10 From popular sovereignty to civil society in post-revolutionary France

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I

The French Revolution did not turn out to be a revolution against the state. Perhaps some of the Jacobins, speaking in the name of “the people” and even of “all mankind,” had initially hoped to carry through such a thorough revolution against centralized authority, but if that was their goal, they failed. Instead, as Tocqueville pointed out, the Revolution furthered the state-building program that had been initiated by the modernizing eighteenth-century monarchy. Many writers and politicians in the decades after the Revolution sought to understand what this fact implied about the fate of popular sovereignty in France. Did the revolutionaries’ failure to resist administrative and military centralization spell the end of republican dreams of self-rule? Or were the various experiments in constitutionalism that emerged from the Revolution best understood as efforts to use the state to institutionalize popular sovereignty? In France the timing and nature of the Revolution and the immediate military threat from outside the borders conspired to pose in an unusually direct way the question of whether popular sovereignty was compatible with centralized state authority over a large territory.

Leaving the state form behind altogether was not an option for France. Even Benjamin Constant, who was fascinated for a time by William Godwin’s anarchism and who wrote well about the importance of decentralization and federalism, asserted the advantages of a large state: Only a strong centralized authority could maintain a military capability sufficient

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to defend France from its neighbors; only a centrally coordinated state could solve the first-mover problem in trying to end unjust practices such as slavery and serfdom; only a large territory contained the variety of human experiences, and allowed enough mobility among them, to encourage the gradual elimination of prejudices and the growth of enlightenment in the public.4 Among these sorts of considerations, the military one dominated, so much so that according to Germaine de Staël both aristocrats and democrats during the revolutionary period thought that even the modest checks on executive power found in the English arrangements would have been fatal to France’s security, which required a large standing army.5

If France had to be governed by a state, could that state at least take on a republican form? The reigning assumption, of course, famously endorsed by both Montesquieu and Rousseau, was that republican forms of government were viable only in territories much smaller than France. The idea of a “French republic” was simply not imaginable to most actors, even after the Revolution had begun. Thus the early debates about constitutional questions, from 1789 to 1791, were aimed at finding a form of constitutional monarchy compatible with the revolutionary aspiration for popular sovereignty. The death of the king ended that stage of the debate, but did not answer the fundamental question of how to combine an executive power sufficient to accomplish the goals of the state with some form of popular rule. Everyone knew that “representative government” was supposed to solve these problems, but the devil was in the details of precisely how such a government should be arranged. Obviously the Convention failed when it devolved into Terror, but the Directory that followed also found itself incompetently seizing more emergency powers than many of its early supporters could stomach, and it fell to Napoleon’s coup d’État in 1799.

Even before the coup, it was easy to conclude from the difficulties of these early experiments that the whole project of representative government – that of institutionalizing popular sovereignty through the agency of a large state – was a misguided one. Joseph de Maistre, scornful of the idea that the Directory had successfully introduced any form of truly popular rule, offered a crude but rhetorically effective calculation in his Considerations on France: If every adult male in the country were to receive a single turn serving in the newly created Legislative Assembly, he noted, each

man would be able to serve as a representative once every sixteen thousand years. “The imagination is staggered,” he concluded sardonically, “by the prodigious number of ‘sovereigns’ condemned to die without having reigned.” 6 While Maistre made the point as part of his counter-revolutionary argument, he was able to cite favorably the disappointed invective of none other than the proto-communist ‘Gracchus’ Babeuf, whose “conspiracy of the equals” to violently overthrow the Directory had only recently been foiled, and who had described the new representative government as an aristocratic, usurping, and enslaving force. 7 From both the right and the left sides of the political spectrum, critics of the Directory asserted that hopes of combining democratic–republican ideals with a large and powerful state had proven impossible to realize. “The phrase large republic, like square circle, is self-contradictory,” wrote Maistre. 8

