[68] we see the complex relation between artifice and nature in

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[62] Rousseau, "Of the Social Contract," 81.

[63] Pamela K. Jensen, "Rousseau's French Revolution," in *The Challenge of Rousseau*, ed. Eve Grace and Christopher Kelly (Cambridge: Cambridge University Press, 2013), 230.

[64] Riley, *Will and Political Legitimacy*, 99f; Maurizio Viroli, *Jean-Jacques Rousseau and the 'well-ordered society'* (Cambridge: Cambridge University Press, 1988), 212. Robert Wokler similarly notes Rousseau's "innovative association of an altogether unlikely pair of terms – 'liberty', as drawn from an ancient republican tradition with emphasis on self-rule, and 'sovereignty', from a modern absolutist ideology addressed to the need for predominating power", Wokler, *Rousseau, the Age of Enlightenment, and Their Legacies*, 171.

[65] Riley, *The General Will Before Rousseau*, 245; also Riley, *Will and Political Legitimacy*, 122.

[66] Rousseau, "Emile," 665; Riley, *The General Will Before Rousseau*, 248; also Carol Blum, *Rousseau and the Republic of Virtue: The Language of Politics in the French Revolution* (Ithaca and London: Cornell University Press, 1986), 73.

[67] Rousseau, "Of the Social Contract," 53.

[68] On the various attempts to resolve this paradox, Steven G. Affeldt, "The Force of Freedom: Rousseau on Forcing to be Free," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006); Masters, *The Political Philosophy of Rousseau*, 329; Frederick Neuhouser, "Freedom, Dependence, and

Rousseau's attempt to solve the problem of making the general will the natural expression of the people. The point being that Rousseau does not simply assert the natural sovereignty of the multitude. The people is not, by nature alone, a defined collectivity.

What arguably makes Rousseau's argument more ambiguous is his complex, and ambivalent, conception of the *nation*. It has been suggested that "quite unlike later nationalists Rousseau did not believe that the national self had any basis in nature", that the national character of a people is entirely bestowed on it from above, by the lawgiver.[69] However, while there is much to be said for this interpretation, Rousseau is arguably ambiguous. While good laws are useful only to a people malleable enough to receive them, with "neither deep-rooted customs nor deep-rooted superstitions", they will nevertheless find fertile soil only in a people "already bound together by some union of origin, interest, or convention".[70] Particularly in his *Considerations on the Government of Poland*, Rousseau appears to emphasize the national character, to which any lawgiver – in this case Rousseau himself – ought to be cognizant.[71] Artifice must be added to nature, and must, in a strange way, produce nature.[72] In the end, the general will can be expressed only

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the General Will," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006), 285; John Plamenatz, "'Ce Qui Ne Signifie Autre Chose Sinon Qu'on Le Forcera D'être Libre'," in *Jean-Jacques Rousseau: Critical Assesments of Leading Political Philosophers*, ed. John T. Scott (London and New York: Routledge, 2006); Hiley, "The Individual and the General Will: Rousseau Reconsidered."; Gopal Sreenivasan, "What Is the General Will?," *The Philosophical Review* 109, no. 4 (2000).

[69] Shklar, *Men and Citizens: A Study of Rousseau's Social Theory*, 161.

[70] Rousseau, "Of the Social Contract," 77.

[71] Jean-Jacques Rousseau, "Considerations on the Government of Poland and on its Projected Reformation," in *The Social Contract and Other Later Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 184f.

[72] As Alfred Cobban points out, there is here yet another paradox: the nation is simultaneously that which is already there and that which must be made, Cobban, *Rousseau and the Modern State*, 109. This paradox, as David A. Bell notes, was certainly not one unique to Rousseau, but imbued much of French eighteenth-century nationalism: "In other words, no matter how urgently it invokes the past, nationalism has something inescapably paradoxical about it. It makes political claims which take the nation's existence wholly for granted, yet it proposes programs which treat the nation as something yet unbuilt", David A. Bell, *The Cult of the Nation in France: Inventing Nationalism, 1680-1800* (Cambridge, Massachusetts/London, England: Harvard University Press, 2003), 5. As F. M. Barnard has argued, the strict distinction between Rousseau's supposedly 'political nationalism' and J. G. Herder's 'cultural nationalism', is somewhat difficult to maintain, F. M. Barnard, "National Culture and Political Legitimacy: Herder and Rousseau," *Journal of the History of Ideas* 44, no. 2 (1983): 250f; see also Maurice Cranston, "The Sovereignty of the Nation," in *The French Revolution and the Creation of*

when each concrete citizen individually *wills* it, and for them individually to will it they must regard themselves as part of a common whole whose good is the object of their will, and to will not their particular wills, but in terms of the general laws by which society as a whole is to function.

So far, however, we have followed Rousseau's attempt to reconcile nature and artifice only in a specific sense. So far, we have only been, as it were, moving within Rousseau's problem of presence: how to fashion a unity out of a plurality of individuals such that this unity is their genuine will. There is, however, another piece of artifice which must be added: the state itself. Even if the minds of people could be effectively transformed to will the common good, there remains the question of in what *form* it is to be expressed. Whether Rousseau implies that the nation, in time, will supplant the state, such that artifice is no longer necessary to express what has, by force of habit, become natural, Rousseau in the end appears unable to relinquish the artifice of the state entirely. In part, I would suggest, the reason resides in the fact that Rousseau, in the end, cannot entirely resolve Hobbes' problem of presence. To the manner in which it enters Rousseau's theory, thus, we may now turn.

Setting the Machine in Motion

So far, we have followed Rousseau's problem of presence, that is, to substitute the general will for all particular wills which endeavour to define the social order. We have seen how, through the lawgiver, through the subsequent transformation of morals, customs and opinion, the people will be made to will the general will. In short, we have seen how Rousseau proposes to fill the seat of power of the state with the general will. This, however, does not exhaust Rousseau's political theory, and while the people and the sovereign are the same person, there is a sense in which the gap which distinguishes the people from the seat of power of the state remains unbridged. It is this distinction to which we may now turn. As I hope to show, it is within it that Hobbes' problem of presence in the end reappears. It is a problem with which Rousseau never really concerned himself, which is perhaps why so little has been made of its role in his political thought. Such a role, I will argue, it nevertheless has, and while Rousseau rarely expressed it directly, there is enough to indicate its presence.

Modern Political Culture – volume 2: The Political Culture of the French Revolution, ed. Colin Lucas (Oxford: Pergamon Press, 1988), 103.

Having described the social contract by which the "body politic" has been given "existence and life", Rousseau continues, it must now be given movement and will, and the ability to do "what it must do to preserve itself".[73] What the social contract has constituted – "the whole artifice of the political machine" – must now, like Hobbes' machine, be set "in motion".[74] Whatever the unity which the contract has brought into being, or which the lawgiver has begun surreptitiously to form, it is through the machine of the state that this unity becomes capable of acting. "Every free action", Rousseau argues, "has two causes which concur in producing it, one moral, namely the will which determines it, the other physical, namely the power which executes it".[75] The moral cause, then, is the general will. In the perfectly unified society, as we have seen, it is already in some sense present in its members. As new laws are in need of being promulgated, "this necessity is universally seen. The first one to propose them only states what all have already sensed".[76] However, even in such a perfectly ideal society, artifice must be added to nature. Even where the need for new laws is universally felt, only in an assembly duly appointed can the general will be expressed, and "any assembly of the People not convoked by the magistrates appointed to that end and according to the pre-scribed forms must be held illegitimate and everything done at it to be null".[77] However organically the morals, customs and opinions have made the citizens will the general will, only through the artifice of form – much as Hobbes and Pufen-dorf had argued – is it possible to say *when* and *where* the general will is truly expressed. The presence of the people, on a stated time and place, remains the *sine qua non* of the pronouncement of the general will. Again, even in Rousseau's ideal society, the sovereign people is not an entity entirely free from the minimal constitutional form by which it is defined.

Furthermore, since the sovereign expresses only the moral cause, it "needs another power that executes, that is to say, that reduces the Law into particular actions".[78] In addition to *sovereignty*, or *legislative power*, action thus requires *government*, or *executive power*.[79] In addition to the sovereign assembly, convoked on

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[73] Rousseau, "Of the Social Contract," 66.

[74] Rousseau, "Emile," 653.

[75] Rousseau, "Of the Social Contract," 82.

[76] Rousseau, "Of the Social Contract," 121.

[77] Rousseau, "Of the Social Contract," 111.

[78] Rousseau, "Letters Written from the Mountain," 232.

[79] Rousseau, "Of the Social Contract," 82.

stated times and places and according to prescribed forms, an additional form of power is necessitated for the state to be able to act. This, as we will see, is the point at which the Hobbesian problem truly begins to reappear in Rousseau's political theory. It is, furthermore, the point on which Rousseau's status as a democratic writer will turn.

In the view of Tuck, the significance of Rousseau for modern democracy resides precisely in his distinction between sovereignty and government. In envisaging a sovereign people whose domain is only the general will, not government, and who "meet only intermittently, just as Hobbes' sleeping democratic sovereign would",[80] Rousseau articulated a distinctly modern form of democracy. It, in Tuck's view, helped formulate a conception of democracy suitable to the modern world, in which the people, in its sovereign capacity, is a comparatively rare presence. Indeed, as we will see, other interpreters have expressed similar interpretations, and thus in some sense challenged the image of Rousseau as a proponent of a radically participatory form of government. As Shklar points out, Rousseau's sovereign people, in the end, "actually *do* very little".[81] Rather than trying to reconcile these interpretations with the image of Rousseau as a participatory democrat, the point I want to make is that this tension is inherent to Rousseau's political theory. Rousseau's people indeed do very little. Indeed, it is in a way most of the time *sleeping*. But, as becomes clear in Rousseau's theory, this cannot mean that the machine of the state is similarly in repose. It must be continuously present and act on the world, and while it does so under the guidance of the general will, the all-too fallible foresight with which the people pronounce it, will always make it at most a precarious guidance. In the end, it is this decidedly Hobbesian problem which may account for some of the paradoxes and antinomies of Rousseau's political theory. And perhaps nowhere does it appear as clearly as in Rousseau's ambivalent treatment of democracy in the *Social Contract*.

The question of Rousseau and democracy, as I noted in the introduction, remains a point of contention among modern interpreters. In part, the difficulty resides in attempting to reconcile Rousseau's somewhat contradictory statements on this form of government. While he, as mentioned, at times romanticizes it, wishing to have been born "under a democratic government wisely tempered",[82]

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[80] Tuck, *The Sleeping Sovereign*, 135. Roger Masters has described Rousseau's distinction between sovereignty and government as the "perhaps the most original aspect of his political teaching", Masters, *The Political Philosophy of Rousseau*, 335.

[81] Shklar, *Men and Citizens: A Study of Rousseau's Social Theory*, 20.

[82] Rousseau, "Second Discourse," 115.

at others, he asserts that "[i]n the strict sense of the term, a genuine Democracy never has existed, and never will exist".[83] This ambiguity, arguably, resides precisely in the distinction between sovereignty and government, and the precise role this distinction plays in Rousseau's somewhat unorthodox categorization of the forms of government. The direct participation of the people in its sovereign capacity, as we have seen, is for Rousseau the *sine qua non* for any legitimate form of government. Mirroring Montesquieu's categories of the forms of government,[84] for Rousseau, the fact that sovereignty inalienably inheres in the people means that "[e]very legitimate Government is republican".[85] Law being the expression of the general will, only the sovereign people can make it, and if a republican government is to live under laws of one's own making, then every legitimate form of government is republican. The differentiation of the forms of government into democracy, aristocracy and monarchy thus is a question not of where sovereignty resides, as it had been for Bodin, but where *government* resides. Thus, where government is entrusted "to the whole people or to the majority of the people, so that there be more citizens who are magistrates than citizens who are simple particulars", then the form of government is a "*Democracy*".[86] Democracy, thus, for Rousseau meant something similar to what Sidney had defined as *pure democracy*, a definition Chevalier de Jaucourt had reiterated in his 1754 *Encyclopédie*-article on democracy: "For as concerns pure *democracy*— that is, the one in which the people in themselves and by themselves perform alone all the functions of government— I know of none like that in the world, unless perhaps it's a little dump like San-Marino in Italy, where five hundred peasants govern a wretched rock whose possession is envied by no one".[87] That is, democracy for Rousseau is a form of government in which the people perform *all* acts of the state, expressing the general will and applying it to particular cases. In order coherently to pose the question of Rousseau's status as a democratic writer, it is then important to understand what Rousseau took such a form of government to mean. Only in this sense can we understand his many critical remarks on it.

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[83] Rousseau, "Of the Social Contract," 91.

[84] Montesquieu had argued that "[t]here are three kinds of government: REPUBLICAN, MONARCHICAL, AND DESPOTIC", in turn subdividing republican government into aristocracies and democracies, Montesquieu, *The Spirit of the Laws*, 10.

[85] Rousseau, "Of the Social Contract," 67.

[86] Rousseau, "Of the Social Contract," 89.

[87] Chevalier de Jaucourt, "Democracy," in *Encyclopedic Liberty – Political Articles in the Dictionary of Diderot and d'Alembert*, ed. Henry C. Clark (Indianapolis: Liberty Fund, 2016), 80.

His wish to have been born in a democracy wisely tempered notwithstanding, Rousseau also pours scorn on those ill-governed republics "where the People, believing it could do without its Magistrates or leave them no more than a precarious authority, had imprudently retained in its own hands the administration of Civil affairs and the execution of its own Laws", asserting that "such must have been the rude constitution of the first governments arising immediately from the state of Nature".[88] Much in the manner of Sidney and Jaucourt, Rousseau's objection is against a form of government in which the people acts as both sovereign *and* government. As has frequently been remarked, for Rousseau, democracy in the strictest sense is above all else a precarious confusion of generality and particularity.[89] Rousseau, admittedly, alludes to other arguments against democracy, such as the separation of power thesis of Montesquieu, asserting that "[i]t is not good that he who makes the laws execute them". His principle concern, however, is to avoid the people turning "its attention away from general considerations, to devote it to particular objects".[90] This, for instance, had been the fate of Athens, which through "a multitude of particular decrees indiscriminately performed all the acts of government", such that "the people no longer had a general will properly so called; it no longer acted as a Sovereign but as a magistrate".[91] The generality of the will, in short, does not easily remain inviolate where the people also must pass judgement on particular matters.

If Rousseau's insistence on the inalienability and irrepresentability of the sovereign general will lends his theory its "radically democratic hue",[92] it is his clear preference for an aristocratic government that causes much consternation among modern interpreters.[93] The people, in short, ought to confine itself to its sovereign function of expressing the general will through law, not government, which it ought to bestow on a select group of individuals suited for the task. While Rousseau does insist on the presence of the people in its sovereign capacity, this insistence simply does not extend to include the function of government. If the view of Rousseau as a totalitarian democrat rests on the assumption that "[t]here is

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[88] Rousseau, "Second Discourse," 117.

[89] Fralin, *Rousseau and Representation*, 93f; Masters, *The Political Philosophy of Rousseau*, 399; Garsten, "Representative government and popular sovereignty," 94.

[90] Rousseau, "Of the Social Contract," 91.

[91] Rousseau, "Of the Social Contract," 62.

[92] Fetscher, "Republicanism and popular sovereignty," 577.

[93] Rousseau, "Of the Social Contract," 93; Rousseau, "Letters Written from the Mountain," 233.

nothing that Rousseau insists on more than the active and ceaseless participation of the people and every citizen in the affairs of the State",[94] there is, as several interpreters have pointed out, in fact little to warrant such an interpretation. In fact, if there is merit to Shklar's interpretation, the participation of the sovereign people will be rather limited. Indeed, there is much to suggest that the people's legislative activity will be little more than "a rare and exceptional activity",[95] where *government* "is in fact all of the ongoing government of a people".[96]

Rousseau's people, then, in the end do very little, and while their presence is the *sine qua non* of the expression of the general will, it is not a presence which appears to be a particularly regular occurrence. In fact, if we are to draw parallels between Rousseau's sovereign and Malebranche's God, we might expect the former to appear only once, expressing the general will by which the machine of the state is to run for all time, just as God once laid down the natural laws by which the world runs. This, of course, is not the case, and while it may be obvious why it is not, it is worth emphasizing precisely why it is not.

Firstly, unlike God's natural laws, the general will does not apply itself. It is not a mechanical law of nature, but an artifice, and it does not work causally on inanimate matter, but on the wills and inclinations of people. The machine, in short, must be present. On this point, however, Rousseau says little. His most explicit assertion is only a passing, and seemingly overlooked, remark on the democratic form of government. While Rousseau's main concern with regard to democracy, as mentioned, is the potential corruption of the general will by the people's preoccupation with particularities, his judgement on this form of government is also premised on the same fundamental practical problem which Hobbes, Pufendorf and Locke had articulated. As Rousseau makes clear, "[i]t is unimaginable that the people remain constantly assembled to attend public affairs, and it is readily evident that it could not establish commissions to do so without the form of the administration changing".[97] In short, the people simply cannot be present often

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[94] Talmon, *The Origins of Totalitarian Democracy*, 47.

[95] Cobban, *Rousseau and the Modern State*, 30. As Richard Fralin suggests: "It is perhaps not too farfetched to say that he was prepared to grant such sweeping powers to the people in his accounts of the social contract, popular sovereignty, and the general will precisely because he did not expect the people to exercise these powers in the normal course of events", Fralin, *Rousseau and Representation*, 92.

[96] Marini, "Popular Sovereignty but Representative Government: the Other Rousseau," 57.

[97] Rousseau, "Of the Social Contract," 91.

enough to fulfil the task of government.[98] This, to be sure, does not significantly change the interpretation of Shklar and others: the people certainly do little. The point, however, is that the correlative of this absence is the continuous presence of a government in which the people neither ought, nor can have, a part.

Indeed, this point becomes discernible once we start to disentangle the rather complex relationship between the presence of the sovereign and that of government. The sovereign, Rousseau insists, "by the mere fact that it is, is always everything it ought to be".[99] In each moment at which it is present, it is free to will, and "there is not, nor can there be, any kind of fundamental law that is obligatory for the body of the people, not even the social contract".[100] It exists solely, as Tracy B. Strong has put it, "in the present".[101] In fact, Strong continues, "sovereignty does not exist over time, or even in time".[102] Each moment at which the sovereign people is assembled is, in effect, an isolated moment, in which the general will is free to express itself irrespective of anything it has wanted in the past. In Strong's interpretation, this timelessness of the sovereign is, in some sense, remedied by the continuity of the general will itself. It is not the presence of the assembled people, but the continuously willed general will, which gives the state its continuity: the will, Strong argues, "is for Rousseau a state of being, not an action".[103] "It

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[98] Melissa Schwartzberg interprets this remark as a reproach against the purported instability of the democratic form of government, such that the "rejection of ongoing assemblies, and on the same grounds, of the democratic form of government, is their instability", Melissa Schwartzberg, "Rousseau on Fundamental Law," *Political Studies* 51 (2003): 396. This, it seems to me, is not quite the meaning of Rousseau's particular assertion here. Joshua Cohen, while noting the "problems of numbers of citizens and other demands on their time" which the democratic form occasions, nevertheless regards such practical problems as secondary within Rousseau's theory, Cohen, *Rousseau: A Free Community of Equals*, 161.

[99] Rousseau, "Of the Social Contract," 52.

[100] Rousseau, "Of the Social Contract," 52. This is not, however, to say that the notion of fundamental laws does not figure at all in Rousseau's political theory. The laws governing the relation between the sovereign and government, and which subsequently determined the form of government, Rousseau conceded, "bear the name of political laws, and are also called fundamental laws", Rousseau, "Of the Social Contract," 80. Similarly, as noted above, the sovereign assembly must be convened on stated times and places, and through an orderly procedure. For an overview of the concept of 'fundamental law' in Rousseau, see Schwartzberg, "Rousseau on Fundamental Law." See also Viroli, *Jean-Jacques Rousseau and the 'well-ordered society'*, 165.