Maistre’s calculation dramatized the fact that most citizens would not actively participate in governing. What he declined to consider was the possibility that the people could be “sovereign” in some meaningful sense even without actively participating in governing. That was the strange, almost-but-not-quite-paradoxical, thought that became central to one emerging understanding of “representative government.” Could that thought be made coherent and satisfying? Thomas Hobbes, a principal theorist of sovereignty, had suggested this possibility. As Richard Tuck emphasizes in his contribution to this volume (Chapter 5), Hobbes had imagined in some detail how a people could appoint a monarch to govern without yielding its sovereignty. 9 Of course, Hobbes clearly preferred monarchical government to democratic institutions; in chapter ten of De Cive he elaborated in detail the problems likely to occur in democratic assemblies, from the factionalism and demagoguery they encouraged to the high taxation they tended to enact so as to be able to provide gifts to their many constituencies. 10 He mocked the democratic desire to participate in deliberative assemblies as little more than a longing to display one’s eloquence and be praised for it. Still, even in that discussion, Hobbes did concede one way in which a democracy might succeed:

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7 Ibid., p. 37.
8 Ibid.
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But if in a Democracy the people should choose to concentrate deliberations about war and peace and legislation in the hands of just one man or of a very small number of men, and were happy to appoint magistrates and public ministers, i.e. to have authority without executive power \([\text{auctoritate sine ministerio}]\), then it must be admitted that Democracy and Monarchy would be equal in this matter.\(^{11}\)

Hobbes went on to clarify the importance of the distinction between \(\text{auctoritas}\) and \(\text{ministerium}\), arguing, “the advantages and disadvantages of a regime do not depend upon him in whom the authority of the commonwealth \([\text{civitatis auctoritas}]\) resides, but upon the ministers of sovereignty \([\text{imperii ministros}]\).”\(^{12}\) The first implication he drew was that sovereign authority could reside in a single person and yet lead to incompetent rule if the administration were too democratic in character. Another implication, however, was the one mentioned in the passage above: sovereign authority could reside in the people without compromising competent rule if the administration of government was appropriately centralized — if the people did not actually do the work of governing.\(^{13}\)

The next section of this chapter will trace this Hobbesian thought into debates about how to institutionalize popular sovereignty after the French Revolution. As we will see, some influential writers and politicians did indeed take up a quasi-Hobbesian strategy for reconciling popular sovereignty and the state, but they soon encountered the limits and dangers of that approach, and a second wave of reflection — that associated with the French liberalism of Benjamin Constant and Alexis de Tocqueville — can be understood as a response to those dangers. While the idea of a people holding authority without administration is not itself incoherent, it came with a set of strong assumptions about what a “people” was, assumptions that made the sort of “sovereignty” retained by the people less substantive and less satisfying than the sort of political engagement that many proponents of popular rule craved. The understanding of civil society that emerged from the later liberals was, in part, an effort to imagine other forms of democratic self-governing that were compatible with, that could survive within, a large state.

The main issue that would arise can be summarized easily enough: The Hobbesian strategy suggested that a “people” could retain sovereignty if it were understood to be an aggregation of separate and equal individuals

\(^{11}\) Ibid., 10.15, p. 125.

\(^{12}\) Ibid., 10.16, p. 125. I have changed Silverthorne’s translation to emphasize that \(\text{imperium}\) refers to sovereign authority, not administrative governance, as Tuck now suggests.

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brought together in acts of voting to produce a majority that would delegate the work of governing. To grant priority to the agency of individuals, as emerging plebiscitary practices did, was to privilege the individuation of wills and their aggregation through voting over other modes of social authority that could be found in communities that existed prior to and outside of the state. In the revolutionary context, asserting the priority of individuals in this way was a kind of liberation; it freed people from the various forms of domination found in family, corporation, guild, and church – in short, from the social-political hierarchies of feudal life. To lodge sovereign authority in a constructed aggregate of individuals was, necessarily, to take authority away from those traditional social entities. Thus the “people” retaining authority in the Hobbesian understanding of popular sovereignty was already an imagined product of the Revolution; it was a vision of the members of society as they appeared through the eyes of someone standing outside any particular standpoint within society – through the eyes of the state, as James Scott might say. However, while this perspective was devised to free people from the grip of churches and guilds and the petty despoticisms of local lords, it also often worked against the associations, societies, and localities engaging in popular politics on the ground. Thus for revolutionaries as well as traditionalists in France, the intended liberation of Hobbesian popular sovereignty often felt like a rejection of their own concrete forms of community and political practice.

When nineteenth-century liberals such as Constant, Staël, and Tocqueville voiced concerns about “popular sovereignty,” they were often expressing worries about the substitution of an aggregate of individuals, an abstract entity whose will could easily be usurped, for the concrete, socially embedded communities that had been traditionally associated with popular rule. When these liberals stood up for “society” they meant to defend an understanding of “the people” not filtered through the sieve of social contract theory. In criticizing the Hobbesian strategy of reconciling popular sovereignty and the state, they contributed to the emergence of a theory of civil society and its virtues that still reigns supreme today both in political science (in the form of Robert Putnam’s work on social capital, for example) and in political practice (in the many organizations promoting “civil society institutions”). One task of this chapter is to show that this understanding of civil society arose in part as a correction to the view that popular sovereignty could be realized in large territories only through the agency of state institutions legitimized by plebiscites. The

state’s function was not only to put majority rule at the national level into effect, but also to create background conditions for a richer set of local democratic practices that were more deeply rooted in the actual social life of the people. That, at least, was the hope of the liberal theorists in France who came to prefer the language of civil society to that of popular sovereignty.

II

To follow the trajectory of the Hobbesian view of popular sovereignty in revolutionary France, we can begin with the thought of Pierre-Louis Roederer. Readers who know of Roederer are most likely to be familiar with the important and somewhat dubious roles he played at two moments in revolutionary history. As prefect of Paris during the tumultuous popular uprising on August 10, 1792, Roederer responded to the gathering of crowds by leading King Louis XVI to the hall of the Legislative Assembly. He was probably trying to save the king’s life and prevent the country from falling into an unconstitutional form of regime change, but some believe his action unintentionally helped to end the monarch’s life. Later in the decade, Roederer joined with Sieyès and Napoleon to help facilitate the coup d’état that ended the Republic. He was one of the chief authors of the constitution of the Year VIII, introduced just after the coup, and he worked hard for Napoleon during his rule, claiming that doing so was the best way to secure the protection of liberal rights and reformist goals. Andrew Jainchill has classified Roederer as a proponent of “liberal authoritarianism,” which he defines as “not a rejection of liberal principles, but, rather, an attempt to maintain them through the establishment of a Hobbesian sovereign and the concomitant rejection of democratic practices.”

While Roederer’s later Napoleonic activities can easily be labeled “authoritarian,” I want here to examine the less simply classified train of thought that he followed during the decade between 1789 and Napoleon’s coup, for it turns out that Roederer was exploring something quite close to the Hobbesian approach to popular sovereignty described above.

Roederer was an early enthusiast of the Revolution; he supported the idea of popular sovereignty for which the Revolution had been fought, and he joined the Jacobin club. In time, however, he split with Robespierre and others who dominated the Jacobins, so much so that during the Terror he was forced into hiding. While in hiding he developed his views

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on political theory, which he explained in a series of lectures at the Lycée of Paris in 1793 under the title *Cours d’organisation sociale*. It so happens that just as he was writing those lectures he was also occupying himself by translating Hobbes's *De Cive*. He gave as a reason for his interest, “There are several parts in his [Hobbes’s] work that are excellent; it is from him that Rousseau took the principle of popular sovereignty.”

In his lectures and elsewhere in his writings Roederer demonstrated that he had thought carefully about the tenth chapter of *De Cive*, the one from which the distinction between *auctoritas* and *ministerium* comes, as he was particularly interested in the arguments comparing the benefits of monarchy and democracy. He even closed his consideration of democracy with a gloss on precisely the passage I have quoted above. He positioned himself as disagreeing with Hobbes, but on this point only: he understood Hobbes to be suggesting not only that the people should not be directly involved in administration, but also that they should not have a role in making the laws. This last part, he thought, went too far, and was based on a worst-case understanding of the vices of democratic deliberation. To meaningfully keep “authority” at all, he argued, the people would have to have some role in legislation.