[101] Strong, *Jean-Jacques Rousseau: The Politics of the Ordinary*, 90.

[102] Strong, *Jean-Jacques Rousseau: The Politics of the Ordinary*, 91. As Nadia Urbinati has pointed out, Rousseau confined sovereignty to the present, "the time dimension of the will", Urbinati, *Representative Democracy*, 94.

[103] Strong, *Jean-Jacques Rousseau: The Politics of the Ordinary*, 99.

is not", Rousseau notes, "by laws that the State subsists, it is by the legislative power. Yesterday's laws does not oblige today, but tacit consent is presumed from silence, and the Sovereign is assumed to be constantly confirming the laws which it does not abrogate when it can do so".[104]

While Strong thus draws out the distinction between the discontinuous moment of the sovereign assembly and the continuity of the general will, there are further implications of Rousseau's conception of the presence of the sovereign assembly worth drawing out. In a passage reiterating almost verbatim the point Bodin had made almost two centuries earlier, Rousseau asserts that "[t]he 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 no longer is a Representative".[105] Where the sovereign is present, all other powers loose the light they had borrowed from it. While this passage – as the corresponding passages in Bodin and Hobbes – may be interpreted as a statement on the sovereign's superiority over government,[106] the argument I wish to make here is, as in the case of Bodin and Hobbes, that we ought to follow the implications of the logic to which Rousseau gives expression. As is clear, it is not by virtue of the sovereign's presence that the political order endures. As Voltaire aptly and incisively remarked on this passage, if it were true, no criminal acts would be punished for the duration of the assembly.[107] That is, the moment the sovereign is present, and government suspended, no particular act by which the general will can be applied is undertaken *at all*.

This problem, in fact, occurs in the very moment at which government is first instituted by the sovereign. As Rousseau points out, the institution of government must begin in the form of a general law, determining its form. This general law, which establishes whether the form of government shall be democratic, aristocratic or monarchical, must then be followed by a particular act, appointing the magistrates "who will be entrusted with the established Government".[108] Being a

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[104] Rousseau, "Of the Social Contract," 109.

[105] Rousseau, "Of the Social Contract," 112. Urbinati notes this passage, but refers it exclusively to the 'spatial configuration' of Rousseau's conception of sovereignty, Urbinati, *Representative Democracy*, 73.

[106] Fralin, *Rousseau and Representation*, 100.

[107] Voltaire, "Republican Ideas. By a member of a public body," in *Voltaire – Political Writings*, ed. David Williams (Cambridge: Cambridge University Press, 1994), 203.

[108] Rousseau, "Of the Social Contract," 117.

particular act, however, this act must be an act of government, not sovereignty. "The difficulty", Rousseau explains, "is to understand how there can be an act of Government before the Government exists".[109] The answer, Rousseau suggests, is that the people itself must perform this particular act, which "is accomplished by a sudden conversion of Sovereignty into Democracy; so that without any perceptible change, and simply by a new relation of all to all, the Citizens having become Magistrates pass from general to particular acts, and from law to its execution".[110] The establishment of government, then, must pass through a momentary democracy, in which the people – if only for appointment of the magistrates – itself exercises government. "It is", Rousseau argues, "not possible to establish Government in any other legitimate manner without renouncing the principles established above".[111] It is, in fact, the structure of each subsequent assembly of the sovereign people.[112] Each moment the sovereign people is assembled and present must be a moment, almost infinitely brief, in which no particular act is undertaken other than by the momentary transformation of the sovereign assembly into a democracy. If it is, as Strong suggests, outside time, it is not only for the reason that the general will is unbound by what it has previously willed. It is also because it must pass almost immediately into the form by which the general will is made effective in a world of continuously unfolding particular events. Here then, the Hobbesian problem of presence appears: only by innumerable particular judgements can the law, and thereby the general will, be effective, and only by a body present to make those judgements, can political order endure. Upon this necessity, "that particular things also be decided", in the end Rousseau concedes, "the preservation of the State" depends.[113] This, then, is the presence which government represents.

Rousseau, as mentioned, never expressly insists on the continuous presence of government, which is perhaps why the Hobbesian problem has elicited little attention among interpreters of his thought. Only his brief remark on democracy noted above indicates the centrality of this presupposition. As I have sought to argue, however, it is the necessary supposition upon which Rousseau is able to

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[109] Rousseau, "Of the Social Contract," 117.

[110] Rousseau, "Of the Social Contract," 117f.

[111] Rousseau, "Of the Social Contract," 118.

[112] Each session of the legislative, Rousseau argued, should begin with two motions: whether to maintain the form of government, and the magistrates appointed to it, Rousseau, "Of the Social Contract," 119f.

[113] Rousseau, "Emile," 654.

assert that the people need do very little. The question, thus, is whether this supposition manifests itself as a problem, either in Rousseau's own theory or in the uses to which it is put by modern theorists. From the point of view of Tuck, and other interpreters, it does not. Precisely the fact that the people do little, that they are, most of the time, *sleeping*, is in fact what makes Rousseau's democratic theory distinctly modern.[114] As I will argue, however, there is reason to caution against too readily dismissing the problems which Rousseau's theory does encounter. The question, specifically, which we ought to ask is what it in fact means to substitute for the general will the will of government, present in its place.

While Rousseau insists that government must remain "only a borrowed and subordinate life", it must nevertheless possess a capacity "to act more or less vigorously or promptly", and possess to that end "assemblies, councils, power to deliberate, to decide".[115] The tension, pointed out succinctly by Richard Fralin, occurs as Rousseau passes from treating government as the mere agent or minister of sovereignty, which "never executes anything but the Law",[116] to attributing to it a measure of independence or will of its own.[117] If government, as Rousseau concedes, must "have a particular *self*, a sensibility common to its members, a force, a will of its own that tends to its preservation",[118] the question is what prevents it, as Fralin asks, from becoming a *de facto* sovereign. Indeed, since its will can never be that of the people, it is unavoidable that "Government makes a constant effort against Sovereignty".[119] For this reason, it "is not enough for the people assembled to have once settled the constitution of the State by giving sanction to a body of laws: it is not enough for it to have established a perpetual Government or to have provided once and for all for the election of magistrates".[120] Only through its intermittent presence can the efforts of government to encroach upon it be curtailed.

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[114] Tuck references specifically Rousseau's *Letters from the Mountain*, in which Rousseau implies that a good democracy is one in which sovereignty and government are separated, Tuck, *The Sleeping Sovereign*, 1; Rousseau, "Letters Written from the Mountain," 257.

[115] Rousseau, "Of the Social Contract," 86.

[116] Rousseau, "Letters Written from the Mountain," 232.

[117] Fralin, *Rousseau and Representation*, 90f.

[118] Rousseau, "Of the Social Contract," 86.

[119] Rousseau, "Of the Social Contract," 106.

[120] Rousseau, "Of the Social Contract," 111.

In the interpretation of Shklar and others, the function of the presence of the sovereign people, in the end serves little purpose other than curtailing the usurping inclinations of government.[121] While there is much to merit this interpretation, it somewhat glosses over the reason why this dilemma appears. Why, after all, must government have a particular self? Why cannot it simply be a mechanical devise for barely executing the general will? Why, in short, must it be that "the more force the Government has, the more frequently ought the Sovereign to show itself"?[122] Here, then, we encounter the second reason why the general will cannot make a singular appearance, setting in motion, once and for all, the machine of the state.

On the Watch-maker and the Miracle

In order fully to understand this dilemma, we might return to Malebranche. While we have already noted some of the points of difference between Malebranche's concept of the general will and that of Rousseau, there is yet another point of difference, one so obvious in fact that Riley curiously does not seem to mention it. For Malebranche, God resembles a watch-maker whose creation, "according to the laws of mechanism, goes by itself and regularly". God, who "knows all, and foresees all", does not create something "which cannot run correctly if he who has made it does not change something in it at every moment according to the situations it is placed in".[123] God, in short, has no need for the miracle, any more than the world has need of his constant presence in order to ensure that the world functions according to his general will. Rousseau's sovereign, by contrast, must accept that "it is a very necessary foresight to sense that one cannot foresee everything".[124]

The problem, Rousseau alludes to already in his *Discourse on Political Economy*, in which he points out that "the infinite number of details of policy and of *economy*" must be "left to the wisdom of the government".[125] Government, when

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[121] Shklar, *Men and Citizens: A Study of Rousseau's Social Theory*, 180; Masters, *The Political Philosophy of Rousseau*, 405f.

[122] Rousseau, "Of the Social Contract," 111.

[123] Malebranche, *Treatise on Nature and Grace*, 210f.

[124] Rousseau, "Of the Social Contract," 138.

[125] Rousseau, "Discourse on Political Economy," 12.

confronted by the inevitable absences and lacunae of the law, will admittedly have "two infallible rules for acting well on such occasions: one is the spirit of the law, which should help decide the cases it could not anticipate; the other is the general will, the source and supplement of all law, and which should always be consulted in their absence".[126] In this manner, however, Rousseau concedes that the spirit, if not the letter, of the law, can be autonomously interpreted by government. Indeed, the general will itself, Rousseau here seems to concede, can be determined, as Fralin has noted, by government.[127] While Fralin interprets this as evidence of Rousseau's readiness to accept representation – even of the general will – what is worth emphasizing is that Rousseau's acceptance here is framed by the relationship between foresight and presence. In the end, only in the absence of the sovereign – and as we saw, only in its absence is the executive in force – must government take it upon itself to express the general will. The point becomes particularly clear in Rousseau's treatment of *dictatorship* in the *Social Contract*. Here, Rousseau asserts that "[t]he inflexibility of the laws, which keeps them from bending to events, can in some cases render them pernicious, and through them cause the ruin of a State in crisis".[128] In such cases, there are two ways of responding to such events: either the power of government is concentrated in the hands of one or two of its members, or a dictator is appointed who "silences all the laws" and suspends the sovereign authority.[129]

The question, then, is how to interpret these arguments. It has been suggested that Rousseau 'democratized' the dictator by making it the creation of "an extraordinary assembly of the people, which could revoke his commission at any time".[130] In short, in such cases, an extraordinary assembly is convened to appoint a dictator. Rousseau, to be sure, does allude to such "extraordinary assemblies which may be required by unforeseen circumstances" in the *Social Contract*.[131] In his *Considerations on the Government of Poland*, Rousseau too makes reference to these extraordinary assemblies of the sovereign, although pointing out that "orderly procedure requires that they indeed be infrequent, and called only in

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[126] Rousseau, "Discourse on Political Economy," 12.

[127] Fralin, *Rousseau and Representation*, 195.

[128] Rousseau, "Of the Social Contract," 138.

[129] Rousseau, "Of the Social Contract," 138.

[130] Marc de Wilde, "Silencing the laws to save the fatherland: Rousseau's theory of dictatorship between Bodin and Schmitt," *History of European Ideas* 45, no. 8 (2019): 1109.

[131] Rousseau, "Of the Social Contract," 111.

situations of urgent necessity".[132] While this is a possible interpretation, there are nevertheless reason to caution against it. Rousseau, for instance, does not mention them in the chapter on dictatorship in the *Social Contract*. Indeed, there is reason to read Rousseau's treatment of dictatorship in conjunction with his *Discourse on Political Economy*, in which he explicitly poses the question: "How, I shall be asked, can the general will be known in the cases in which it has not declared itself? Will the entire nation have to be assembled at each unanticipated event?".[133] His answer was that it would not. It suffices, he there argues, that the magistrates "know well enough that the general will is always on the side most favorable to the public interest, that is to say, the most equitable; so that one need only be just in order to be sure of following the general will".[134] In the genuine emergency, Rousseau similarly suggests in the *Social Contract*, "the general will is not in doubt, it is obvious that the people's foremost intention is that the State not perish".[135] While Rousseau's remarks on the dictator are arguably inconclusive, it is not altogether unlikely that government, not an extraordinary assembly of the sovereign, must be the one to appoint the dictator. Rousseau, certainly, downplays the significance of this departure from his insistence that the general will can be expressed only by the assembled people. In the genuine emergency, it is plain and obvious what the general will is. It arguably does remain, however, an unanswered question whether Rousseau entirely resolves the problem.[136] Certainly, the people may, *ex post facto*, call the dictator to account,[137] but in the moment, and until such a time, only the will of the latter exists to move the machine of the state. As in the case of Locke's prerogative, such a judgement will always, in some sense, arrive too late. And while the actions of government and the dictator, like Hobbes'

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[132] Rousseau, "Government of Poland," 203.

[133] Rousseau, "Discourse on Political Economy," 12.

[134] Rousseau, "Discourse on Political Economy," 12.

[135] Rousseau, "Of the Social Contract," 138.

[136] This is the question which Carl Schmitt posed: it is, he argued, a "mystery" how the "*volonté générale* suspends itself in a case of emergency", and from where "an executive organ should get the authority for such a suspension", Carl Schmitt, *Dictatorship* (Cambridge/Malden: Polity, 2014), 106. David Bates, in attempting to defend Rousseau against the criticism of Schmitt, alludes to the manifest nature of the general will in the case of an emergency. David Bates, "Rousseau and Schmitt: Sovereigns and Dictators," in *Thinking with Rousseau: from Machiavelli to Schmitt*, ed. Helena Rosenblatt and Paul Schweigert (Cambridge: Cambridge University Press, 2017), 219. This, however, in the end glosses over Schmitt's question.

[137] Putterman, *Rousseau, Law and the Sovereignty of the People*, 168.

magistrates, will be constrained by the implied presence of the sovereign, such an implied presence can never entirely be a substitute for an actual presence.

In the end, if the people in Rousseau's political theory do very little, the dilemma resides in that what they do, they can do only with an all too human foresight. Their general will can never resemble that of God, who knows all and foresees all. Having pronounced it, they can certainly go to sleep, and entrust the machine to run, in all its part, in accordance with the moral cause which set it in motion. But unlike God, they will never truly know whether the machine runs as they have predicted. Certainly, the sovereign people can show itself more or less often. But only through its continuous presence, where it appears as a perfect democracy, pronouncing a general will which it in the next moment, having transformed itself into government, applies, can it ever fully avoid the dilemma.

Conclusion

I have in this chapter argued that Rousseau's problem of presence was one rather different from that of Hobbes. For Rousseau, what must be made present is not merely the sovereign will by which anarchy is warded off, but a general will with more force than all the particular wills incessantly threatening to usurp political order. The problem Rousseau set himself, thus, was for every citizen to *will* the general will. Where the general will is truly present, the machine of the state runs, in all its parts, in accordance with it. What was artificial, in time, will become natural.

If Hobbes' problem of presence nevertheless reappears, it is for the simple reason that no people will ever truly be "a people of Gods".[138] The general will can never foresee all things, nor set in motion a causal chain whose outcome is guaranteed. The machine of the state will remain a piece of artifice, continuously present to make the general will a reality, and possessed of its own will and judgement in order to amend the inevitably fallible foresight with which it is set in motion.

One of the intractable questions in the interpretation of Rousseau, as we have seen, is whether the people, in his view, are meant to do a great deal or very little. On this question, the judgement of Rousseau as a democratic writer clearly depends. The same is true of the question of Rousseau's views on representation.[139]

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[138] Rousseau, "Of the Social Contract," 92.

[139] René-Louis de Voyer de Paulmy Marquis d'Argenson, whom Rousseau references in the *Social Contract*, had in his *Considérations sur le gouvernement* published in 1764, spoken – perhaps

While the image of Rousseau as a proponent of direct, or participatory democracy, is premised on his assertion of the irrepresentability of will, many interpreters, most notably Fralin, have pointed out how Rousseau, in various ways, undermines his own assertion. As we have seen, Rousseau clearly holds that "Government represents the Sovereign".[140] And in his *Considerations on the Government of Poland*, Rousseau seemingly abandons his opposition to representation.[141] Thus, the assertion that will cannot be represented, Fralin argues, "in addition to being of dubious validity, was clearly subordinate to his pragmatic objection to representation on the grounds that representative assemblies are less effective than popular assemblies in preventing executive usurpation of popular sovereignty".[142] As we have seen, in the view of many interpreters, Rousseau's insistence on the presence of the people, and the necessity of it showing itself through frequent assemblies, ought to be understood primarily as a means of curtailing the inevitable efforts on the part of government to usurp political authority. "Moral self-defense, not action, is the concern of the general will".[143] The argument which I have sought to make here is not to suggest that this interpretation is not merited. It is rather to suggest that this question brings out an ambivalence in Rousseau's political theory. The continuous participation of the people is undesirable *and* practically impossible. What appears is the same ambivalence which imbues contemporary political theory: the democratic assembly is what we do not want and cannot have. What I have sought to suggest is an answer to why this ambivalence might appear in the political theory of Rousseau. And in this sense, there is merit to reading Rousseau alongside Hobbes. The people need perhaps do very little, and be little more than a rare and exceptional presence in the world. But, insofar as the state

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the first to have done so – of representative democracy, René-Louis de Voyer de Paulmy Marquis d'Argenson, *Considérations sur le gouvernement, a critical edition, with other political texts*, ed. Andrew Jainchill (Liverpool: Liverpool University Press, 2019), 78. "D'Argenson", as Pierre Rosanvallon argues, "was the first to strip the word 'democracy' of its ancient and archaic referents and turn its technical meaning upside down (from the idea of direct self-government to that of representative government), an inversion that would take nearly a century to pass into ordinary usage in France", Pierre Rosanvallon, "The History of the Word "Democracy" in France," *Journal of Democracy* 6, no. 4 (1995): 143.

[140] Rousseau, "Of the Social Contract," 114f.

[141] Rousseau, "Government of Poland," 200f.

[142] Fralin, *Rousseau and Representation*, 195. Rousseau's lawgiver, in fact, may be viewed as a kind of representative, Vieira, "Founders and Re-founders: Struggles of Self-authorized Representation," 501.

[143] Shklar, *Men and Citizens: A Study of Rousseau's Social Theory*, 190; Fralin, *Rousseau and Representation*, 100; Masters, *The Political Philosophy of Rousseau*, 405f.

needs to be present often indeed for the general will to have an effect in the world, *someone* must be present to give life to the artificial machinery of the state. We may certainly challenge Rousseau's assertion of the irrepresentability of the will, but in some sense Rousseau's problem remains. In the end, in the moment, it is the one who is present who must, with only fallible foresight as a guide, say what the common good is, and what the general will dictates in a world of particularity.

What, then, ought we in the end to make of the question of presence in Rousseau? Should we regard Rousseau as the principal proponent of a metaphysics of presence and as the romanticizer of direct democracy in modern political thought? Whatever may be said on either side of that argument, the point which I have sought to make is that there is in Rousseau a very practical problem of presence, which we ought not to overlook. Rather, perhaps, than giving us Jacobin terror, as J. L. Talmon suggests, or our modern democracy, as Tuck suggests, it may be that Rousseau gives us our modern dilemma. As Steven G. Affeldt has suggested, the fact that the general will always exists only in the present, in a timeless now in which it is free of the shackles of its past, means that society must be continuously willed by its citizens. When we are represented, when we confer the task of willing on someone other than ourselves, we accept that the chains which bind us are of our own making.[144] If there is a point to Rousseau's critique of Hobbes, it is that if we allow the unity of the state to reside only in the unity of the representative, we shall have to accept that the person of the state, in the end, speaks and acts only through this representative. We shall, in Hobbes' terms, have to accept that we must *own* whatever the sovereign representative does. Whether Rousseau resolves this problem, whether we can unite our wills and yet be as free as before,[145] the point is that only in understanding Hobbes' problem can we truly understand Rousseau's choice. If we wish for the state to be present, we must answer the question of who gives it its will. The dilemma Rousseau presents us with is this: the political order is either defined by a particular will or by a general will. There is a third option, and it is the one around which Hobbes' problem of presence revolves, and which Rousseau rarely contemplates: the absence of a will entirely,

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[144] Affeldt, "The Force of Freedom: Rousseau on Forcing to be Free," 406, 19. Joshua Cohen has something similar in mind. While he agrees with the critical interpretations above, he is more reluctant to disregard Rousseau's arguments against representation as ill-founded: "it does not have the same basic structure as his case against slavery. Instead, his assessments of more participatory and more representative systems derive from broadly empirical assessments about the operation and evolution of such systems", Cohen, *Rousseau: A Free Community of Equals*, 150.