Elsewhere in his course of lectures Roederer put quite a lot of weight on the distinction in book three of Rousseau’s *Social Contract* between sovereignty and government, a distinction that parallels Hobbes’s between *auctoritas* and *ministerium*. His goal was to show how a Rousseauian understanding of popular sovereignty was, in spite of Rousseau’s famous arguments against representation, compatible with elected, constitutional government in France. First, he took Rousseau’s distinction between sovereignty and government to imply a justification


18 The relative advantages of monarchy and democracy – of obvious and immediate interest in the early 1790s – also dominated another work that Roederer composed at this time, an imagined dialogue between Hobbes, Voltaire, Rousseau, Montesquieu, Bayle, Helvétius, and Sieyès – in which he indicated that he believed, with Sieyès, that a wholly new form of government had to be invented, one that had the stability of a Hobbesian monarch and the deliberative virtues of a well-constituted democratic assembly. See R. Scurr, “Pierre-Louis Roederer and the Debate on Forms of Government in Revolutionary France,” *Political Studies* 52.2 (June 2004), pp. 251–68. Roederer also quoted from chapter ten of *De Cive* in his account of his experience with the Parisian mobs in 1792. See Pierre-Louis Roederer, *Notice de ma vie pour mes enfants*, in Roederer, *Œuvres*, III. Cf. Roederer, *The Spirit of the Revolution of 1789*, p. 71.

19 Roederer, *Œuvres*, VIII, p. 301.
for the constitutional separation of legislative and executive powers. Second,
and more interestingly, he spotted a way of justifying the fact that a constituent or legislative assembly could create laws without taking the ultimate authority to make laws away from the people. As he highlighted during his exposition of Rousseau’s thought, “the constituent power is not sovereignty.”20 While it was true that the people were too numerous to gather and debate laws for themselves and therefore that they had to appoint representatives, it was crucial not to mistake the representatives for “a governing authority.”21 The assembly that deliberates and votes on laws should be regarded as having merely provisional power. More precisely, its power was that of discussing, deliberating, and voting on its own final opinion. Even the “constituent power” that Sieyès made so much of should be understood to include only these functions. “The sovereign [people] can say to whomever it chooses: Debate among yourselves, in my presence, all the questions that interest me, and I will listen to you; vote by plurality one opinion, and I will see if it pleases me.”22 The final authority would remain with the people, thus preserving Rousseau’s idea that sovereignty was inalienable.23

At the same time, Roederer insisted that his audience pay close attention to what could count as a “law” in Rousseau’s argument. Laws had to be wholly general in scope and in application, otherwise they lost their particular claim to legitimacy, a claim based entirely on their emergence from the nation as a whole and their equal application to everyone in it. Thus Roederer suggested that much of what the Constituent Assembly had spent time debating had been too specific, essentially executive decrees. He assumed that once the true nature of a law was understood, there would be very few laws proposed by a legislative assembly, and that would make it possible to actually bring them before the people for endorsement. Roederer supported an “obligation to submit the laws to popular sanction.”24 This is consistent with an argument he had made in a 1788 pamphlet on the subject of how to organize the coming meeting of the Estates General, in which he had argued that a nationwide

20 Ibid., p. 259. “Le pouvoir constituant n’est point souverainité; voilà une première notion sur laquelle il faut se fixer.”
21 Ibid., p. 254.
22 Ibid., p. 260. “Le pouvoir de discuter et de délibérer une constitution, voilà ce que c’est que le pouvoir constituant.”
23 Roederer may have had in mind here a discussion he heard in the National Assembly on August 10, 1791 about whether to add the word “inalienable” to the description of the general will in the Constitution. See Archives Parlementaires de 1789 À 1860: Recueil Complet Des Débats Législatifs & Politiques Des Chambres Françaises, ed. J. Mavidal and E. Laurent (Paris: Librairie administrative de P. Dupont, 1862), XXIX, pp. 327–329.
24 Roederer, Œuvres, VIII, pp. 260–261.
referendum was needed to ascertain the view of a plurality of citizens on the best mode of organization.\textsuperscript{25} 

Roederer’s endorsement of appeals to the people, even if only occasionally and for the most general and fundamental laws, distinguished his point of view from that of Sieyès. As is well known, Sieyès opposed any sort of direct appeal to the people, because he thought there was no unified agent called “the people” to whom anyone could appeal except through properly convened representative assemblies.\textsuperscript{26} Sieyès thus followed a different strain of thought in Hobbes, stated most clearly in chapter sixteen of \textit{Leviathan}: that unity could be found only in the \textit{represente}nt and not the \textit{represented}.

For Sieyès, this meant that consulting the people through plebiscites, or even through assemblies in which each representative presented the local interests of his constituents, failed to yield a single governing authority that could legitimately act for the nation as a whole. The importance of this theoretical point for Sieyès was evident in the fact that he bothered, on June 16, 1789, to resist Mirabeau’s motion to name the post-revolutionary version of the Estates General the “Assembly of the People’s Representatives.” Instead, Sieyès seems to have supported the awkward “Assembly of known and verified representatives,” which he then withdrew, proposing instead the simpler title,

\textsuperscript{25} Ibid., VII, pp. 573–574.

\textsuperscript{26} “Only representation is the reunited people, since the ensemble of parties to the association cannot achieve a unity any other way. The integrity of the nation is not anterior to the will of the reunited people, which is only available through its representation. Unity begins in it. Nothing, therefore, is above representation, and it is the only organized body. Dispersed, the people is not an organized body, and has neither a singular will nor a singular mind – indeed, nothing singular at all”: Sieyès in the Archives nationales, 284 A.P. 5, folder 1(2), as quoted in P. Rosanvallon, \textit{Democracy Past and Future}, ed. S. Moyn (New York: Columbia University Press, 2006), p. 89. See also K. M. Baker, \textit{Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century} (Cambridge: Cambridge University Press, 1990), pp. 295–301.

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“The National Assembly,” which of course won the day.\(^{28}\) As early as September 7, 1789, speaking to the National Assembly, he followed the line of thought that Roederer would later dismiss:

It is evident that five to six million active citizens, spread over twenty-five thousand square leagues, cannot assemble together; it is certain that they cannot aspire to anything except a representative legislature. Therefore the citizens who name representatives renounce, and should renounce, making the law directly themselves.\(^{29}\)

Sieyès thus placed a lot of weight on the simple but stubborn fact that it was impossible to gather all citizens together at one time and place. In doing so he was following Hobbes’s arguments in *De Cive*. Hobbes had stated quite directly that a people could only be said to hold sovereign authority when they *assembled*. And in the cases when a citizenry wanted to appoint another person or group to do the work of governing, it could only be said to retain its sovereign authority, according to Hobbes, if, while assembled to make the appointment, it also set the next time and place of assembly. Gathering together in meetings was not incidental in Hobbes’s account in *De Cive*; it was one of only two announced criteria for what counted as a democracy: “Two things, then, constitute a *Democracy*, of which one (an uninterrupted schedule of meetings) constitutes a Δημοσ, and the other (which is majority voting) constitutes το κρατος, or authority.”\(^{30}\) When Hobbes later discussed the differences between monarchy, on the one hand, and aristocracy and democracy, on the other, he remarked that the latter forms of government “require specific times and designated places for deliberation and decision . . . Optimates, and the people, need to assemble, because they are not one thing by nature.”\(^{31}\) Once a people transferred sovereign authority to a monarch or to an assembly without making provision for assembling together themselves again, the people as a singular agent “dissolved” and turned again into a “rude multitude” whose authority “vanished.”\(^{32}\) Indeed, when Hobbes outlined the possibility of locating sovereign authority in any number of forms of government, from a monarchy to a democracy, he always seems to have assumed that the options were either to locate it in “one man” or in “one Assembly or council of many men.”\(^{33}\) The interesting inclusion of both


\(^{29}\) *Archives Parlementaires*, VIII, p. 594.