[145] Rousseau, "Of the Social Contract," 49f.

that is, anarchy. It is the option which is conspicuously absent from Rousseau's writings. Occasionally, however, it does appear. Political order, Rousseau does acknowledge, requires three things: that the sovereign makes laws, government executes them, and the citizens obey. Without these, "disorder replaces order, and the State is dissolved, falling into despotism or anarchy".[146] But the problem of anarchy is not Rousseau's problem. The fact that we have now largely forgotten Hobbes' problem of presence, despite the influence which Rousseau has exerted, then, may simply be because Rousseau never truly addressed it. But, as I have argued, only in understanding it can we understand Rousseau's problem.

It would be erroneous to suggest that there was, from Rousseau onwards, no manner in which political thought could return to the problem which early modern thought had posed. Rousseau's thought does not precisely mark a paradigmatic shift. But, one might perhaps say that his thought occupies a threshold which political thought, in the nineteenth century, would follow in opposing directions, neither of which had reason to return to Hobbes' problem. On the one hand, Rousseau's contractualism still conformed to the individualism and voluntarism of Hobbes and Locke, from which modern liberalism would emerge.[147] On the other, nineteenth-century thinkers like Otto von Gierke could find in Rousseau's attempt at "raising Collective unity to the dignity of a living and authoritative Group-person",[148] the first tentative steps towards an organic conception of the state.[149] It is here beyond the scope of this thesis to recount the influence of

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[146] Rousseau, "Emile," 655.

[147] Hobbes' problem is not one which makes any particular reappearance in the works of figures like J. S. Mill, François Guizot, and Benjamin Constant, who, in the nineteenth century, sought to envisage a representative form of government capable of navigating the twin shoals of absolutism and Jacobin Terror, see Benjamin Constant, *Principles of Politics Applicable to All Governments*, trans. Dennis O'Keeffe, ed. Etienne Hofman (Indianapolis: Liberty Fund, 2003); Benjamin Constant, "On the Liberty of the Ancients Compared with that of the Moderns," in *Benjamin Constant. Political Writings*, ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988); Constant, "Principles of Politics Applicable to all Representative Governments."; Mill, *Considerations on Representative Government*; François Guizot, *The History of the Origins of Representative Government in Europe*, trans. Andrew R. Scoble, ed. Aurelian Craiutu (Indianapolis: Liberty Fund, 2002). For an overview, see William Selinger, *Parliamentarism: From Burke to Weber* (Cambridge: Cambridge University Press, 2019).

[148] Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, 128.

[149] As McCloskey points out, mirroring the interpretation of several nineteenth-century organicist thinkers themselves: "Rousseau, with perhaps only slight justification, has frequently been interpreted as offering an organic theory of the state, yet there is nothing in his view which tells against the instrumentalist interpretation in terms of the social contract; and it is significant that he himself in a number of places likens the state to a machine", H. J. McCloskey, "The

Rousseau on figures like Gierke, Hegel, Bluntschli and Bosanquet.[150] The only point I wish to make is that as the state ceases to be artificial, and when its will becomes the organic manifestation of an organic body,[151] the question of who is present to express it, in some sense ceases to be a pressing issue. This is not to suggest that the problem disappears entirely.[152] But if the problem was already somewhat buried in Rousseau's thought, the organic conception of the state had little reason to excavate it.

More to the point, perhaps, is that, soon after Rousseau had posited his dilemma, there emerged a conception of democracy which appeared to offer a third way out. Democracy, as a series of revolutionary thinkers insisted, could be representative and still be democracy. It is to this idea we may now turn.

State as an Organism, as a Person, and as an End in Itself," *The Philosophical Review* 72 (1963): 312.

[150] G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet, ed. Allen W. Wood (Cambridge: Cambridge University Press, 1991), 277; J. K. Bluntschli, *The Theory of the State*, 3 ed. (Oxford: Clarendon Press, 1895), 98; Bosanquet, *The Philosophical Theory of the State and Related Texts*, 55.

[151] The final source of all law, Gierke maintains, "remains the *social consciousness* of any social institution whatever", Otto von Gierke, "The Basic Concepts of State Law and the Most Recent State-Law Theories," in *The Genossenschaft Theory of Otto von Gierke*, ed. John D. Lewis (Madison: University of Wisconsin Studies in the Social Sciences and History, number 25, 1935), 176. Bosanquet similarly identifies the "general will of any community with the whole working system of dominant ideas which determines the places and functions of its members, and of the community as a whole among other communities", Bernard Bosanquet, "The Reality of the General Will," *International Journal of Ethics* 4, no. 3 (1894): 314.

[152] Bluntschli, to be clear, still saw merit in the contractualist emphasis on the state as an artificial construct, Bluntschli, *The Theory of the State*, 297.

Chapter V: Present Again

I began the historical argument of this thesis by recounting a familiar hypothesis. The hypothesis was that representative democracy, and with it our modern paradox, emerged as a solution to the problem of the size and scale of the modern state. At a quick glance at the thinkers to whom we owe our modern idea of representative democracy, there would seem to be much to merit this hypothesis. "In a large society, inhabiting an extensive country," John Adams argued, "it is impossible that the whole should assemble to make laws".[1] Whereas democracy, James Madison suggested, "must be confined to a small spot", a republic, being representative in character, "may be extended over a large region".[2] On the other side of the Atlantic, Emmanuel Joseph Sieyès asserted that since "it is evident that five to fifteen million active citizens, spread over more than twenty-five thousand square leagues, cannot assemble; it is certain that they can only aspire to a Legislature by representation".[3] "Democracy", Jean-Joseph Mounier agreed, "is a foolish dream in a large state".[4] The "extent of the republic", Nicolas de Condorcet reiterated, "permits only a representative constitution".[5] In short, the question of presence would seem to be one which might be put in precisely the terms with which Thomas Paine posed the predicament: "*What is the best form of government*

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[1] John Adams, "Thoughts on Government: Applicable to the Present State of the American Colonies," in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Charles C. Little and James Brown, 1851 [1776]), 194.

[2] James Madison, "No. 14," in *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 63.

[3] Emmanuel Joseph Sieyes, *Dire de l'Abbé Sieyes, sur la Question Du Veto Royal, a la Séance du 7 Septembre 1789* (Versailles: Chez Baudoin, Imprimeur de l'Assemblée Nationale, Avenue de Saint-Cloud, n°. 69, 1789), 13.

[4] Jean-Joseph Mounier, "Speech on the Royal Sanction (september 5, 1789)," in *The French Revolution: A Document Collection*, ed. Laura Mason and Tracey Rizzo (Boston/New York: Houghton Mifflin Company, 1999), 80.

[5] Nicolas de Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," in *Condorcet: Selected Writings*, ed. Keith Michael Baker (Indianapolis: The Bobbs-Merrill Company, Inc., 1976), 152.

for conducting the RES-PUBLICA *or* PUBLIC BUSINESS *of a nation after it becomes too extensive and populous for the simple democratical form?*".[6]

If there was a problem of presence underpinning the thinking of the revolutionaries at the end of eighteenth century, it would seem to be phrased in the by now familiar narrative of size and spatiality. Of the formulation of the problem of presence of Hobbes and Pufendorf, there would seem to be little of an echo. In this sense, if Rousseau added the first morsel of sand, it is arguably here, at the end of the eighteenth century, that the problem of presence of early modern thinkers like Hobbes and Pufendorf came to be buried. In this chapter, the aim is not to dispute the spatial narrative, or to suggest that these revolutionaries, despite themselves, still spoke of the problem of presence as one of time. It is to suggest, however, that if there is merit to the history I have suggested in the preceding pages, we may wonder whether this problem was one which, in truth, could be entirely buried. It is to suggest that, if we truly look, we can still discern, shimmering through the sand, the problem of time.

Before sifting through the sand, however, there is yet another narrative of what the revolutionaries brought into the world which it will be important to note. It is a narrative which suggests that, in truth, the problem of presence played little or no part in the arguments of the figures to whom we owe our representative form of government. What we see when we look back to them are not democrats reluctantly acquiescing in the necessity of representative government.[7] Rather, so the argument goes, we see in them subtle theorists for whom representative government was something more than "merely a pragmatic alternative for something we, modern citizens, can no longer have, namely direct democracy".[8] Indeed, if it is true to say of the French revolution, as François Furet has done, that "[p]ure democracy culminated in government by the Terror",[9] the point of this narrative

[6] Thomas Paine, "Rights of Man," in *Thomas Paine: Political Writings*, ed. Bruce Kuklick (Cambridge: Cambridge University Press, 2000 [1791-92]), 178f.

[7] Indeed, some have in fact seen in them reluctant democrats to begin with, willing to concede only a minimum of influence to the people, Manin, *The Principles of Representative Government*; Joshua Miller, "The Ghostly Body Politic: The Federalist Papers and Popular Sovereignty," *Political Theory* 16, no. 1 (1988).

[8] Urbinati, *Representative Democracy*, 10; also Lucia Rubinelli, *Constituent Power: A History* (Cambridge: Cambridge University Press, 2020); Garsten, "Representative government and popular sovereignty."

[9] Francois Furet, *Interpreting the French Revolution* (Cambridge: Cambridge University Press, 1981), 78. The point is mirrored by Lefort, whose theoretical argument owes much to Furet's historical, Lefort, *Democracy and Political Theory*, 107. The narrative has some overlap to that of Hannah Arendt, for whom the decisive facet of the American revolution, and which

is to suggest that unlike Robespierre, revolutionaries like Madison, Hamilton, Paine, Sieyès and Condorcet understood well that pure democracy was not merely a practical impossibility. What they envisaged, rather, was a form of government in which the seat of power would remain empty, in precisely the manner later theorized by Lefort.

While there is, as we will see, much to merit this narrative, it does beg the obvious question of why these revolutionaries nevertheless felt the need to assert a problem of presence which they regarded as irrelevant. This apparent contradiction, I suggest, becomes resolved once we acknowledge that these figures, while reluctant to romanticize pure democracy, were equally reluctant to envisage the seat of power as literally empty. As such, the problem of presence was for them a very real one indeed, and while none envisaged its solution other than through representation, it was not a problem which simply could be 'swept away'. Though reluctant to espouse pure democracy, theirs was also an ambivalent argument: the democratic assembly is what we do not want, and cannot have.

In this chapter, the aim is to bring the discussion in the preceding pages of this thesis to a close, by bringing it to bear on some of the fundamental theoretical questions on which contemporary political theory continues to view the revolutionaries at the end of the eighteenth century as interlocutors. Specifically, I will in this chapter address four related questions. The first concerns the question of whether the revolutionaries indeed invoked popular sovereignty primarily as a negative argument, and the sovereign people as an absent rhetorical figure. The second addresses the question of whether the problem of presence which representation was meant to resolve truly was merely a spatial problem. The third question concerns whether the revolutionaries in fact eschewed pure democracy as a normative ideal. Lastly, the chapter will address the question of whether, and if so in what sense, the revolutionaries did envisage a form of government which would leave the seat of power empty. The aim in making the revolutionaries speak on these questions is not to afford them a privileged place of truth, but to restore to their discourse their ambivalence. In the end, we may find in these revolutionaries subtle thinkers for whom the paradox of presence was as disconcerting as we continue to find it.

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differentiated it from the French, was "the consistent abolition of sovereignty within the body politic of the republic", Hannah Arendt, *On Revolution* (London: Penguin Books, 1965), 153.

The Mythic Present

As a way of introducing the discussion of this chapter, we may return to the question of what it means to speak of popular sovereignty. To what do we actually refer when we speak of the sovereign people? In a sense, we seem to refer to an impossible object. The attribute of sovereignty, in the end is one which the people seemingly cannot bear without lapsing into outright paradox. To speak of *the* people, after all, presupposes a constituted form, and thus rules and procedures which it cannot break at will. To speak of the sovereign people, then, would seem to be trying to meld two contradictory terms. It is, then, perhaps little more than a fiction.[10] Or it is perhaps, rather, a concept fundamentally misunderstood. What we speak of is perhaps only a rhetorical figure, invoked to remind those who exercise sovereignty that they do not possess it.[11] It is, in this sense, something absent, projected into the past to give authorship to an order which those who exercise authority are merely the instruments of. [12]

While there is much to recommend these interpretations, I have suggested throughout this thesis that to speak of popular sovereignty is to speak in ambivalent terms. As we have seen, sovereignty itself appears as a term imbued with a surplus of meaning. From Grotius to Lawson, Pufendorf and Locke, we have seen that sovereignty seems invariably to appear in ambivalent terms. The *common* subject of sovereignty notwithstanding, there must also be its *proper* subject; the *Real* sovereignty of the community notwithstanding, there must also be the *Personal* sovereign; and the *supream power* of the community notwithstanding, there must also be the *supream power* of political society. The sovereign is, seemingly, always both within and without, abstract and intangible yet concrete and present. What I have suggested is that this ambivalence is not one we need to resolve, but one which we ought to understand. Rather than to impose on the polysemy of the concept a rigorous meaning, the idea has been to understand precisely to what this ambivalence alludes.

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[10] Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, 50. For a similar argument, see Morris, "The Very Idea of Popular Sovereignty: "We the People" Reconsidered," 25; Olson, *Imagined Sovereignties: The Power of the People and other Myths of the Modern Age*.

[11] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 14.

[12] Pasquino, "Popular Sovereignty – The People's Two Bodies," 154. For a similar argument, see Lindahl, "Sovereignty and Symbolization," 357; Lindahl, "Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood."

When, on both sides of the Atlantic, revolutionaries invoked the idea of popular sovereignty, they hardly resolved this ambivalence. When Jean-Joseph Mounier sought to clarify that "*being* the principle of sovereignty and *exercising* the principle of sovereignty are two very different things",[13] it was a statement which could not but assert the very ambivalence it was meant to resolve. It could not but reiterate the image of two sovereigns, one which *is* and one which *does*. Indeed, to speak of the nation as the *source* of sovereignty, as the *Declaration of the Rights of Man and Citizen* was to do,[14] in the end enshrined the very same ambiguity.[15] And if the course of the French revolution was particularly plagued by it, neither was it absent from the American. "The streams of national power", Alexander Hamilton argued, "ought to flow immediately from that pure original fountain of all legitimate authority".[16] Though Americans may have been the first to articulate, in recognizably modern terms,[17] the idea that the constitution is an act not of "government, but of the people constituting a government",[18] they too recognized the ambivalence of speaking of the people as a source and fountain of a sovereignty they would not exercise.[19]

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[13] Mounier, "Speech on the Royal Sanction (september 5, 1789)," 82.

[14] The Declaration stated that the "source of all sovereignty resides essentially in the nation", "Declaration of the Rights of Man and Citizen (26 aug, 1789)," in *The French Revolution: A Document Collection*, ed. Laura Mason and Tracey Rizzo (Boston/New York: Houghton Mifflin Company, 1999).

[15] As Jon Cowans points out, words like *source* and *essentially* imbued the declaration with a considerable degree of vagueness, Jon Cowans, *To Speak for the People: Public Opinion and the Problem of Legitimacy in the French Revolution* (New York/London: Routledge, 2001), 29.

[16] Alexander Hamilton, "No. 22," in *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 112.

[17] It is often suggested that our modern conception of the constitution comes from the American revolutionaries in general, and Paine in particular, McIlwain, *Constitutionalism: Ancient and Modern*, 2; Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Williamsburg: The University of North Carolina Press, 1969), 266; Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts/London, England: The Belknap Press of Harvard University Press, 1967), 175. J. H. Burns, however, has argued that much of the innovation attributed to Paine, was already to be found in Bolingbroke, and that Paine did not say much "which Bolingbroke had not said earlier", J. H. Burns, "Bolingbroke and the Concept of Concept of Constitutional Government," *Political Studies* 10, no. 3 (1962): 274.

[18] Paine, "Rights of Man," 89.

[19] It was to this ambiguity Noah Webster alluded when, in 1802, he reflected on the question of the purported sovereignty of the people. On this matter, Webster asserted that "sovereignty consists in the single will of a body acting together, deliberating, deciding, and capable of carrying its decrees into effect. Do the people possess this power?" The obvious answer was that it

Perhaps nowhere does this ambivalence appear as clearly as it does in the thought of Emmanuel Joseph Sieyès. Or, to put it more precisely, Sieyès' concept of *constituent power* brings into focus precisely the ambivalence of speaking of the people being the source of a power which they do not exercise. In the following, then, we may take this concept as a point of departure.

At the outset, however, Sieyès' concept of constituent power confronts us with a different ambivalence. The attributes which Sieyès bestows on the nation, arguably, would seem to render it an unequivocal sovereign. It is, Sieyès tells us, "prior to everything", and "the source of anything".[20] It is "always in a state of nature",[21] and its constituent power is – like Rousseau's sovereign – "free from every constraint, every procedural formality but that which it decides to adopt". The constituent power, in short, "is supreme".[22] For these reasons, Hannah Arendt could rhetorically ask: "What else did even Sieyès do but simply put the sovereignty of the nation into the place which had been vacated by a sovereign king?".[23] Yet, as unequivocal as these pronouncements may appear, there is reason to suggest that Sieyès rigorously sought to eschew the concept of sovereignty entirely. The equivocation of constituent power and sovereignty, Lucia Rubinelli in particular has argued, ought in fact to be imputed to Carl Schmitt's misreading of Sieyès.[24] Indeed, in his constitutional writings from Year III, Sieyès – although with the benefit of hindsight and the experiences of the Terror behind him – unambiguously repudiated the entire concept of popular sovereignty. It is, he here argued, "an

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did not. At most, he argued, it could be said that power was 'derived' from the people, which "possess the right of electing agents or substitutes to meet and constitute the supreme power...and farther than this right of electing, which is exercised by a private act of each individual, the people cannot possibly have a share in the sovereign power", Noah Webster, "An Oration on the Anniversary of the Declaration of Independence," in *American Political Writings during the Founding Era 1760 – 1805*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Fund, 1983 [1802]), 1230. On this ambiguity in American revolutionary political thought, see Wood, *The Creation of the American Republic 1776-1787*, 366ff.

[20] Emmanuel Joseph Sieyès, "What is the Third Estate?," in *Emmanuel Joseph Sieyès: The Essential Politicial Writings*, ed. Oliver W. Lembcke and Florian Weber (Leiden/Boston: Brill, 2014), 89.

[21] Sieyès, "What is the Third Estate?," 91.

[22] Sieyès, "Reasoned Exposition of the Rights of Man," 127.

[23] Arendt, *On Revolution*, 156.

[24] That the two concepts have tended to be confused Rubinelli attributes in particular to Carl Schmitt's adoption of Sieyès' political theory, a misreading Arendt in turn reiterated, Rubinelli, *Constituent Power: A History*, 23, 185ff; see Schmitt, *Constitutional Theory*, 128. Richard Tuck also notes Sieyès' distinction, Tuck, *The Sleeping Sovereign*, 176.

important, yet too-little-known truth, so it bears repeating: the French people as a whole does not have these powers, these unlimited rights, which flatterers attribute to it".[25] "It is", he emphasized, "indeed popular sovereignty that I am talking about", which the French, "still captivated by the superstitions of kingship", had erroneously imputed to the people.[26] If the revolution had rendered the seat of power occupied by the king vacant, the error of the radical elements was to have envisaged the people capable of occupying it.[27]

If constituent power, then, is not sovereignty, then what is it? Arguably, the key to answering this question resides in Sieyès' conception of representation. As historian Keith M. Baker has pointed out, while Sieyès' use of terms like *nation* and *general will* echoed Rousseau, the originality of his political thought resided in combining them with a systematically developed theory of representation.[28] Specifically, constituent power implied a delimited and carefully constrained function. Once the political order is constituted, the *pouvoir constituant* of the nation gives way to its *pouvoir commettant*, the right to elect its representatives.[29] Once the constitution is authorised, as Rubinelli puts it, citizens "retreat into the private sphere and confer the ordinary working of politics onto ordinarily elected representatives".[30] The nation, then, is not sovereign. Its only power is the constituent power, and once this is exercised, something else takes its place. Neither is, however, that which takes its place sovereign, since it is the creation of the constituent power. There simply is, in short, no sovereign in Sieyès' system. As Pasquale Pasquino summarizes Sieyès' political theory: the *pouvoir constituant* has "the function of establishing through the constitution the *empty seat* (the position of government) that the *pouvoir commettant* will fill up".[31] The interpretation suggested

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[25] Sieyès, "Sieyès's Views Concerning Several Articles of Sections IV and V of the Draft Constitution [First Thermidorian Intervention]," 156.

[26] Sieyès, "Sieyès's Views Concerning Several Articles of Sections IV and V of the Draft Constitution [First Thermidorian Intervention]," 156.

[27] Already here then, as Furet has pointed out, Sieyès noted the connection between the concept of sovereignty and the Terror, François Furet, "Terror," in A Critical Dictionary of the French Revolution, ed. François Furet and Mona Ozouf (Cambridge, Massachusetts/London, England: The Belknapp Press of Harvard University Press, 1989), 149.

[28] Baker, *Inventing the French Revolution*, 251.

[29] Rubinelli, *Constituent Power: A History*, 58.

[30] Rubinelli, *Constituent Power: A History*, 60.

[31] Pasquale Pasquino, "Modern Representative Democracy: Intellectual Genealogy and Drawbacks," in *Markets, Morals, Politics: Jealousy of Trade and the History of Political Thought*,

by Rubinelli and others, then, is that Sieyès' constituent power of the nation is in fact something like a rhetorical figure, indeed a negative argument, invoked to show to whom sovereignty does not belong.[32] In fact, there is no sovereignty to possess at all. The seat of power, in short, is empty.

To speak then of an ambivalence in Sieyès' thought would perhaps seem a misnomer. But, as is clear, the mere absence of an entity adorned with all the attributes of sovereignty within Sieyès' political theory does not exhaust it. The constituent power of the nation may serve only a delineated function, and it may establish the empty seat of power. But, as already suggested, this does not conclude Sieyès' argument. It only marks a point of transition at which it now becomes necessary to fill that seat. And while that which fills the seat neither is sovereign, it does not mean, as we will see, that it does not possess *some* of the attributes of sovereignty.

Here, then, it is worth returning to Sieyès' conception of the nation. Specifically, the question worth posing here is what the nation *is*, prior to the establishment of the political order. If this figure is a mere rhetorical figure, an absent body retrospectively invoked to confer authorship on the constitution, Sieyès nevertheless goes to some lengths to describe it. Indeed, Sieyès gives something of a historical account of it. Being in the state of nature, the nation must be self-constituted, created by "a fairly considerable number of isolated individuals who wish to unite", and who, "by this fact alone", "already constitute a nation".[33] It cannot itself be constituted by anything external to it. "Is there", Sieyès rhetorically asks, "a prior authority which could have told a multitude of individuals: 'I put you together under such and such laws; you will form a nation on the conditions I prescribe.' We are not speaking here of brigandage or domination, but of a legitimate, that is to say voluntary and free, association".[34] The nation, to put it in

ed. Béla Kapossy et al. (Cambridge, Massachusetts/London, England: Harvard University Press, 2018), 121.

[32] It has been suggested that Sieyès' conception of constituent power was, in this sense, closer to the American federalists' conception of popular sovereignty than to Rousseau's, Vieira and Runciman, *Representation*, 37f; Pasquino, "Popular Sovereignty – The People's Two Bodies," 148, 54, 56.

[33] Sieyès, "What is the Third Estate?," 87.

[34] Sieyès, "What is the Third Estate?," 90.

modern terms, is present to itself as a defined collectivity, or, as Baker puts it, an "immanent political presence".[35]

While Sieyès thus unambiguously asserts that the nation is something prior to the establishment of government, he remains somewhat opaque about precisely what it is.[36] While, Sieyès maintains, all the "rights of a nation" are already enjoyed by its members, it nevertheless remains "for them to exercise them".[37] Like Rousseau's social machine, Sieyès' "social machinery",[38] as it were, must too be set in motion. While already a community, it "needs a common will", since "without *singleness* of will it could not succeed in being a willing and acting body".[39] That is, in the state of nature the nation does not yet have a will. Nor, indeed, does it have a body. "It is", Sieyès concedes, "impossible to create a body for any purpose without giving it the organization, procedures and laws appropriate for it to fulfill its intended functions. This is called the *constitution* of this body".[40] Thus, it must form a body, and "every body needs to be organized, delineated etc., or, in other words, needs to be constituted".[41] Like Lawson's community, Sieyès' nation, while already a community, is a pure potentiality of endless possibilities. It is free from every constraint but those which it imposes on itself. But for that very reason, it does not yet have a form or a single will. It must, then, pass into constituted form. It must become a body and possess a will.

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[35] Baker, *Inventing the French Revolution*, 257; also Keith Michael Baker, "Representation," in *The French Revolution and the Creation of Modern Political Culture: The Political Culture of the Old Regime*, ed. Keith Michael Baker (Oxford: Pergamon Press, 1987), 469.

[36] Alfred Cobban has suggested that the French revolution marks a transition from enlightenment individualism to nationalism: "The Revolution ends the age of individualism and opens that of nationalism", Alfred Cobban, *Aspects of the French Revolution* (London: Jonathan Cape, 1968), 25. As David A. Bell points out, the nationalism which the French revolutionaries invoked was one which was long in the making. It was also one which reiterated Rousseau's paradox: while already in some sense present, it was also "a union that manifestly remained to be built, and whose construction stood logically prior to all other political tasks", Bell, *The Cult of the Nation in France: Inventing Nationalism, 1680-1800*, 200. While this facet was perhaps less manifest in the writings of American revolutionaries, Peter S. Onuf has suggested that a similar ambivalence does appear, at least in the later writings of Thomas Jefferson, Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville and London: University Press of Virginia, 2000).

[37] Sieyès, "What is the Third Estate?," 87.

[38] Sieyès, "What is the Third Estate?," 87.

[39] Sieyès, "What is the Third Estate?," 88.

[40] Sieyès, "What is the Third Estate?," 88.

[41] Sieyès, "Reasoned Exposition of the Rights of Man," 126.

Lynn Hunt has coined the term 'the mythic present' to describe the state of permanent revolution which came to define the course of the French revolution.[42] It was a government of a not-yet realized constitutional government, an endless deferral of the moment in which the revolution would be deemed concluded. Of course, as we will see, the revolution did not, and could not, subsist in a truly mythic present. But if the term may be appropriated to a different context, it arguably describes well Sieyès' nation in the state of nature. In the mythic present, time has not yet started. In it, potentiality need not yet be made actual, and form need not yet be imposed on matter. Sieyès' nation has rights it cannot yet exercise, it has a unity but not yet a single will. It exists, in short, in a timeless and mythic present. It does not yet have a single will upon which to act in relation to concrete events, and remains, as it were, outside time.

When Sieyès thus argues that the political body "cannot exist without" a constitution,[43] the word 'existence' here has a clear and decisive meaning. If it cannot exist, it is because it cannot exist in time as a willing and acting body. The nation must, in short, pass into time by giving itself a constitution. If, at this point, the constituent power of the nation becomes, as Rubinelli puts it, "present only indirectly",[44] there emerges at this point a quite *literal* and direct presence, through a political *body* possessed, like Rousseau's, of both a 'faculty of willing' and a 'faculty of acting', that is, a legislative and executive.[45] In short, though Sieyès does not express it in these terms, the nation must become a *state*.

If there is a point at which Sieyès' eschewing of sovereignty becomes ambivalent, if there is a Hobbesian tint to his theory of representation, it is arguably in his insistence on the singleness of the will which comes into being once the nation leaves the state of nature. In fact, Baker articulates Sieyès' theory in explicitly Hobbesian terms. What Hobbes, Baker points out, had offered were three distinct possibilities. Either the sovereignty of the state is represented by one person, by a part of the people, or by an assembly of all. In this sense, the *ancien régime* had followed the first route, Rousseau the third, and Sieyès the second. In those terms, Baker concludes, "Sieyès accepted the postulate of unitary sovereignty fundamental to the traditional logic of absolutism but transformed the concept of a representative public person by reworking Rousseauian theory in combination with

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[42] Lynn Hunt, *Politics, Culture, & Class in the French Revolution* (London: Methuen & Co. Ltd, 1986), 27.

[43] Sieyès, "What is the Third Estate?," 88.

[44] Rubinelli, *Constituent Power: A History*, 49.

[45] Sieyès, "Reasoned Exposition of the Rights of Man," 126.

elements of the social theory of representation".[46] While the use of the term sovereign here may be somewhat of the historian's imposition, it is an interpretation which arguably suggests something of an ambivalence.

The decisive question to which Baker's interpretation seems to point is the question of what it is that is being represented, once the nation passes into constituted order. What, in short, is the common will which the constituted order brings into being? In Sieyès' apocryphal historical account in *What is the Third Estate?* this passage is largely glossed over. In the earliest times, Sieyès asserts, the nation, already in some sense constituted, merely decides "to give consistency to their union" by forming a *common will*, which it does by assembling in person to govern.[47] Sieyès, however, quickly opts to "leap the lapse of time", to consider the situation in which the members have become "too numerous and occupy too large an area to exercise their common will easily by themselves".[48] This, then, is the situation in which France at present finds itself. Here, thus, we encounter the familiar spatial problem. This spatial problem, and the idea of representative government as a solution to it, is one to which I will have reason to return in more detail below. At this point, we may however simply follow Sieyès' argument.

While Sieyès, like Rousseau, asserts that only the general will can give direction to the political order, in the modern state, characterized by a numerous population dispersed across a large territory, he argues that "it is no longer the *real* common will which is in operation, but a *representative* common will".[49] This *representative* common will, "which resides in the body of representatives is neither complete nor unlimited; it is a mere portion of the grand, common, national will". It is exercised not "as a right inherent in themselves, but as a right pertaining to other people; the common will is confided to them in trust".[50] Again, sovereignty

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[46] Baker, *Inventing the French Revolution*, 251; also Baker, "Representation," 490. Lucien Jaume similarly draws this connection between Sieyès and Hobbes, and indeed regards Sieyès as a proponent of 'national sovereignty', Lucien Jaume, "Constituent Power in France: The Revolution and its Consequences," in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007), 84. Nadia Urbinati too suggests that Sieyès sought to merge "Rousseau's goal (preservation of the unified will of the nation) and Burke's means (free mandate as a means to attain the former): the sovereign retained its unitary identity but its site changed from the people to the parliament", Urbinati, *Representative Democracy*, 89.

[47] Sieyès, "What is the Third Estate?," 88.

[48] Sieyès, "What is the Third Estate?," 88.

[49] Sieyès, "What is the Third Estate?," 88.

[50] Sieyès, "What is the Third Estate?," 88.

would seem to reside nowhere. While the representative assembly will have to be the body which expresses the common will of the nation, as an acquiescence to the problem of size, this will is neither complete nor unlimited. Where the ambivalence nevertheless seeps in, is in Sieyès' insistence that the representative common will, though only a portion, is also a common will of the nation as a whole, against which no contending claims can be made: "In a country that is not a democracy – and France cannot be one – the people, I repeat, can speak or act only through its representatives".[51]

Certainly, this common will must have some ground in the particular wills of citizens.[52] The power which the representatives hold will not be a power which they possess, but one bestowed on them by the *pouvoir commettant*, through election by the active citizens of the nation. But, at the same time, this representative common will is not an aggregate of those individual wills. Only in a deliberative assembly of representatives, each representing not the particular wills of the districts, but the nation in its entirety, can the national will emerge.[53] The subtle nuance of Sieyès' argument, as Stephanie Frank has put it, is that contrary to his Rousseauists contemporaries, Sieyès' argument is not only that the representatives *express* the general will, but, that without a National Assembly "there would be no general will".[54]

Here, then, Baker's argument becomes clearer. The representative common will *is* the national will. Though only a portion of the whole, there really is no whole

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[51] Sieyes, *Dire de l'Abbé Sieyes, sur la Question Du Veto Royal, a la Séance du 7 Septembre 1789*, 16f; translation from Baker, *Inventing the French Revolution*, 300.

[52] Sieyès, "What is the Third Estate?," 95.

[53] Sieyes, *Dire de l'Abbé Sieyes, sur la Question Du Veto Royal, a la Séance du 7 Septembre 1789*, 15. As Baker points out, on the question of deliberation Sieyès departed from Rousseau. For the latter, deliberation was potentially detrimental to the expression of the general will, for the former, it was a necessary prerequisite for its formulation, Baker, *Inventing the French Revolution*, 250.

[54] Stephanie Frank, "Political Idolatry – The Relation of Schmitt's Two Claims in Political Theology," in *Sovereignty in action*, ed. Bas Leijssenaar and Neil Walker (Cambridge: Cambridge University Press, 2019), 209; also Paul Friedland, *Political Actors: Representative Bodies and Theatricality in the Age of the French Revolution* (Ithaca and London: Cornell University Press, 2002), 158; Patrice Guenifrey, "Les Assembl'ees et la Représentation," in *The French Revolution and the Creation of Modern Political Culture: The Political Culture of the French Revolution*, ed. Colin Lucas (Oxford: Pergamon Press, 1988), 235f. As Sieyès himself put it towards the end of the revolution, "[t]he people, as a subject of political activity, exists only at the level of national representation: it forms a body only at that level", Emmanuel Joseph Sieyès, "Constitutional Observations," in *Emmanuel Joseph Sieyès: The Essential Political Writings*, ed. Oliver W. Lembcke and Florian Weber (Leiden/Boston: Brill, 2014), 187.

which can be asserted against it. In fact, if there is a whole, it resides in the representative common will. It is, within the constituted order, for all intents and purposes, the highest power. It remains a constituted power, and for this reason, it is not sovereign. But, within the constituted order, it nevertheless bears some of the attributes of the Hobbesian sovereign. Since it does not *express*, but *is* the general will, it is within the constituted order the final word.

It is in this sense that the question of what this representative common will *makes present*, becomes an ambivalent one. If the representative common will does not *express*, but *is*, the general will, the question is in what sense it is *representative*. Who, in short, is the absent entity which the representative assembly *makes present* again? In whose name do representatives truly speak?

Though, as mentioned, theirs must be a will in some sense representing the wills of their electors, it is clearly also something different. As Sieyès pointed out in his later writings: "There are two kinds of representation: that which is invested in the individual representative, and that which is embodied by the assembly of which he is a member".[55] What the assembly makes present, thus, is something different from the districts which the individual representative makes present. Indeed, the qualities of the individual representative ought, in some sense, to be its capacity *not* to represent its constituents. As William H. Sewell has pointed out, already in *What is the Third Estate?*, Sieyès envisaged the representatives of the Third Estate to be drawn largely from the 'the available classes',[56] that is, "those classes where some sort of affluence enables men to receive a liberal education, to train their minds and to take an interest in public affairs".[57] Indeed, Sieyès' proposed distinction between *active* and *passive* citizens in his *Reasoned Exposition of the Rights of Man* from the same year – subsequently inscribed in the constitution of 1791[58] – expressed a similar sentiment.[59] When citizens elect their

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[55] Sieyès, "Constitutional Observations," 186f.

[56] William H. Sewell, *A Rhetoric of Bourgeois Revolution: The Abbé Sieyes and What is the Third Estate?* (Durham and London: Duke University Press, 1994), 152.

[57] Sieyès, "What is the Third Estate?," 60f.

[58] The constitution of 1791 stipulated as active citizens those over the age of 25 who had paid taxes equivalent to three days wages. These, however, would only elect electors, eligibility for which stipulated additional property requirements, "Constitution of 1791," in *The Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907*, ed. Frank Maloy Anderson (Minneapolis: The H. W. Wilson Company, 1908), 66f.

[59] Sieyès, "Reasoned Exposition of the Rights of Man," 127; Sewell, *A Rhetoric of Bourgeois Revolution: The Abbé Sieyes and What is the Third Estate?*, 164; William H. Sewell, "Le citoyen/la citoyenne: Activity, Passivity, and the Revolutionary Concept of Citizenship," in

representatives, they ought to do so, in short, not in order to make present their wills and opinions, but to delegate the exercise of their will to those "who are much more capable than themselves of knowing the general interest".[60] The representative common will, in short, will be not merely what the body of the people had willed had it been present to deliberate and discuss, but what the body of the people had willed had it been possessed of a certain education and public spirit.[61]

In this sense, to try to make sense of what the representative assembly makes present, is somewhat complex. Istvan Hont, reiterating the Hobbesian framing of Baker, has suggested that Sieyès' 'nation' and Hobbes' 'state', are really little more than synonyms: "As a political definition of the location of sovereignty, Hobbes's 'state' and Sieyes' 'nation' are identical. Sieyes' 'nation' is Hobbes's 'Leviathan'".[62] The interpretation suggested here, though, is that such an interpretation too readily equates the two. The representative assembly, after all, does not represent the absent body of the nation or its constituent power. This, the representatives cannot, being a constituted body, exercise or represent. It is, in this sense, not strictly speaking the nation that the representatives make present. However, neither is it,

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The French Revolution and the Creation of Modern Political Culture: The Political Culture of the French Revolution, ed. Colin Lucas (Oxford: Pergamon Press, 1988), 111.

[60] Sieyes, *Dire de l'Abbé Sieyes, sur la Question Du Veto Royal, a la Séance du 7 Septembre 1789*, 12.

[61] As pointed out by historians of the revolution like Mona Ozouf, Keith M. Baker, and Jon Cowans, terms like *general will, common will*, and – perhaps most importantly – *public opinion*, figured as virtually synonymous terms during the entire course of the revolution. Public opinion, prior to the revolution, had been a term virtually synonymous with terms like *truth* or *reason*, denoting the opinions shared among enlightened and educated men. In the prelude to the revolution, it had however come to be invoked as the opinion of the nation, independent of, and asserted against, the king. While the concept thus helped, as Baker has put it, to open up a space in which "the French Revolution became thinkable", it did not entirely divest itself of its earlier connotations. The distinction between public opinion and the "passive, untamed, divided opinion of the multitude" was one which, as Ozouf points out, Sieyès held firmly to, see Cowans, *To Speak for the People: Public Opinion and the Problem of Legitimacy in the French Revolution*, 14; Baker, *Inventing the French Revolution*, 199; Mona Ozouf, "Public Spirit," in *A Critical Dictionary of the French Revolution*, ed. François Furet and Mona Ozouf (Cambridge, Massachusetts/London, England: The Belknapp Press of Harvard University Press, 1989), 772; Ran Halévi, "Estates General," in *A Critical Dictionary of the French Revolution*, ed. François Furet and Mona Ozouf (Cambridge, Massachusetts/London, England: The Belknapp Press of Harvard University Press, 1989), 48. Jürgen Habermas' influential history of the public sphere, although informed by a different purpose, should also be mentioned here, Habermas, *The Structural Transformation of the Public Sphere : An Inquiry Into a Category of Bourgeois Society*, 1.