\(^{30}\) Hobbes, *On the Citizen*, 7.5, p. 94. The Greek words are *demos* (the people) and *to kratos* (rule), the two parts of the word *democracy*.

\(^{31}\) Ibid., 7.13, p. 97. \(^{32}\) Ibid., 7.8, 7.9, 7.11. \(^{33}\) Ibid., 7.1, p. 91.
“assembly” and “council” in this formulation, repeated elsewhere in the text, suggests that Hobbes was thinking in concrete terms about gatherings of citizens. Nor is it plausible to think that Hobbes regarded voting to find a majority as the only important activity undertaken in an assembly; he explained the purpose of an assembly of all men at the beginning of chapter seven in this way: “so that each of them has the right to vote and can participate in debating issues if he so wishes.”34 All the vices of democratic debate that he catalogued so powerfully, the demagoguery and factionalism, were introduced as arguments against democracy and not arguments against the idea that democracy required assembling and debating.35 Therefore, when Sieyès argued that France could not be a democracy because its citizens could not physically assemble together, he was following Hobbes’s definition of democracy in a very straightforward way, according to which it was hard to see how a dispersed multitude of a large state could hold or retain auctoritas at all.36

Roederer, who was quite close to Sieyès on many points but who still wanted, as we have seen, to identify some notion of popular authority that could persist even through the appointment of an administration, found himself having to think quite carefully about the kinds of appeals to the people that were possible in a state as large and diverse as France. How, precisely, would “submitting the laws to public sanction” work in practice? To which assembly, assemblies, or persons would the proposed laws be submitted? In revolutionary France, the question of whether citizens needed to actually gather together to select representatives and vote on referenda was a live one. As Malcolm Crook has noted, the plebiscites on the constitutions in 1793 and 1795 relied on traditional processes in which citizens assembled in meetings at set times and places in their cantons, waiting together through a long process of calling the rolls to register their votes in front of their peers. For Sieyès, the problem in appealing to the people in this way was that when people met in societies or cantonal assemblies or other partial associations, they were more likely to vote for their familial or religious or sectional interests, and they could more easily fall prey to oratorical demagoguery. Sieyès thought that a unified national will could be found or created only if those interests

34 Ibid.
35 As Richard Tuck points out, the passage I quoted earlier, from 10.15, suggests that Hobbes imagined the possibility of separating deliberation from democracy, delegating deliberation to ministers rather than considering it to be a constituent part of democratic sovereignty: Chapter 5 in this volume, pp. 000–00. Roederer tried to follow this lead by portraying constituent assemblies as delegated deliberations, as I described in the previous section.
36 “Je soutiens toujours que la France n’est point, ne peut pas être une démocratie”: Archives Parlementaires, VIII, p. 594.
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were set aside in favor of the national interest, and he did not imagine it desirable or even possible to ask people to set aside their particular interests themselves as they assembled in small meetings at the local level. It was at the national level that he expected representatives to give priority to the national interest. The Constitution of 1795 summarized his view in its 52nd article: “The members of the Legislative Body are not representatives of the department which has elected them, but of the entire Nation, and they cannot be given any mandate.” He opposed federalism and direct elections because he thought they conveyed a confused message on this point.