[62] Istvan Hont, "The Permanent Crisis of a Divided Mankind: 'Contemporary Crisis of the Nation State' in Historical Perspective," *Political Studies* XLII (1994): 203. For a similar argument, see Forsyth, "Thomas Hobbes and the Constituent Power of the People," 201.

as we have seen, strictly speaking the concrete body of the active citizens of France. The representative assembly, after all, represents the common will of France as a whole, and not merely the aggregate of the districts and active citizens. Here, then, we seem to find a third body of the people. It is not the constituent power of the nation, bound by nothing other than what it imposes on itself. It is not a body which the representatives can invoke to transform the constitutional order. Nor is it the aggregate of actual citizens. Rather, it is *the people* whose common will is the will of the whole in the course of ordinary political life. It is not the body of the nation in its pre-constituted form. It is not a body free of every constraint. But it is, within the constituted order, the will of the whole.

This *third body* I will return to more fully below. But if this concept does in some way help us to disentangle the ambivalence of Sieyès, it is arguably by virtue of allowing us to distinguish what precedes constituted government from what follows it. If the constituent power is outside time, the third body in whose name the representative assembly speaks is decisively inside time. It is made present, and unlike the indirectly present constituent power of the nation, it is a presence which tangibly acts upon the world. If the constituent power creates the empty seat of power, it is this third body which the representative assembly fills the seat with. Only by this filling up of the empty seat of power by a body capable of willing, does Sieyès' nation become Hobbes' state. Where that seat is no longer occupied, as when the legislative body is in disruption, there is no longer a supreme judge, and "without one, order must give way to anarchy".[63]

By the mere fact of time, the nation must be brought from the mythic present of the state of nature into form. By this fact, the seat of power which the constituent power of the nation has rendered empty, must nevertheless be filled by a body present to speak, continuously, in the name of the people as a whole. If a rose by any other name smells as sweet, Sieyès representative assembly may not bear the name of sovereign, but it still speaks in the name of a people whose voice it alone can utter. The point being that if there is an ambivalence which Sieyès no more than any other theorist of popular sovereignty could resolve, it is that this people cannot simply be an absent figure, invoked merely to show to whom sovereignty does not belong.

Before moving on to this third body of the people, which, I would argue, appears also in the writings of American revolutionaries, it is worth briefly remaining with the French revolution, and address the ambivalence to which Sieyès alludes from, as it were, another point of view. On the question of Sieyès' influence on

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[63] Sieyès, "What is the Third Estate?," 90.

the subsequent course of the revolution, there is itself something of an ambivalence. In Rubinelli's interpretation, the finer points of Sieyès' carefully constructed concept of constituent power were lost as the revolution turned into Jacobin rule and the Terror, underpinned by the concept of popular sovereignty.[64] In Baker's more ambivalent interpretation, however, Sieyès' political theory was, from the outset, imbued with certain fundamental tensions, and the "tensions it introduced into revolutionary discourse did much to structure the meaning of subsequent revolutionary events".[65] Whatever the specific position of Sieyès in the intellectual history of the revolution after 1789 until the end of the Terror in 1794, a recurring theme in the literature on this period is precisely the inability of a theory of representation to gain general acceptance. As Jon Cowans has put it, synonymous terms like *public opinion*, *general will* and *common will* became a theory without a practice, as representation became a practice without a theory.[66] Similarly, the manifest presence of insurrectionary crowds, alongside representatives, posed what Baker has called the problem of the *people's two bodies*.[67] Though Robespierre and the Jacobins retained a scepticism towards the popular movements, their conception of inalienable popular sovereignty could not discount them. Theirs was, in part, a doctrine of "real political presence: 'the people is always there'".[68] Indeed, Albert Soboul has remarked that the Parisian *sans-culottes*, to a certain extent, "succeeded in giving practical expression to what had originally been only an idea; they saw the Republic as the embodiment of the democratic

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[64] Rubinelli, *Constituent Power: A History*, 67ff; also Sewell, *A Rhetoric of Bourgeois Revolution: The Abbé Sieyes and What is the Third Estate?*, 188.

[65] Baker, "Representation," 490.

[66] Cowans, *To Speak for the People: Public Opinion and the Problem of Legitimacy in the French Revolution*, 197.

[67] Keith Michael Baker, "Political languages of the French Revolution," in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), 649.

[68] Baker, "Political languages of the French Revolution," 650. As pointed out by many historians, the Jacobin leadership retained a deep scepticism of the popular movements as long as they were not organized and working at their behest, Colin Lucas, "The Crowd and Politics," in *The French Revolution and the Creation of Modern Political Culture: The Political Culture of the French Revolution*, ed. Colin Lucas (Oxford: Pergamon Press, 1988), 282; George Rudé, *The French Revolution* (London: Weidenfeld and Nicolson, 1988), 94f; Cobban, *Aspects of the French Revolution*, 164. The Jacobins, as pointed out by Paul Friedland, never fundamentally challenged the logic of representation, Friedland, *Political Actors: Representative Bodies and Theatricality in the Age of the French Revolution*, 290.

ideal".[69] In short, as Hunt has succinctly put it, though the seat of the king had been vacated, "no one person, institution, or document succeeded in taking his place".[70]

If there is a point which the revolution came to reside in a 'mythic present', as Hunt calls it, it is arguably the period following the point at which the provisional government of France was declared "revolutionary until the peace".[71] Here, then, what again opened up was what Baker has called the *gap* between revolution and constitution.[72] If this was what Arendt termed "the Revolution declared in permanence",[73] it is also a period which illustrates the trivial fact that there simply is no mythic present. The point was, in fact, rather appositely expressed by Benjamin Constant, who argued that the revolutionary government of the Terror was not, as some had suggested, "an absence of government", but that, rather, "an atrocious and ubiquitous government was always present".[74] Indeed, this point is hinted at in R. R. Palmer's authoritative account of the Committee of Public Safety during the Terror, which begins precisely with a mundane description of place and time, of the room at Tuileries where its twelve members "transacted its affairs at all hours".[75] If the revolutionary government of the Committee existed in that mythic present between revolution and constituted government, it was also a present filled with innumerable events calling the Committee into action. If the Committee sought to embody the seat of power vacated by the divine body of the king, or at least to bring about the conditions under which the people would be able to do so, it had also to embody that seat in a quite physical sense, present at all hours in that small room at Tuileries. If there are no other parallels to draw between Sieyès and Robespierre, it is at least true to say that both understood that no form of government can literally subsist in the mythic present.

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[69] Albert Soboul, *The Parisian Sans-Culottes and the French Revolution 1793-4* (Oxford: Clarendon Press, 1964), 250.

[70] Hunt, *Politics, Culture, & Class in the French Revolution*, 26.

[71] "Decree upon the Revolutionary Government (10 Oct, 1793)," in *The Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907*, ed. Frank Maloy Anderson (Minneapolis: The H. W. Wilson Company, 1908), 189.

[72] Baker, *Inventing the French Revolution*, 252, 304, on the revolution as an 'extended present', 223.

[73] Arendt, *On Revolution*, 134.

[74] Constant, *Principles of Politics Applicable to All Governments*, 7.

[75] R. R. Palmer, *The Twelve who Ruled: The Year of the Terror in the French Revolution* (Princeton: Princeton University Press, 1941), 4.

The Third Body of the People

I suggested above the idea of a third body of the people in order to make sense of what Sieyès' constituent power brings into being, and which the representative assembly as a whole makes present. To put it in such terms, to be sure, is to emphasize the rather Hobbesian framing suggested by Baker. As mentioned, however, Baker is certainly not alone in drawing these parallels. Nor is the assertion that there is something fundamentally Hobbesian about modern democratic representation a particularly original assertion. As Runciman has suggested, if there is something relevant to our modern condition we can yet draw from Hobbes, it is to indicate the limitations of thinking of political representation as an individual relationship between citizen and representative: "To put it in semi-Hobbesian terms, there is something implausible about the idea that when government taxes an individual, it is representing that individual in doing so, since the chances are that the person concerned would much prefer not to be taxed".[76] The merit of speaking of the state as a person, as we saw in chapter II, is precisely that it alludes to the fact that the state is an *association* of many individuals, and therefore something more than a mere aggregate of such individuals. That in whose name governments speak, in short, cannot strictly speaking be the aggregate of concrete citizens. "Governments", as Runciman continues, "need to be able to act in the name of the state, or of 'the people' understood as a collective entity, not a disparate collection of individuals".[77]

The idea of a third body of the people, then, would be precisely this collective entity. The reason for distinguishing this third body from the constituent power, or, Hobbes' state from Sieyès' nation, however, is to emphasize the particular logic upon which the 'need' for governments to speak in the name of the people is premised. If the nation's constituent power can be, in rare moments, invoked to establish a new constitutional order, Hobbes' state is one which must be invoked more or less continuously. While the former is invoked in the mythic present of the not yet established constitutional order, the latter is invoked in the ordinary course of continuously unfolding events. If there is an ambivalence to the idea of popular sovereignty, if sovereignty is both within and without, absent and present,

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[76] David Runciman, "Hobbes's theory of representation: anti-democratic or proto-democratic?," in *Political Representation*, ed. Ian Shapiro et al. (Cambridge: Cambridge University Press, 2010), 28.

[77] Runciman, "Hobbes's theory of representation: anti-democratic or proto-democratic?," 28.

it is for the simple reason that the name of 'the people' is one which cannot remain a mere absent figure.

In this sense, we may return to the question with which I opened this chapter, and indeed the thesis as a whole: is the source of the paradox of modern representative democracy a problem of spatiality and size? While, as we have seen, revolutionaries on both sides of the Atlantic framed it in such terms, the preceding discussion would suggest that the fundamental problem in a sense resides elsewhere. Indeed, if we study things said, precisely as they were said, we find that the revolutionaries too, as they sought to explicate wherein the problem of size and spatiality in fact resided, recognized the limitations of such a vocabulary. In the American context, the question appeared with particular clarity on the question of what representation, precisely, was supposed to mean. Specifically, the issue at stake was the question of whether representation ought to imply the right of constituents to issue *instructions* to their representatives. On this issue, in fact, we can discern precisely the limitations of the spatial vocabulary with which we have tended to think of the problem of presence. And indeed, a close reading of how Americans thought about this question reveals that they recognized this limitation as well.

As one anonymous South-Carolinian pamphleteer pointed out, "[w]hatever difficulty there may be in convening and taking the sense of all the members of a society at once; there is none in assembling parishes separately".[78] It would, in short, be quite feasible to assemble smaller units in order to deliberate on public issues, and instruct their representatives according to their resolutions. In this sense, the problem of size and spatiality could be feasibly resolved. The use of binding instructions had in fact been, prior to the revolution, in practice in the colonies, and several states elected to incorporate that right in their constitutions.[79] And in the revolutionary context, several writers emphasized its centrality. Thomas Tudor Tucker, of South Carolina, for instance asserted that "constituents of every District have an undoubted right (however speciously it may have been lately denied) to instruct their representatives in both Houses. Without entering into arguments upon the subject, we may confidently affirm, that the right is as certain, and founded in the same principle of freedom as the right of any State to

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[78] "Rudiments of Law and Government Deduced from the Law of Nature," in *American Political Writings during the Founding Era 1760 – 1805*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Fund, 1983 [1783]), 586f.

[79] Wood, *The Creation of the American Republic 1776-1787*, 190; Bailyn, *The Ideological Origins*, 170f; John Philip Reid, *The Concept of Representation in the Age of the American Revolution* (Chicago & London: The University of Chicago Press, 1989), 105.

instruct its delegates in Congress".[80] Tucker indeed proposed to incorporate such a right into the federal constitution, as the first amendment was discussed in the House of Representatives in 1789.[81] During the subsequent debate, John Page agreed, as did Elbridge Gerry, arguing that whether such a right was explicitly stated or not, it was an inherent right of the sovereign people, "for gentlemen will not contend that the sovereign will presides in the Legislature".[82] Most did not, however. Thomas Hartley contended "that the principle of representation is distinct from an agency, which may require written instructions".[83] The latter, George Clymer asserted, would be "utterly destructive of all ideas of an independent and deliberative body", and render "Congress a mere passive machine".[84]

The issue at stake may be, as historian Gordon S. Wood suggests, a question about the republican ideal of a deliberative assembly debating freely on the common good.[85] We ought, however, also see in this issue the very same question to which Sieyès alluded. Indeed, we ought here to see a reflection of the arguments which Edmund Burke had put forward in his famous speech to the electors of Bristol, in which he asserted that "Parliament is a *deliberative* Assembly of *one* Nation, with *one* Interest, that of the whole".[86] This, indeed, is much the same argument James Madison invoked in the debate in 1789, asserting that "I do not believe that the inhabitants of any district can speak the voice of the people".[87] The *voice of the people*, in short, had to be that of the whole people, not any district

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[80] Thomas Tudor Tucker, "Conciliatory Hints, Attempting, by a Fair State of Matters, to Remove Party Prejudice," in *American Political Writings during the Founding Era 1760 – 1805*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Fund, 1983 [1784]), 620.

[81] Manin, *The Principles of Representative Government*, 164.

[82] *Annals of Congress. The Debates and Proceedings in the Congress of the United States*, vol. I, ed. Joseph Gales (Washington: Gales and Seaton, 1834), 765.

[83] *Annals of Congress*, I, 762.

[84] *Annals of Congress*, I, 763.

[85] Wood, *The Creation of the American Republic 1776-1787*, 195f; Reid, *The Concept of Representation*, 105.

[86] Edmund Burke, "Speech to the Electors of Bristol," in *Select Works of Edmund Burke*, ed. Francis Canavan (Indianapolis: Liberty Fund, 1999), 11. See Mark Goldie, "The English system of liberty," in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), 60.

[87] *Annals of Congress*, I, 767.

or, in fact, even an aggregate of such districts.[88] This latter point was succinctly spelled out by Thomas Hartley, who contended that "were all the members to take their seats in order to obey instructions, and those instructions were as various as it is probable they would be, what possibility would there exist of so accommodating each to the other as to produce any act whatever?".[89]

While binding instructions, then, could certainly allow the views and sentiments of a dispersed people to be concentrated in a specific *place*, present in the collective body of their representatives, it could offer no guarantee that any *act* whatsoever would issue from it. Whether from this body any decision would emerge, would rather be a question of happenstance, and whether, by chance, the instructions of the electorates should happen to align. There may, then, be several reasons for why the revolutionaries in the end eschewed binding instructions. However, part of what appears in the arguments of those reluctant to espouse it, I would argue, is the recognition that the seat of power is not, as we have perhaps become accustomed to think, in truth a *place*. Certainly, the seat of power must be *somewhere*, as there must, in some sense, be physical bodies present there. But, as those reluctant to espouse binding instructions alluded to, the more relevant question would be *when* that seat is occupied, and under what conditions a body is deemed legitimately present there. And, what imbued that question with its urgency arguably was the supposition, though largely implicitly stated, that the voice of the people, the voice of what I have called the third body of the people, is one which has to speak with some regularity and consistency.

This presupposition, though perhaps largely unstated, brings to the fore the question, as in the case of Sieyès, of by what means the third body of the people would be made to speak. Certainly, this voice had to be, in some sense, the voice of the body of concrete citizens. The hope that it would be so, at least, underpinned John Adam's contention that the representative assembly ought to be "in miniature an exact portrait of the people at large", which ought to "think, feel, reason, and act like them".[90] Indeed, there is much to suggest, as modern historians have done, that the novelty of the American conception of representation meant that the people were no longer "merely an ultimate check on government,

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[88] To put the point in the theoretical terms of Michael Saward, a representative claim always constructs an *object* as the represented, and which is never quite identical to the *referent* of actual constituencies, Saward, *The Representative Claim*, 36.

[89] *Annals of Congress*, I, 762.

[90] Adams, "Thoughts on Government," 195.

they *were* in some sense the government",[91] and that the "trite theory of popular sovereignty gained a verity in American hands that European radicals with all their talk of all power in the people had scarcely considered imaginable except at those rare times of revolution".[92] At the same time, as we have seen, the voice of the third body of the people was also one which did not necessarily speak through the districts. In fact, in some sense it would speak more clearly, more truthfully, through the voices of a select few. As Madison famously suggested, representative government would do precisely what pure democracy could not, "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations".[93] If, as Paine later argued, "Athens, by representation, would have surpassed her own democracy", it was precisely because "the representative system of government is calculated to produce the wisest laws by collecting wisdom where it can be found".[94] There was, certainly, as Bernard Manin has argued, a measure of aristocratic sentiment underpinning this idea of representation,[95] as it was also commensurable, in a sense, with the republican idea of the 'common good'.[96] But, as I have sought to argue, the issue at stake was arguably also one underpinned by the felt need – though largely implicitly stated – for the third body of the people to be made consistently and regularly present in the world. The point being that whatever the rationale, the source of the voice of the

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[91] Bailyn, *The Ideological Origins*, 173.

[92] Wood, *The Creation of the American Republic 1776-1787*, 362.

[93] Madison, "No. 10," 46. 'Cato' was on this point explicit: "it is true that we are told that the better sort of people will be appointed to govern; I pray God the prediction may not be a false one", "Cato", "Essay," in *Friends of the Constitution. Writings of the "other" Federalists, 1787 – 1788*, ed. Colleen A. Sheehan and Gary L. McDowell (Indianapolis: Liberty Fund, 1998), 347; also Oliver Ellsworth, "The Letters: I-V, VIII," in *Friends of the Constitution. Writings of the "other" Federalists, 1787 – 1788*, ed. Colleen A. Sheehan and Gary L. McDowell (Indianapolis: Liberty Fund, 1998), 297; "Atticus", "Essays: I-IV," in *Friends of the Constitution. Writings of the "other" Federalists, 1787 – 1788*, ed. Colleen A. Sheehan

Gary L. McDowell (Indianapolis: Liberty Fund, 1998), 337.

[94] Paine, "Rights of Man," 180, 76.

[95] Manin, *The Principles of Representative Government*, 130.

[96] Wood, *The Creation of the American Republic 1776-1787*, 381.

third body of the people, and its connection to the body of concrete citizens, remained, for Americans too, a source of ambivalence.[97]

Pure Democracy

In a sense, many of the preceding points appear with perhaps particular clarity in the revolutionaries' conception of *pure democracy*. Here, however, we ought to resist imposing on this image a meaning it did not, for these revolutionaries, have. No doubt, Furet alluded to something central through his use of the term pure democracy, as contemporary political theory alludes to something central in its conception of it. But, if Furet, and contemporary political theory, has sought to conjure up Robespierre's virtuous and unified people, possessed of an unlimited and terrifying sovereignty, what appears in the thought of the revolutionaries is also something else.

If Americans spoke the language of republicanism,[98] their conception of pure democracy was not precisely the same as that of the English seventeenth-century

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[97] As Richard Henry Lee critically remarked on the proposed House of Representatives in the federal constitution, a genuine representational assembly meant "that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled". This in turn meant having "to allow professional men, merchants, traders*, farmers, mechanics, &c. to bring a just proportion of their best informed men respectively into the legislature", Richard Henry Lee, "Observations of the System of Government proposed by the late Convention. By a Federal Farmer," in *Pamphlets of the Constitution of the United States, 1787 – 1788*, ed. Paul Leicester Ford (Brooklyn, New York: 1888), 288f. In the view of George Mason, in the proposed assembly, "there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people", George Mason, "Objections to the Federal Constitution," in *Pamphlets of the Constitution of the United States, 1787 – 1788*, ed. Paul Leicester Ford (Brooklyn, New York: 1888), 329. The proposed constitution, Gerry Elbridge similarly argued, "is dangerously adapted to the purposes of an immediate *aristocratic tyranny*", Elbridge Gerry, "Observations on the New Constitution, and on the Federal and State Conventions. By a Columbian Patriot," in *Pamphlets of the Constitution of the United States, 1787 – 1788*, ed. Paul Leicester Ford (Brooklyn, New York: 1888), 6.