Sieyès’s insistence that sovereignty could not be exercised by any part of the whole was enshrined in the 1791 constitution. He was opposed not only by traditionalists jealously trying to preserve local privileges, but also by revolutionaries who thought that popular sovereignty should mean that actually existing, concrete communities should participate in ruling. Robespierre, for example, had forcefully spoken against Sieyès’s view in the National Assembly on August 10, 1791. He had brought murmurs from the crowd (according to the transcript in the Archives parlementaires) when he had noted that they already implicitly allowed parts of the country to exercise the sovereignty that Sieyès said belonged only to the whole whenever they allowed a region to select representatives to the Assembly; after all, he argued, the selection of representatives was itself an act of sovereignty. In his own proposal for a different version of a Declaration of Rights of Man and Citizen, Robespierre included a provision specifically designed to emphasize the respect due not only to the people as a whole, but also to sections of the people. The point

37 “La Souveraineté est une, indivisible, inaliénable et imprescriptible. Elle appartient à la Nation; aucune section du peuple, ni aucun individu, ne peut s’en attribuer l’exercice”: Constitution of 1791, section 1, title 3.
38 Archives Parlementaires, XXIX, pp. 326–327. Sieyès had tried to answer this line of argument two years earlier in a speech on the royal veto on September 7, 1789: “Il faut donc reconnaître et soutenir que toute volonté individuelle est réduite à son unité numérique; et ne croyez pas que l’opinion que nous nous formons d’un représentant, élu par un grand nombre de citoyens, détruise ce principe. Le député d’un bailliage est immédiatement choisi par son bailliage; mais médiatement, il est élu par la totalité des bailliages. Voilà pourquoi tout député est représentant de la nation entière. Sans cela, il y aurait parmi les députés une inégalité politique que rien ne pourrait justifier; et la minorité ferait la loi à la majorité, ainsi que je l’ai démontré ailleurs”: ibid., VIII, p. 593.
39 G. Rudé, Robespierre (New York: Prentice Hall, 1967), pp. 55–56, article 19: “No portion of the people may employ the power of the entire people, but the wish which it expresses must be respected as the wish of a portion of the people, which is to concur in forming the general will. Each and every section of the assembled sovereign must enjoy the right to express its will with entire liberty; it is essentially independent of all constituted authorities and master of regulating its police and its deliberations.”
was crucial to Robespierre's understanding of the role that clubs and communities should play in self-government.

Roederer may have supported a kind of appeal to the people, but he did not at all follow Robespierre on this fundamental point. He felt a deep unease at the way in which social dynamics within particular localities or societies could intimidate and suffocate individuals and minorities. In his 1788 tract on the Estates General he had introduced a broad argument about how equality should be understood and institutionalized in electoral systems, arguing that voting should be by individuals rather than estates, and also that representatives should not take instructions from their localities or provinces, but should think of themselves as fully national. He specifically remarked that representatives who were only messengers delivering the views of their cantons to the central assembly could never produce an adequate representation of the will of the whole, but would only reproduce "the small divisions of societies in a state of war with one another."

If this argument was conceived initially as an attack on feudal corporations, it nevertheless applied just as well to republican understandings of popular sovereignty through organized bodies smaller than the state as a whole. Roederer's views on the Estates General reappeared in his later hostility to clubs and associations, a hostility intensified after his own experience with the Jacobin club and, most significantly, his time as the Parisian prefect responding to the unrest on the Parisian streets in the summer of 1792. When he later wrote an account of the journeé of August 10, 1792, he saw the events of that day through the lens provided by Hobbes's account of democratic factionalism and oratory in De Cive. He referred to the uprising as "democracy, or, if one prefers, a formidable ochlocracy [mob rule]" and described it in these terms:

Each popular assembly had its own [orator]... A swarm of men had arisen in France, men of powerful and barbarous eloquence... men who had discovered far better than those in the national assemblies the techniques of persuasion and bewitchment... They presented France to the proletarians as a prey which was theirs if they wished to seize it... One saw at that time the realization, the revival of what happened in the revolution of 1648 in England. The writer Hobbes who defended, in his work De Cive, the monarchical system against the partisans of democracy, said to those who objected that a Caligula or a Nero might come to the throne under a monarchy, [but] 'In democracia, tot possunt esse Nerones, quot