[98] Wood, *The Creation of the American Republic 1776-1787*, 14; Bailyn, *The Ideological Origins*, 34; Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 507. On the argument that Americans, by the time of the adoption of the constitution, had come to partly abandon their republican ideal, see Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 262. Max Edling, however, has suggested that the federalist project ought to be understood not so much as a departure from the civic humanist tradition, but as a project of *state formation,* Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S.*

republicans to which they owed so much of their thought. It did not mean precisely the same thing, nor were their normative assessment longer as unambiguous. Indeed, in this subtle shift, we find some indication of the ambivalence Americans no doubt felt about the representative form of government they brought into the world. As Noah Webster conceded, the "idea that naturally presents itself to our minds, on a slight consideration of the subject, is, that in a perfect government, all the members of a society should be present, and each give his suffrage in acts of legislation, by which he is to be bound".[99] Without espousing it, what he alluded to was the same simple idea to which Thomas Jefferson would later give expression in his proposed ward-system of 'little republics', "[w]here every man is a sharer in the direction of his ward-republic, or of some of the higher ones, and feels that he is a participator in the government of affairs, not merely at an election one day in the year, but every day".[100] The image which Jefferson conjured up, then, was not the image of the sovereign people, terrible and limitless, but the

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Constitution and the Making of the American State (Oxford: Oxford University Press, 2003), 45.

[99] Noah Webster, "An Examination into the leading principles of the Federal Constitution By a Citizen of America," in *Pamphlets of the Constitution of the United States, 1787 – 1788*, ed. Paul Leicester Ford (Brooklyn, New York: 1888 [1787]), 30. While the republican language adopted from English radicals did not entail a preference for pure democracy, there was a measure of ambivalence on the question. Thus Richard Price could assert: "From hence it is obvious that *Civil Liberty*, in its most perfect degree, can be enjoyed only in small states, where every member is capable of giving his suffrage in person, and of being chosen into public offices". Where this is not possible, "a diminuation of Liberty necessarily arises", Richard Price, *Observations on the Nature of Civil Liberty, The Principles of Government, and the Justice and Policy of the War with America*, 9 ed. (London: Edward and Charles Dilly, 1776), 7. Thomas Jefferson, in a letter to John Taylor some years after the revolution, took issue with Adam's definition of republican government as one merely governed by laws: "Were I to assign to this term a precise and definite idea", he stated, "I would say, purely and simply, it means a government by its citizens in mass, acting directly and personally, according to rules established by the majority; and that every other government is more or less republican, in proportion as it has in its composition more or less of this ingredient of the direct action of the citizens", Thomas Jefferson, "To John Taylor, May 28, 1816," in *Thomas Jefferson: Political Writings*, ed. Joyce Appleby and Terence Ball (Cambridge: Cambridge University Press, 1999), 207. When John Taylor, in turn, some years after the revolution sought to draw a clearer distinction between democracy and popular sovereignty, it was "for relieving the mind from an association, between the sovereignty of the people, and the evils produced by a nation's exercising the functions of government", John Taylor, *An Inquiry into the Principles and Policy of the Government of the United States* (London: Routledge and Kegan Paul Ltd, 1950 [1814]), 99.

[100] Jefferson, "To Joseph C. Cabell, Feb. 2, 1816," 205.

simple idea that the voice of the people which speaks every day, ought to come from the body of concrete citizens.[101]

Indeed, in the revolutionaries' conception of pure democracy, we also find yet another indication that the problem with which they were concerned was not merely that of spatiality and size. In a subtle way, the meaning of pure democracy had shifted, and no longer meant, as it had done in the hands of the English seventeenth-century radicals, a form of government in which the people perform all acts of government. "In the most pure democracies of Greece", Madison suggested, "many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and *representing* them in their *executive* capacity".[102] "What is contended for," Adams similarly argued, "is, that the people in a body cannot manage the executive power, and, therefore, that a simple democracy is impracticable".[103] The most explicit expression of this subtle shift, however, came from across the Atlantic, from Sieyès, who argued that "even the greatest partisans of pure democracy do not propose to extend it to the executive, administrative, or judiciary institutions. They ask for it only in the legislative branch. Our challenge is therefore to extend representation only to the legislative branch, for this is what distinguishes a representative regime from pure democracy".[104] If the problem of space and size was the argument with which to meet this challenge, other concerns then underpinned the exclusion of the people from the exercise of the executive function. Indeed, on the subject of the executive, the meaning of representation itself had to adapt to those concerns. While Adams, as he put it, "had almost ventured to propose a third assembly for the executive power", he concluded that "the unity, the secrecy, the dispatch of one man has no equal".[105] More so than for the legislature, but only by degrees, would it be

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[101] Arendt, in particular, has emphasized the ambivalence to which Jefferson gave expression. His proposed system was an expression, Arendt argues, of the fact "that he knew, however dimly, that the Revolution, while it had given freedom to the people, had failed to provide a space where this freedom could be exercised. Only the representatives of the people, not the people themselves, had an opportunity to engage in those activities of 'expressing, discussing, and deciding' which in a positive sense are the activities of freedom", Arendt, *On Revolution*, 235.

[102] Madison, "No. 63," 329.

[103] John Adams, "A Defence of the Constitutions of Government of the United States of America, Against the Attack of M. Turgot, in his Letter to Dr. Price, Dated the Twenty-Second Day of March, 1778," in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Charles C. Little and James Brown, 1851 [1787]), 488.

[104] Sieyès, "Constitutional Observations," 186.

[105] Adams, "Defence," 585. "Decision, activity, secrecy, and despatch", were the characteristics which, Hamilton argued, necessarily had to imbue the executive, and which "will generally

incumbent upon the executive to speak, regularly and consistently, in the name of the state.[106]

If Furet, and modern political theory, in speaking of pure democracy, have alluded to those fictions of authenticity, immediacy and presence which continuously haunt democratic thought, the point I have sought to make is that the revolutionaries' conception of it alludes rather to a fundamental ambivalence. Though none espoused it, they did not eschew it on purely normative grounds. In some sense, the argument which could not be simply dismissed was that, in a truly free form of government, the people ought to participate in person, not only in rare revolutionary moments, but in the course of everyday government. What precluded such an ideal, then, was a quite practical problem: not only the size and scale of the state, but also the fact that this state would have to speak and act, in principle, every day. If pure democracy could not simply be dismissed as a normative ideal, it was for the simple reason that if the voice of *the people*, or the state, does indeed speak every day, the troubling question remained: who, in the end, is present to give it its voice?

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characterize the proceedings of one man, in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished", Hamilton, "No. 70," 363. Madison too contended that "energy in government requires not only a certain duration of power, but the execution of it by a single hand", Madison, "No. 37," 182. In this sense, as has been remarked upon by modern scholars, the revolutionaries reiterated Locke's *efficiency argument*, Sharp, "The Classical American Doctrine of "The Separation of Powers"," 397; Gwyn, *The Meaning of the Separation of Powers*, 34. That being said, the more significant argument, arguably, was the separation of power thesis of Montesquieu, see Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 81; Wood, *The Creation of the American Republic 1776-1787*, 449.

[106] Though rarely explicit, the Lockean problem of presence was in this regard occasionally alluded to. As John Jay remarked in *Federalist* no. 64 on the question of the president's power to enter treatises, "there frequently are occasions when days, nay, even when hours, are precious". "For these the president will find no difficulty to provide; and should any circumstance occur, which requires the advice and consent of the senate, he may at any time convene them", John Jay, "No. 64," in *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 335. Hamilton similarly responded to the objection that the authority to enter treatises had not been vested in the House of Representatives by asserting that: "The greater frequency of the calls upon the house of representatives, and the greater length of time which it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty, would be a source of so great inconvenience and expense, as alone ought to condemn the project", Hamilton, "No. 75," 390.

The Empty Seat of Power

In view of the preceding discussion, we may now, in order to conclude this chapter, return to the question of the empty seat of power. As we have seen, neither Sieyès nor Madison, Hamilton nor Paine suggested that the seat of power ought to remain literally empty. In view of this, the question is what, precisely, it means to speak of the seat of power as being empty. While many modern scholars have found Lefort's argument to express something fundamentally true of modern democracy, its practical implications arguably remain somewhat opaque.[107] One may certainly say that modern representative democracy is underpinned by the idea that "power belongs to no one; that those who exercise power do not possess it; that they do not, indeed, embody it".[108] In representative democracy, the representatives do not possess the power they exercise, circumscribed as they are not only by a constitution of which they are not the authors, but also by the votes of the concrete citizens who they represent. But, as we have seen, representative democracy has not meant, and arguably does not mean, that *no one* speaks and acts in the name of the people.

In the introduction to this thesis, I suggested that, if Hobbes filled the seat of power Lefort left empty, we ought perhaps to understand *why* Hobbes filled it. If there is a point to reading Sieyès or Madison or Paine alongside Hobbes, it is arguably to emphasize that, in a sense, they too filled the seat of power. That being said, though these figures did not precisely leave the seat of power empty, it would be equally erroneous to suggest that there is no difference between what they envisaged and what Hobbes envisaged. To return to Runciman's argument, while there is reason to suggest that modern representation is, in some sense, Hobbesian, "[w]hat can be dispensed with from Hobbes's account is the idea that authorization must be a once-for-all event, rather than an ongoing process".[109] Indeed, the interpretation which perhaps most readily presents itself is that the seat of power remains empty as long as no one is permitted to speak and act, *unchallenged*, in the name of the people. Any claim to speak and act in the name of the people must be understood to be only tentative and provisional. It is in these terms, for instance, Bryan Garsten has argued the subtle merit of the theory of representation bequeathed on us by the likes of Madison and Hamilton. Locating "the source of

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[107] Vieira and Runciman, *Representation*, 142.

[108] Lefort, *Democracy and Political Theory*, 225.

[109] Runciman, "Hobbes's theory of representation: anti-democratic or proto-democratic?," 26.

sovereignty in an abstract entity, 'the people' whose voice can be heard only through the various interpretations of its many spokespeople", they envisaged a form of government which "instigates constant debate about what the popular will actually is".[110] In a similar vein, theorists like Iris Marion Young and Nadia Urbinati have argued that representation ought to be seen precisely as "a process that takes place over time", moving "between moments of authorization and accountability",[111] in which no moment leaves the spokesperson with an unchallenged right to speak authoritatively in the name of the people.

The interpretation suggested, in short, is that we can conceive the seat of power as empty once claims to speak and act in the name of the people become situated in time, circumscribed by the ever-present possibility of such claims being challenged. While there is much to recommend such an interpretation, it is also one whose implications remain somewhat opaque. The claim to speak and act in the name of the people, and the challenging of those claims, clearly, cannot co-exist simultaneously. One cannot simultaneously speak and act in the name of the people, and at the same time be prevented from doing so. In this sense, to view representation as a process, or as a constant debate, risks equivocating two distinct meanings. Specifically, it risks equivocating what precedes acts undertaken in the name of the people, and what follows them. As is clear, these two facets are clearly distinct, and neither, taken by itself, ought to be understood to imply constant debate. Representative government arguably does not mean, and cannot mean, the endless deferral of such acting. And neither does "revisability" preclude such acting,[112] since it, by definition, presupposes it. That is, while the empty seat of power may necessitate "ever-revisable decisions",[113] only what is already decided can be revised.

While thinking of representation as something which takes place over time does give concrete meaning to what the empty seat of power might mean, it also alludes to the subtle problem involved. Perhaps nowhere does this problem appear as clearly as it does precisely in the theory of representation which, in Urbinati's views, pre-eminently exemplifies representation as a process: the theory of representation of Nicolas de Condorcet.

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[110] Garsten, "Representative government and popular sovereignty," 104, 02.

[111] Young, *Inclusion and Democracy*, 129; Urbinati, *Representative Democracy*, 90.

[112] Keenan, *Democracy in Question: Democratic Openness in a Time of Political Closure*, 10.

[113] Urbinati, *Democracy Disfigured*, 25. The process of opinion- and will-formation, Habermas similarly argues, is only ever punctuated by "revisable majority decisions", Habermas, *Between Facts and Norms*, 186.

Condorcet's theory, which he set out in his, ultimately unrealized, draft for the constitution of 1793, was one which sought to resolve, by constitutional means, what Baker calls the *political two-body problem*.[114] While conceding, like Sieyès, that the "extent of the republic permits only a representative constitution",[115] his proposed system sought to provide a legal means by which the people could act against their representatives. In the place of spontaneous protests and meetings, the proposed constitution sought to create "regular and legal remonstrances, made by assemblies convoked in the name of the law and exercising precise and determined functions according to legally established forms".[116] Specifically, Condorcet incorporated a procedure by which legislation adopted by the representative assembly could be revised by the people. In primary assemblies, the people would be able to voice their opinions, in turn aggregated to produce the majority will of the nation. The procedure, Condorcet envisaged, could be distinguished in terms of deliberation and decision.[117] Deliberation on the proposed revision, he argued, neither necessitated nor benefited from taking place in the assemblies, but could be conducted in what Habermas would have called the *public sphere*, through the print press and informal debate. Only the actual decision would take place in the primary assemblies, which necessitated "that the questions are definitively and unalterably posed in such a way that they can be decided by a simple vote of affirmation or negation".[118] Such means thus would serve the purpose of "preserving and extending the enjoyment of the right of sovereignty, the direct exercise of which is useful (even under a representative constitution) to remind citizens of its reality and existence".[119]

Where Sieyès had essentially come down on the side of parliamentary sovereignty, Condorcet posited sovereignty inalienably in the people. Though he was

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[114] Baker, "Political languages of the French Revolution," 648.

[115] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 146.

[116] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 152.

[117] Herein resides, Urbinati points out, the principal difference between Condorcet and Rousseau, for whom only the vote, not deliberation, was the defining moment, Urbinati, *Representative Democracy*, 204.

[118] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 148.

[119] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 147.

careful to point out that "[e]ach assembly is not sovereign",[120] the proposed system regulated the primary assemblies in such a way that through the aggregation of their votes of affirmation or negation the majority will of the nation could be discerned. The totality of the people could thus be rendered simultaneously present, though divided into a multiplicity of assemblies. And in distinguishing decision from deliberation, Condorcet could, as Urbinati has emphasized, institutionalize the *process* of opinion and will formation by incorporating the public sphere.[121]

This being said, Condorcet carefully circumscribed the function of the primary assemblies. Condorcet asserted, at the outset, his reservations with regard to both binding mandates, and to a legislative procedure in which legislative proposals would be subject to immediate approval in primary assemblies: "A constitution according to which the delegates formed a general will in conformity with the particular wills expressed in their mandates would be still more impracticable than one in which deputies, reduced to the simple function of drawing up the laws without even being accorded a provisional obedience, were obliged to present every law to the direct approval of the citizens".[122] The point, in short, was to find a middle path between binding mandates on the one hand, and giving the primary assemblies direct control over every legislative proposal on the other.

Condorcet's solution, thus, was the notion of *provisional obedience*. While primary assemblies would be able to revise legislative proposals adopted by the representative assemblies, these proposals would nevertheless enjoy provisional obedience. That is, once adopted by the representative assembly, they would have the status of valid law, until such time as rescinded by the primary assemblies, convoked upon popular initiative. The primary assemblies, thus, would not form a part of the legislative process, they "do not act each for itself as a portion of the whole", and "they will never be convoked except to decide questions already reduced to appropriate form".[123]

Why, then, does Condorcet insist on this provisional obedience? Though he does little more than allude to the impracticality of the alternative, the point

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[120] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 150.

[121] Urbinati, *Representative Democracy*, 184, 202.

[122] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 146.

[123] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 151, 53, 59.

arguably is that the ordinary course of government would be severally hindered by making every legislative proposal subject to the primary assemblies. The continuous need for legislative action, in short, necessitates the presence of a body unambiguously present to speak, however provisionally, in the name of the people as a whole. While this point is subtle, it is arguably of considerable significance. While Condorcet inscribes the people within the legislative process, only the continuing validity of the law, not its enactment, is within the purview of that people. What precedes the enactment of new legislation is not constant debate. Nor will its enactment be localized in the public sphere or the primary assemblies, but only in the representative assembly.

The somewhat implicit premise underpinning Condorcet's insistence on provisional obedience, then, is the felt need to guarantee the continuous presence of ordinary government. This premise, arguably, becomes most explicit on the subject of the executive. The possibility of the people to remonstrate against adopted legislation, which Condorcet had inscribed in his system, did not extend to administrative acts. In relation to these, Condorcet asserts, such remonstrances would be "useless, because too late, or dangerous, because it would suspend their necessary execution".[124] The domain of the executive, in Condorcet's view, would be one dictated by promptness, and one which would neither necessitate nor could allow for the intervention of the sovereign people. What the executive has done, the people simply cannot undo.

What, in short, appears in Condorcet's draft, is the subtle problem which the question of time occasions. What precedes the decision cannot be constant debate, the decision cannot be endlessly deferred. And while law can be revised, only its continuing validity, neither its effects nor the effects of executive and administrative acts, can be affected. Condorcet, in effect, articulated the tragedy which in some sense remains our own. Though we cannot know what the popular will is, it is nevertheless that which must be made to act on the world, the consequences of which we may not be able to undo.

Conclusion

If there is a point at which the problem of presence, such as it had appeared in the political thought of Hobbes and Pufendorf, disappeared from view, it is arguably

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[124] Condorcet, "On the Principles of the Constitutional Plan Presented to the National Convention," 157.

here, in the first formulation of a modern theory of representative democracy. As I have sought to argue in this chapter, however, if it was buried, it was never buried particularly deep. While the task which revolutionaries like Paine, Madison, Hamilton, Condorcet and Sieyès set themselves was one very different from that which preoccupied Hobbes, the point I have sought to make is that the latter, if we truly look, still underpins the former.

Insofar as these figures remain interlocutors on the theoretical questions which continue to imbue contemporary political thought, there is then merit in bringing this problem to the surface. Not in order to afford these thinkers a privileged place of truth, but in order to understand what they have bequeathed on us. If there is a merit to making these historical figures speak on the concerns of today, it is not in order to provide ready answers, but to make them speak in their own ambivalent discourse. Only in so doing, can we acquire a self-conscious understanding of those ambivalences which remain our own.

The question, then, is what it is that we may bring to the surface from these thinkers? Though arguably none of the authors treated here posed it in precisely these terms, the question which they nevertheless wrestled with, and sought to provide an answer to, essentially was: under what conditions, which is to say, *when*, is a body deemed present to speak and act in the name of *the people*? This is essentially the problem of presence which they sought to resolve, underpinned by the largely unstated presupposition that it is the question which any democratic form of government, in some sense, *must* answer. Certainly, regardless of the answer which they individually favoured, all asserted that such bodies would be adjoined by citizens authorizing, holding to account, and objecting to, what is done in their name. Such bodies would, in these terms, be beset by the perpetual flow of political life of which they would be no more than a particular institutional manifestation. That their presence, however, *would* be the *sine qua non* of this political life, arresting its flow through authoritative – and perhaps irreversible – decisions, is the point on which all these thinkers insisted, and which I have, in this chapter, sought to emphasize.

If there is a buried treasure to bring to the surface, it is arguably in making this presupposition explicit and self-conscious. The question of whether the state *ought* to be a continuing presence in the course of political life, and under what conditions a body is deemed present to speak and act in its name, we ought to acknowledge, are questions which no less belong to those fundamental constitutional questions to which any democracy must provide an answer.

Conclusion

In the beginning of this thesis, I posed the question of from where the paradox of modern representative democracy comes. By posing the question in this manner, I sought to suggest that the linguistic paradox involved in speaking of representation as making present what is absent, is one which alludes to, or reflects, something more than a mere case of intricate language-use. It was to suggest that the word *presence* is in no way arbitrarily chosen in the efforts of modern political thought to make sense of democracy and popular sovereignty. In some way, though we seem yet to have arrived at precisely in what way, we do need to speak of the people being present, while acknowledging that, strictly speaking, it cannot. In this sense, the linguistic paradox of representation reflects a paradox of thought. To ask from where our paradox comes, then, was to ask why modern political thought has so incessantly asserted both the necessity and the impossibility of the presence of the people.

The suggestion, then, was to take the linguistic question seriously, and to pose the deceptively simple question: what do we mean by 'presence'? In contemporary political thought, we seem to find two distinct meanings of this word, although both related to the question of *being*. The first is literal. Presence is to be in a given *place*, it is to be *here* rather than *there*. The second is more abstract. Presence is to be *something*. Both senses, although in different ways, contemporary political thought has employed to assert the impossibility of the presence of the people. In the first sense, there is no place in which the people of the modern state could practically be present. In the second sense, the people never simply *is* a unified whole. In either way, the people cannot be present. The argument of this thesis, to be clear, was never to dispute these interpretations. It was, however, to suggest, that while they both point to why the people cannot be present, they tell us relatively little about why the people *need* to be present.

The suggestion, then, was to yet again pose the question of what it means to speak of presence, but to pose the question of why this presence should be a political necessity to begin with. In this sense, I suggested that in order to ask this question, we might acknowledge an additional sense of the word 'presence'. To be present, after all, is to be in a given moment in *time*, to be in this *moment* rather

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than another. The reason for drawing attention to this sense, however, was not to argue for the intrinsic significance of a linguistic facet of an arguably polysemic word. Rather, the argument was that if we look to history, we indeed find that the political problem of presence, at a certain point in time at least, alluded precisely to this sense. This was the sense of the problem of presence which it was the purpose of this thesis to recover. Not, to be sure, in order to supplant those prevalent in contemporary political thought, but rather in order to emphasize the indissolubility of *all* the senses of this word within the political problem of presence.

Indeed, in the period to which I suggested we ought to return, the early modern period of Hobbes, Filmer and Pufendorf, the spatial sense of presence is certainly discernible. The physical presence of the people in one place still remained the *sine qua non* of democracy. Yet, neither Hobbes nor Pufendorf suggested that the mere physical proximity of a *multitude* in and of itself would be the mark of democracy. Neither held that a democracy would simply emerge naturally from such a presence, or that mere physical proximity would form anything we might call a people. Indeed, neither held that the people precedes the state at all. This, arguably, is the decisive innovation of Hobbes, by which he sought to dismantle *monarchomach* and *parliamentarian* ideas of sovereignty inhering naturally in the people. Hobbes, as we saw in chapter II, in fact dismantled all "fictions of presence, authenticity and immediacy".[1] The *people* simply is not a being present to itself as an already unified whole. It is always the product of *artifice*, it is a *person* only in a *fictional* sense, and its unitary will always an artificial will created by the agreement to allow *one* person to will for all. *All* government is, in the end, representative.

As I sought to argue in chapter II, however, this facet of Hobbes' thinking still leaves part of the problem of presence which he posed somewhat unexplored. It is the facet of the problem of presence which presents itself the moment the state is brought into being, and the multitude transformed into a people. It is the problem which emerges the moment immediately following this instant, in which this artificial will must be brought to bear on the real world. In fact, it is in this moment, in which the state has been brought into being, that the problem truly emerges. The state, we might say, is brought into time. It is, we might even say, brought into being for no other reason than this fact. This, I have sought to argue, is what has remained a neglected facet in the effort of modern theorists to understand the problem of presence. Hobbes, certainly, remains as powerful a critic of the image of a defined collectivity, present to itself as a unity absent all constituted

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[1] Vieira, *The Elements of Representation in Hobbes*, 250.

form, as any modern thinker. But, for Hobbes, the problem of presence does not end with this assertion, but rather begins.

This, then, is the theme which I took up in chapter III. If Locke perhaps in particular sought to argue for the existence of *the people* independently of any constituted form, the opacity of the picture he painted of it arguably does indicate the theoretical difficulties to which modern scholars have alluded. As much as he insisted on its centrality, and as much as it underpinned his political theory, reading the *Two Treatises*, the figure of *the people* seems incessantly to evade our grasp, passing immediately from one constituted form into another. Like the *formless matter* of Lawson's not-yet constituted community, or Sieyès' nation inhering in the *mythic present* of the state of nature, we seem to find a unity without form, a community without a common will. The point, then, was to understand why the formless matter of a not-yet constituted state, of a people without a common will, should appear so opaque. The point was to comprehend the incomprehensibility of *being* without form, to understand why a discourse would speak of something which it would simultaneously leave its authors without the means of accurately describing. The answer which I suggested was that this incomprehensibility cannot be comprehended without understanding the question of time. As I sought to argue in chapter III, part of Locke's opacity arguably resides in the fact that *the people*, in the end seems to appear only by either reacting to the abuses of government or teleologically anticipating the new form it constitutes. The dissolution of government reveals it only, if it reveals it at all, in a new *form* – the form of a perfect democracy, by which the people must meet to enact new legislation *from time to time*, and appoint officers, *always in being*, for the execution of those laws. The *formless matter* of the community, much like Hobbes' *multitude*, and Sieyès' *nation*, must seemingly pass, immediately, into form. By the mere condition of living in time, an infinitude of possibilities must pass into a form by which some possibilities are excluded and others settled on, as it must give way to the artifice by means of which a common judgement is affected out of plurality and heterogeneity. No political order, if it is a political order, can truly subsist in the mythic present.

This point, in a sense, says little which contemporary political and legal theorists have not also said. The people cannot *be* if we cannot say of it that it *is* this rather than that, in this way rather than that. Pure potentiality, by definition, negates itself as soon as it becomes actual. But, in relating this familiar question of being to the question of time, the point was to suggest the indissolubility of the two. If the multitude is not yet a people, if it is not yet a unified whole, the question remains: what does it become when it *does* pass into constituted form? In fact,

why must it become a people in the first place? Why must it pass from pure potentiality into actuality?

To return to the argument in chapter II, the interpretation suggested there was that, strictly speaking, in Hobbes' political theory, the passage from multitude to people consists in nothing more, and fulfils no other purpose, than to create a unified will in relation to the innumerable concrete events which it will be incumbent upon the political society thus created to decide upon. Certainly, the state thus created will constitute the condition of possibility of other things, such as a rich society of people interacting socially, and engaging in various economic, artistic and scientific projects. But, the state itself in no ways owes its existence to any community arising from such projects. Indeed, even Pufendorf, who did assert an innate sociability, drew a clear distinction between those associations which satisfy the desires of sociability, love, and economic concerns, and the association of the state. The peculiar being of the state, its *raison d'être*, was for both Hobbes and Pufendorf, and one might add even for Locke, to be the instrument by which a society acts *politically*, by which the society acts in the name of the whole in a world of moral uncertainty. This is the sense in which *the people* is present as a being, as something more than the sum of its multitudinous parts. It is, furthermore, for the very same reason that it must be present, literally, as often as something happens in relation to which a political act is necessitated.

Only in acknowledging this, can we understand why Hobbes simultaneously dismantles all fictions of presence, authenticity and immediacy, *and* fills the seat of power with the Leviathan. The true significance of the presence of the people, its *sine qua non* of the democratic form of government, in the end resides in the fact that only through this presence can the assembly *represent* and *carry* the fictional person of the state. And only by this representation can the fictional person of the state *act*.

The point in drawing out this facet of Hobbes' thought was to suggest that if we speak of the presence of the people as the *sine qua non* of democracy, we are in fact speaking of very distinct conditions. If we have become accustomed to think of this presence as the condition of possibility for the genuine expression of the popular will, Hobbes points us to a very different problem. For Hobbes, this physical presence fulfils a function very different from that underpinned by any fiction of authenticity and immediacy. What matters is not that *all* are present, but that where all are *allowed* to be present, only *where* and *when* the assembly is agreed to convene, can the democratic state act. Hobbes' argument is not that out of this presence a more genuine popular will may emerge. Indeed, this will must necessarily be as artificial as if the person of the state was carried by a monarch. What

matters is only this: that out of plurality and heterogeneity a common judgement is affected in relation to some concrete fact which concerns the political order. The name *democracy* signifies merely an answer to the question of whether all, some, or one will be allowed to articulate this will. The question of whether this answer, rather than another, is to be preferred was, as Hobbes conceded, "the only thing" which "is not demonstrated but put with probability".[2]

Only with this Hobbesian problem in mind, I argued in chapter IV, can we truly understand the dilemma which Rousseau imposes on us: the will by which the person of the state acts "is general or it is not; it is either the will of the body of the people, or that of only a part".[3] The fact that Rousseau so rarely contemplates the third option – the absence of a will entirely, that is, *anarchy* – I suggested, may be why we have now largely forgotten Hobbes' problem of presence. And, it is perhaps why Rousseau's dilemma has seemed relatively easy to dismiss. If Rousseau's dream has appeared not only utopian, but also unnecessary, it is perhaps because the horns of Rousseau's dilemma only truly appear once we have understood Hobbes' problem of presence. In the end, Rousseau posed of Hobbes a question which has lost none of its force: if governments speak and act in the name of *the people*, then who assumes that role?[4] While we may simply authorize someone to speak and act in our name, we shall have to be prepared to own their words and actions, whatever they may be, as our own. Unless we are prepared to do that, we may need to acknowledge that Rousseau's problem of presence is not so easily dismissed. Indeed, if we are no more willing than Rousseau to contemplate the third option, the dilemma is not one which we can entirely avoid. In this sense, only in understanding Hobbes' problem of presence can we fully appreciate Rousseau's. The words and actions of the state, if we indeed wish for the state to continuously speak and act, will need to come from somewhere. While we may trust whoever speaks and acts to have the common good before their eyes,[5] this will be not only an act of faith, but will also pose the question: can the common good come from anywhere but ourselves? Rousseau, of course, imposes on the democratic assembly something more than did Hobbes. The mere presence of the people and majoritarianism is not enough. Those present will also have to think

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[2] Hobbes, *On the Citizen*, 14.

[3] Rousseau, "Of the Social Contract," 58.

[4] On Hobbes' difficulty in resolving this question, see Runciman, *Pluralism and the Personality of the State*, 31.

[5] This faith in some sense underpins Skinner's optimistic reading of Hobbes' theory of the state, Skinner, *From Humanism to Hobbes: Studies in Rhetoric and Politics*, 383.

about the common good for a general will to emerge. But this condition does not supplant, but is only superadded to that of Hobbes. In this sense, if Rousseau gave us modern democracy in the form of a *sleeping sovereign* who, in actual fact, does very little, he also gave us the dilemma which this entails. As long as human beings do not resemble gods, and the fallibility of foresight remains part of the human condition, we will have to acknowledge that the question of what we ought to do cannot be answered once and for all. In this sense, if perhaps only in this sense, there is something to Robespierre's caution: "[r]ead what Rousseau has written about representative government and judge whether the people can sleep with impunity".[6]

We may certainly resist the dichotomous terms of Rousseau's dilemma, and as we saw in chapter V, the figures to whom we owe our modern idea of representative democracy certainly did so. However, while we may frame our narratives about what they brought into the world in comfortably reassuring terms, we may in doing so also neglect the fraught dilemma with which they were wrestling. We may certainly say that these revolutionaries eschewed the preoccupation with "physical presence and spatiality", and the "*immediacy or the unity of space, time, and the object*", which Rousseau had bequeathed on modern political thought.[7] For these thinkers, we may say, political life is no longer exhausted by the place and time in which the sovereign speaks unequivocally. Indeed, we might even say that in their arguments, they dissolved the boundaries of the democratic assembly. The particular status which we as democratic citizens, according to Pufendorf, could carry only where and when the assembly meets, we may now be said to carry in every waking hour, wherever we go. Yet, reading Sieyès, Paine, Madison, Hamilton and Condorcet, such a reassuring narrative is hardly borne out by the intricacies of their thought. The voice of *the people*, that curious third body which is neither sovereign nor an aggregate of concrete citizens, speaks most decidedly from a place, and perhaps more importantly, in a given moment in time. Indeed, nothing illustrates the subtle intricacies of the problem of presence more than the very revolution whose course Sieyès and Condorcet so unsuccessfully sought to influence. As boisterous crowds extended from the street into the galleries of the Convention and the National Assembly, cheering, booing, and manifesting their sovereignty over their representatives,[8] they gave expression to the subtleties of the

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[6] Maximilien Robespierre, "Robespierre on War (2 jan, 1792)," in *French Revolution: Introductory Documents*, ed. D. I. Wright (St. Lucia, Queensland: University of Queensland, 1974), 132.

[7] Urbinati, *Representative Democracy*, 74, 79.

[8] Lucas, "The Crowd and Politics," 274.

problem of presence which has been the subject of this thesis. Though physically present at the seat of power, none carried the status of being a member of those assemblies which *occupied* it. And in various ways, the revolutionaries sought to make sense of these intricacies, and though none took the route Rousseau had espoused, all recognized the subtle difficulties entailed by the necessities which time, space and physical presence occasion for any democratic order.

The narrative of modern representative democracy, and with it, our modern paradox, may certainly be put in the familiar terms of size and spatiality, as it may be put in the less familiar terms of rendering the seat of power empty. Yet, the very fact that both narratives articulate facets of the story, suggests that neither alone tells it in its entirety. The question of *when* a body is deemed legitimately present to speak and act in the name of the people, in the end, is a question which, unlike the problem of size and spatiality, cannot be swept away. And the recognition that such speaking and acting must occur with some regularity and consistency, in the end, points to the fact that the seat of power may not be altogether empty.

What, then, are the implications of the history recounted here? What treasure, if any, has the archaeological undertaking here brought to the surface? I have suggested that in returning to the *argumentum ad absurdum* of Hobbes, Filmer and Pufendorf, we might find something which speaks to our decisively modern dilemma. Not in the sense that we have erroneously taken their malicious portrait of popular sovereignty at its word, and that we could somehow evade our dilemma by returning to some earlier, uncorrupted, conception of what it means to speak of the sovereignty of the people.[9] Nor by recognizing ourselves in Hobbes' *sleeping sovereign*.[10] Rather, the suggestion was that even in their scorn, they spoke a discourse whose fundamental structure we have yet to escape. It was to suggest that the object of their scorn, the image of the democratic assembly, in the end was more than a disjointed caricature. It was to suggest that if their portrait had meaning, it was because it brought into relation a series of equally meaningful concepts. The singular significance of the democratic assembly as an image resided in the fact that within it, *the people* as unity and aggregate would converge; within it, *the people* as members of the political association of the state interpellated by the authority of this association, and *the people* exercising this same authority, would converge. In short, the image of the democratic assembly was one which brought out the indissolubility of concepts like 'people', 'state', 'sovereignty', and 'seat of

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[9] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*.

[10] Tuck, *The Sleeping Sovereign*.

power'. This, I suggested, was what gave their *argumentum ad absurdum* its unique force. And if it brought the idea of the sovereignty of the people to its logical conclusion, the point was precisely to say that it *was* logical.

The point, then, was to say that if our own thinking can be driven to the same conclusion, if the image of the democratic assembly continues to exert its hold, it is not merely because of some romantic nostalgia towards an inherited ideal. It is because we do continue to think in the same fundamental terms. If the merit of the kind of archaeological undertaking suggested by Skinner is to make self-conscious concepts we now employ somewhat unselfconsciously, the point of the historical study attempted here was to make self-conscious the question of what it means to speak of the presence of the people. It was to suggest that when we pose this question, we do not really do so by asking whether a random collection of individuals can fit into a delineated piece of space. We do so by asking whether *the people* as an aggregate can exercise the power of that particular association we call *the state*. And in doing so, we cannot but assume the purposiveness of that particular association it is incumbent upon this people to carry. It was to suggest that already in posing this question, we do so in terms of concepts of which we remain, in some sense, 'captives'.

With this in mind, it will perhaps be possible to bring the argument of this thesis to a close by asking the simple question which I have been posing throughout: can the people be present? If by such a question we mean whether something like *a people* can be present to itself absent some constituted form, we invariably do encounter Rousseau's paradox of founding. As many scholars have, in various ways, reiterated, a random collection of individuals does not make a people. Absent some constitution we cannot speak of the boundaries which define it, and absent some pre-defined procedures by which this collection expresses its common will, we can hardly expect such a will to issue from it. In the absence of *some* constituted form, the people cannot *be* present. But, if we thereby conclude that it is *absent*, we will in some sense fail to ask what it is that this constituted form brings into being. To speak, as Hobbes did, of the state as a *person* is, after all, to imply that what is brought into being is a unity.[11] Irreducible to the aggregate of concrete individuals which composes it, surviving the continuous deaths and births of the latter, it is something more. What is brought into being, after all, is

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[11] What Hobbes points to is the inescapable fact that representation, at least by the state, must in some sense proceed from the representative. Representation, as Brito Vieira puts it, "must be 'the other way round' to constitute the collective agency which can sustain a public interest and from which any more particularistic demands can be made", Vieira, "Performative Imaginaries: Pitkin versus Hobbes on Political Representation," 47.

that unity which makes a *people* out of a disparate multitude of isolated individuals. But what this ineffable *something more* is, remains a question about which neither Hobbes nor contemporary political theory provides an unambiguous answer. Perhaps it is little more than a hypostatization of the unity of the legal order,[12] or perhaps there is something more lurking beneath or supervening on it, whether an 'organism',[13] a 'nation',[14] an 'imagined community',[15] or a 'public sphere'.[16] Traversing these answers, in a sense, is to ask whether one is a sign of the other, and at what point we find not a sign but reality.

Though Hobbes does not quite offer us a clear answer, there is a facet of his conception of unity worth drawing out. To begin with, the unity of the state is artificial, it is not a sign of something else. Even in a democracy, the unity by which the multitude becomes a people resides only in the fact that all have agreed to allow the assembly to speak and act for all. Outside the assembly, there need be no other unity, and when the assembly is not convened, there is strictly speaking not any people. Since the people, in Hobbes' conception, exists solely by virtue of being represented by the assembly, only when and where it is present does the people as a unity exist. Secondly, and perhaps more importantly, the unity by which the multitude becomes a people exists only in the acts of the assembly. In the strictest sense, its unity exists only in relation to the specific question on which it becomes necessary to reduce the plurality of voices to one common will of all. In this sense, the unity in fact is always an isolated and singular act.

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[12] Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts*, 14; Kelsen, "God and the State," 69; Kelsen, *General Theory of Law and State*, 185.

[13] Bluntschli, *The Theory of the State*, 22. For an overview of the organicist conception of the state, F. W. Coker, *Organismic Theories of the State: Nineteenth Century Interpretations of the State as Organism or as Person* (New York: Longmans, Green & Co., Agents, 1910); McCloskey, "The State as an Organism, as a Person, and as an End in Itself."; Avital Simhony, "Idealist Organicism: Beyond Holism and Individualism," *History of Political Thought* 12 (1991).

[14] For an overview of the relation between popular sovereignty and the concept of the 'nation', see Heiskanen, "The nationalism-populism matrix."; Hont, "The Permanent Crisis of a Divided Mankind: 'Contemporary Crisis of the Nation State' in Historical Perspective."; Bernard Yack, "Popular Sovereignty and Nationalism," *Political Theory* 29, no. 4 (2001); Forsyth, "Thomas Hobbes and the Constituent Power of the People."

[15] Benedict Anderson, *Imagined Communities* (London/New York: Verso, 2006). For a similar argument, Olson, *Imagined Sovereignties: The Power of the People and other Myths of the Modern Age*.

[16] "In societies organize around a state, legal norms are already superimposed on a mature normative infrastructure", Habermas, *Between Facts and Norms*, 26.

This, certainly, is to exaggerate a detail in Hobbes' political theory, and his conception of the unity of the state is irreducible to it. After all, the point of speaking of the state as a fictional person arguably does reside in bestowing on a world otherwise in constant flux a sense of continuity.[17] But, alongside the unity by which the state is itself, by which it appears to persist in time,[18] like the ship of Theseus, there is the unity which in a given moment acts on the world. And if there is a point in exaggerating this detail in Hobbes' political theory, it is because it alludes to a sense of the word *unity* we can capture neither by speaking of continuity or the unity of the legal order or an imagined community. It is the unity which appears *this* moment, before *this* concrete issue. In *this* instant, on *this* issue, the state is brought to bear as a unity, speaking and acting in the name of a *people*. It is a unity in no way undermined by the possibility that it should, in the very next moment come undone. Neither is it affected by what has been said and done before, or what will be said and done a little later. Continuity and consistency are exterior to it. Though again a minor detail in Hobbes' political theory, the point here is to suggest that though subsequent thinkers departed from Hobbes in other ways, it is a conception of unity which did not disappear. Though those who speak and act in the name of the people may find their words and actions resisted (as in Locke), or revised (as in Condorcet), those words and actions are, for the time being, those of the people as a whole.

If there is some merit to this interpretation, it alludes to wherein some of the antinomies of contemporary political theory resides. Certainly, the empty seat of power ought to be understood as an eschewing of a certain kind of unity. Indeed, this is the merit of "thinking of entities in terms of *différance*", as Young suggests. It "leaves them in their plurality without requiring their collection into a common identity".[19] Plurality, in this sense, opposes unity.[20] But it does so only in a specific

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[17] Skinner, "The sovereign state: a genealogy," 46.

[18] Bernard Yack distinguishes the *nation*, which signifies continuity over time, from the aggregate of concrete citizens existing at any given moment in a kind of *eternal present*, Yack, "Popular Sovereignty and Nationalism," 521. On the problem of continuity specifically, see Espejo, *The Time of Popular Sovereignty*; Adam Lindsay, "Hannah Arendt, the problem of the absolute and the paradox of constitutionalism, or: 'How to restart time within an inexorable time continuum'," *Philosophy and Social Criticism* 43, 10, no. 1022-1044 (2017).

[19] Young, *Inclusion and Democracy*, 127.

[20] Young, admittedly, acknowledges that "some unity is of course a condition of democratic communication", Young, "Communication and the Other: Beyond Deliberative Democracy," 126. I understand Young to assert an Arendtian conception of plurality as a pre-requisite for democracy. Where Young is perhaps more opaque is on the question of how, and to what

sense. It opposes itself to any political project which attempts to fashion out of plurality and diversity a homogenous and unified people. It opposes itself to any political project which does not circumscribe acts undertaken in the name of the people with debate and revision. Yet, looking back to the figures to whom we owe our modern idea of representative democracy, we find that this process of debate and revision, in the end, is also punctuated by acts undertaken in the name of *the state*, or *the people*.[21] If only in this sense, the state arguably does bring into being, however artificial and brief, a unity.

If there is some merit to this particular conception of unity, it perhaps alludes to the unavoidable tension which continues to imbue contemporary democratic thought. While we may say that the "body politic is posited as a unity it can never be",[22] we will in some sense have missed the mark.[23] Thus, while we may wish to eschew the populist romanticization of pure democracy and the homogenous body politic, there is something implausible in the assertion that democracy need not entail some measure of unity.[24]

That tension, of course, might be resolved by simply asserting that none may ever speak and act in the name of the state, or the people. But the point I have sought to make is that none of the thinkers treated here made that argument. All asserted that, in some sense, political order would depend on the presence of somebody to speak and act in the name of the people, as they all asserted, to varying degrees, the disconcerting fact that whoever is present to do so will, for however brief a period of time, do so unequivocally.

While there is certainly a point at which we must leave Hobbes' formulation of this problem, we may still take it to indicate the more abstract problem of political order which his state, and indeed perhaps our own, is meant to solve. In the most abstract sense, we may perhaps say that this problem begins with plurality and diversity. The state, as Hobbes already saw, presupposes plurality, and would lose

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extent, this plurality is to emanate into authoritative decisions, see also Young, "Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and Political Theory," 76.

[21] While Urbinati opposes the *longue durée* of representative democracy to immediate democracy, represented as "a discrete series of decisions (*pointillist sovereignty*)", the question is if there is a strict dichotomy between the two, Urbinati, *Representative Democracy*, 31.

[22] Butler, *Notes Toward a Performative Theory of Assembly*, 4.

[23] For a similar argument, see Hans Kelsen, "The Conception of the State and Social Psychology: With Special Reference to Freud's Group Theory," *The International Journal of Psycho-Analysis* V, 1 (1924): 3.

[24] Rummens, "Populism as a Threat to Liberal Democracy," 558f.

its very reason for being if plurality was not, as Hannah Arendt has argued, the human condition.[25] The state, in short, would not exist if people resembled ants and bees whose wills by nature concur. Plurality is the condition of possibility of politics. Yet, for that reason, the state exists. Not in order to leave plurality as it is nor to negate it, but to punctuate it with acts undertaken in the name of that particular association whose purpose it is to act for the whole.

This political problem, I have suggested, in the end underpins Hobbes' problem of presence, and subsequently our own. It points us to the wherein the dilemma of modern democracy resides, and suggests that, in a sense, it is one of our own making. As long as we continue to wish for that particular association called the state to act in the name of the whole, we cannot but demand its presence. We need not, of course, accept entirely the terms of Hobbes. Our choice may not be one between *order* and *anarchy*. Indeed, whether such a distinction is one which the political theorist can draw in the first place is, in itself, somewhat questionable. After all, what is, and what is not, *order*, and what *ought* to be the domain of the state, certainly, must itself be a democratic decision. Nor need the absence of the state entail, as Hobbes argued, the war of all against all. Indeed, as the pluralists of the early twentieth century argued, in the absence of the state we may see life ordered through a multiplicity of spontaneous associations. In fact, left to itself, life may find in the absence of the state a certain freedom and autonomy restored to it, shaped by the voluntary inclinations of individuals no longer at the heel of the coercive apparatus of the state. At the same time, if there is merit to reading these pluralists alongside Hobbes, as Runciman has done, it is to point out the problem here. For, though we may certainly withdraw the state from a certain domain of life, in doing so, "we shall have to accept that we can have no control over what goes on there".[26] It may not be disorder, but what kind of order ensues, will not be a *political* question. One may certainly have faith that the order will be a better one than the state can procure, and the spectre of a totalitarian democracy which knows no boundaries to the domains in which it can intervene remains, as the Terror testifies to, a genuine concern. At the same time, as the long history of feminist discourse also suggests, if there is merit in saying that the private is political, it is because the order which prevails in those domains from which the state is absent need not be characterized by freedom and autonomy.[27]

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[25] Arendt, *The Human Condition*, 7.

[26] Runciman, *Pluralism and the Personality of the State*, 264.

[27] Certainly, the state itself may, and historically has, enforced the subordination of women, Vogel, "The State and the Making of Gender: Some Historical Legacies."; Waylen, "Feminism and the State: An Overview." But, insofar as the slogan 'the private is political' means that "no

To understand Hobbes' problem of presence, we need only transpose the pluralists' dilemma to that of time: when no one carries the state, when its power rests merely in the walls or the air, we will no longer have any control over what kind of order ensues. Whether, and for how long, we can countenance such an absence of the state, thus, must itself be a self-conscious democratic decision. And, to the extent that we are unwilling to countenance it, so must the decision of how to resolve this problem of presence.

We may, of course, still speak of democratic life taking place in domains other than the state, and without returning to the pluralism of the early twentieth century, we may still speak of popular sovereignty residing in "*a plurality of modes of association*" in the *public sphere*.[28] Indeed, as deliberative democratic theorists suggest, such a public sphere may be the *sine qua non* of a genuine democracy. But unless this plurality replaces the state, the question remains. Still the only association truly capable of *acting*, the question of if, and when, we want the state to be present is not one which we can answer merely by pointing to this sphere. While no "network of associations" can "replace the dismissed 'body' of the people", nor "occupy the vacant seat of the sovereign",[29] it cannot mean – lest we *do* make the truly anarchist argument – that the seat of the sovereign is truly vacant.

If the interpretation I have suggested here is correct, then it is arguably the case that each time the state acts, it brings into the world an entity which, in some sense, does not exist. It brings into being *a people* never quite identical with the totality of living citizens.[30] Yet, though it does not precisely exist, it is nevertheless *made present* in the world, and for however a brief a moment it is made to speak

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social institutions or practices should be excluded a priori as being the proper subject for public discussion and expression", it brings into focus the question the necessity of a *public*, or distinctly *political*, form of being by which those institutions and expressions can be put into question, Young, "Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and Political Theory," 74. The question of the state, in this sense, alludes to the wider question of what Laclau & Mouffe call the *political space*, Laclau and Mouffe, *Hegemony and Socialist Strategy - Towards a Radical Democratic Politics*, 132. For an extended discussion of the idea of 'the private is political', Elshtain, *Public Man, Private Women: Women in Social and Political Thought*, 204.

[28] Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," 73.

[29] Jürgen Habermas, "Popular Sovereignty as Procedure," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge, Massachusetts/London: The MIT Press, 1997), 58.

[30] In this sense, the state cannot but *name*, and thus implicate, its citizens in its actions, see Eric Beerbohm, *In Our Name: The Ethics of Democracy* (Princeton and Oxford: Princeton University Press, 2012), 280f.

and act as a unity. And, as long as we live in time, this invocation of the people is not merely a rare occurrence, relegated to those few and extraordinary moments in which a new political order is first instituted. It, in fact, occurs quite often. And if it does so, it is because we do assume, consciously or unconsciously, that only by this recurring presence do we have any political say about those, more or less anticipated, events which concern our living together.

From where, then, does the paradox of presence of modern democracy come? In a sense, the Lefortian claim is plainly correct: *the people* does not precisely exist, and will never truly coincide with the totality of individual citizens. But, it does not mean that it is not, quite frequently, *made present* in the world. If there is a point at which we ought to take care not to overstate the Lefortian claim, it resides in this. Indeed, the very fact that the seat of power in modern democracy is empty, that it is no longer occupied *a priori* by the divine body of the monarch, in a sense inaugurates the dilemma. After all, it is precisely in the 'disenchanted' world,[31] that the question of who makes present the people becomes troubling. In this sense, there is also something plainly correct about the participatory claim. In the end, those who make present the people must, in some sense, be the people themselves. At least, where this becomes a domain reserved for experts, we arguably encounter a different democratic disfigurement.[32] In the end, this is arguably what underpins the ambivalence which modern political thinking continues to feel about the democratic assembly: it remains something we may not want and something we cannot have. At the same time, we shall equally have failed to understand the dilemma if we continue to hold out hope that the irrefutable problem of size and spatiality can be resolved by local participatory forums or through technology. In the end, neither alone can address the question of whether the state can be present *often enough*, nor what we deem to be often enough.

If we then find ourselves in another iteration of our familiar paradox, the point is that it is one which cannot be so easily resolved. The point, thus, is not to resolve it, but to suggest that only through a self-conscious understanding of it can we hope to address it. It is that only in truly understanding the problem of presence can we make a self-conscious decision about how to respond to it, while knowing that it is one which can never be 'swept away'. We may, then, in the end, have to acknowledge that the problem of presence occasions two questions which ought

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[31] Habermas, *Between Facts and Norms*, 26; also Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," 73.

[32] In this sense, the democratic assembly of all who will come together in some sense overlaps with what Jacques Rancière has viewed as the essence of democracy: the absence of any *entitlement* to govern, Jacques Ranciére, *Hatred of Democracy* (London/New York: Verso, 2006), 41.

to be understood to be as fundamental as many others which have long since been recognized as fundamental constitutional questions: whether we want the state to be present, and under what conditions we deem a body present to carry it. The intention here has not been to answer these questions. Indeed, in the end these questions will have to be answered democratically. It has been to suggest that only in making them self-conscious can we make a self-conscious decision about how to answer them. What we might nevertheless infer from the preceding pages, is that we ought to caution against solutions which do purport to sweep these questions away.

Indeed, if there is a point to conceiving of these questions as constitutional, it is because they, like all constitutional questions, in some sense logically precede the instant of speaking and acting.[33] Though we may eschew, on practical and normative grounds, the democratic assembly of Hobbes and Pufendorf, it will no less be necessary to settle the question of where and when the seat of power is deemed occupied, and to do so *before* we recognize in anyone the voice of the people. Certainly, these questions may not appear as clearly in the representative system, and we have now perhaps come to assume somewhat unselfconsciously the more or less continuous presence of parliaments, governments and bureaucracies of the modern democratic state. Yet, though they may not appear as clearly, the point here is that, in some sense, these questions are unavoidable, and that if parliaments, governments and bureaucracies are now more or less continuously present to carry the state, they are so as a result of decisions more or less self-consciously made. In this sense, the merit of the history recounted here, is that it may help make those decisions self-conscious, and to suggest that if we indeed wish to envisage a better solution to the problem of presence, it must be no less self-conscious. In this sense, if populism is indeed a democratic disfigurement, it is arguably because it evades these questions. In the end, the symbolic representation of *the people* by the leader offers little in the way of an answer to the constitutional question of where and when the seat of power is deemed occupied.[34] It will resolve the problem of presence only by conjuring up the impossible figure of an immortal God, present in every moment to speak and act in the name of the people. It will, in short, resolve the problem of presence only by ignoring it.

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[33] Andrew Rehfeld borrows from H. L. A. Hart the idea of certain 'rules of recognition' which precede representative claims, Rehfeld, "What is Representation?: On Being and Becoming a Representative," 64.

[34] On this point, even Laclau & Mouffe are rather opaque about what happens after the populist struggle is successful and has become hegemonic.

Similarly, while the "visible presence" of bodies in public space may lay claim to an irrefutable democratic import,[35] it hardly resolves, but merely re-states, the political two-body problem. The question which will remain as troubling as it was for the French revolutionaries is whether, and in what sense, we ought to impute to the appearance of physical bodies in space an innate democratic significance. While there is much to be said in favour of the assertion that we ought to do so, it is, as recent events have demonstrated, a logic which can also be put to work in the populist disfigurement of democracy. While the argument here does not help us resolve this dilemma, the point perhaps is to suggest that if we continue to think of the presence of the people merely in terms of the public space in which bodies appear, we will continue to neglect a part of the problem of presence. Lest we are prepared to espouse "permanent anarchy", the "necessarily transient" character of these popular gatherings must presuppose that which is not transient, which is continuously present, which those transient and critical gatherings of people interpellate, question, make demands of, etc.[36] And where this presupposition becomes unselfconsciously assumed, the risk is that we no longer explicitly pose the question of how it is made real. That is, if we think of the presence of the people merely as bodies in a public space,[37] the question which will continue to be unselfconscious is *when* we deem a body present to speak in the name of the people. In the end, it may be that as long as this question remains unselfconscious, the allure of a redeeming presence will continue to find fertile soil.

However, neither will the notion of the empty seat of power address this question, at least not if we take it too literally. In the end, that seat cannot remain literally empty if we wish for the state to act. Certainly, we may say that those who occupy it do not possess the power they exercise, but in exercising it they will invariably speak in the name of *the people*, and while they cannot expect to do so unchallenged, it is the condition of living in time that what they do in that name it may not be possible to revise. The question of who occupies it, and under what

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[35] Butler, *Notes Toward a Performative Theory of Assembly*, 164.

[36] Butler, *Notes Toward a Performative Theory of Assembly*, 16, 21. Butler's views on democracy are here indebted to those of Sheldon Wolin, according to which democracy is always 'fugitive', Sheldon Wolin, "Fugitive Democracy," *Constellations: An International Journal of Critical and Democratic Theory* 1, no. 1 (1994): 23.

[37] Butler, here, relies heavily on Arendt's view of the public as a "a spatial construct". What is somewhat neglected is that for Arendt this spatial construct is merely a condition of possibility for action, that is, for the conduct of common political life, Hannah Arendt, "Introduction into Politics," in *The Promise of Politics*, ed. Jerome Kohn (New York: Schocken Books, 2005), 119. It is, in the end, not obvious how Butler's assemblies can in any way can take on a corresponding task.

conditions, is not a question we can answer merely by suggesting that those who do exercise power do not possess it.

I have, in this thesis, sought to make the argument that our paradox is one which we, in the end, may not hope entirely to avoid or resolve. It may, in the end, not be enough to dispel the dream of pure democracy to say that *the people* in whose name governments speak does not exist. The sovereign people may be a fiction, but if there is anything we may learn from Hobbes, it is that fictions no less can be made to speak and act in the world. The question, then, perhaps is instead which fictions we ought to make reality. Robespierre's attempt to make the fiction of the unified and virtuous sovereign people a reality arguably does stand as a caution against the dream of pure democracy. But if *the people* in whose name governments speak every day is equally difficult to see and touch, the point is that it is a fiction we perhaps cannot but make a reality as long as we wish the state to be present. And if democracy is to mean anything, its voice cannot be entirely independent of the tangible body of concrete citizens. Again, only a self-conscious decision can settle the question of when, and under what conditions, we deem a body legitimately present to give real voice to that fictional entity.

Not least, as long as this question remains buried, we shall have to expect the allure of a redeeming presence to lose none of its hold over the democratic imaginary. After all, the extraordinary stirring of the sleeping sovereign, genuinely present to affirm its power of self-determination and self-government,[38] will appear redeeming only as long as we refrain from posing the question of what happens the day after. Only as long as we refrain from acknowledging the fact that politics, like all human activity, occurs in time, will the image of a mythic present hold out the hope that the absence of the people can be, once and for all, redeemed.

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[38] Kalyvas, *Democracy and the Politics of the Extraordinary*, 6f.

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The Present People

One of the most recalcitrant, and increasingly pressing, questions of modern democratic thought is whether, and in what sense, the people can be *present*. While the presence of the people has, and continues to be, the *sine qua non* of the democratic form of government, it has also been for a long time held that the people cannot be present literally or in fact. According to the conventional narrative, this absence has been seen as a necessary acquiescence to the problem posed by the modern state, territorially expansive and populous, which precluded an assembly democracy in which all can be physically present. The paradox which thus underpins modern democracy is that the people, being represented, is present in some sense, while not present literally or in fact.

This thesis argues that the conventional narrative of the paradox of presence of modern democracy remains incomplete. It argues that in posing the question of what it means to speak of the presence of the people, contemporary political theory and intellectual history has so far neglected the question of time. Turning to the history of political thought of early modernity, the thesis contends that in the political thinking of Thomas Hobbes, Samuel Pufendorf and Robert Filmer, the critique of the democratic assembly was indeed framed primarily as one of time, rather than size and space. Taking this problem of presence as a point of departure, the thesis traces its constitutive role in the political thought of some of the key thinkers of modern political thinking, including John Locke, Jean-Jacques Rousseau, as well as some of the central theorists of representative government from the end of the eighteenth century. It argues that while the question of time gradually came to be lost from the vocabulary of modern political thought, the problem continued to underpin and structure modern thinking on democracy and popular sovereignty.