When Roederer emerged from hiding, having survived the Terror, one of his first public interventions offered a sharp argument against the claims of sections, clubs, or associations to exercise any sort of legitimate political authority. He published *Des sociétés populaires* in 1794 and then largely recycled it into another pamphlet in August 1799, *Des sociétés particulières, tells que clubs, réunions, etc.* In these pieces he argued in favor of strong laws regulating the activities of clubs and societies, limiting their size to no more than twelve or fifteen people, and shutting some of them down altogether. The purpose of such groups, he argued, should be friendship and instruction; they should aim at the enlightenment of each individual member, but they should not deliberate or vote about political actions or positions to be taken by the group as a singular whole. Against writers who claimed that societies could aid in the surveillance of the government, he argued that surveillance ought to be the work, on the one hand, of individuals exercising their rights, and, on the other, of the nation as a whole, but only as a whole. He rejected the view that clubs could be helpful intermediary bodies between individuals and the constituted authorities; they were accountable only to their members; they were institutionalized in a way that put no checks on their power; and they could therefore tyrannize over both individuals and government officials. In explaining why he opposed letting societies deliberate and vote, he echoed Hobbes’s warning about the vanity and ambition of orators, who he said would focus on the contest and so eclipse the possibility of instruction. He recalled that in 1789 and early in 1790 the Jacobin club had been useful and not dangerous; it had not taken votes, but only sparked discussion, leaving each individual freer and more informed as a result.

Roederer’s most significant theoretical point in these writings against politicizing societies was that they interfered with the creation of a genuine and legitimate form of “public opinion.” Public opinion should come from an aggregation of the separate opinions of individuals, individuals who were not cowed or dominated by the majority within any particular section. He echoed a passage from Rousseau’s *Social Contract* claiming that the general will would arise not from shared deliberation but

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41 Roederer, *The Spirit of the Revolution*, p. 71. The Latin passage: “In a democracy there may be as many Neros as there are orators who flatter the people. Many exist at the same time in a democracy and each day new ones rise up.” This is a slightly altered version of Hobbes’s statement in *De Cive* 10.7.

instead from each individual’s silent and spontaneous opinion.\textsuperscript{43} Voting on a particular group’s position, implicitly submitting one’s individual will to the will of the group, would interfere with the separate process of opinion formation within each individual, and therefore with the process of forming a genuine public opinion of the whole.\textsuperscript{44} The sort of representation that would emerge from the world of clubs and societies and sections was, Roederer argued, a “false image” of public opinion. The true image was the aggregate of separate individual wills.\textsuperscript{45}

Thus, in spite of the difference we have noted, Roederer and Sieyès were not so far apart. Neither supported an appeal to people as they were found in their particular communities, whether old regime corporate communities or revolutionary republican ones. In some ways the natural compromise between Sieyès and Roederer on this point seems to have been precisely the change in voting procedures that came when they collaborated on Napoleon’s \textit{coup d’état} in 1799. The hastily drafted constitution to support that coup was, in fact, submitted to the people for approval in the plebiscite of January 1800. But the citizens were no longer asked to assemble together at one time and place in their cantons. Instead, they were given longer periods of time during which they could present themselves individually at local polling places to register their votes separately. Roederer was an organizer and proponent of this new system of voting. When he defended it, he remarked not only on its

\textsuperscript{43} Roederer, \textit{Œuvres}, VII, p. 93: “L’opinion publique, qui ne peut se composer que de la majorité des opinions individuelles des citoyens, et ne peut naître que d’une manière silencieuse et spontanée, ne se trouve que dans les lumières et de la liberté. Des opinions de confréries, de sectes, de parti, parviendront sans peine à étouffer celle-ci et à l’empêcher de se produire, si des sociétés ont le droit d’émettre leur vœu avec éclat et autorité.” Cf. Rousseau, \textit{Social Contract}, book 2, chapter 3: “If, when an adequately informed people deliberate, the citizens were to have no communication among themselves, the general will would always result from the large number of small differences, and the deliberation would always be good. But when factions, partial associations at the expense of the whole, are formed, the will of each of these associations becomes general with reference to its members and particular with reference to the state. One can say, then, that there are no longer as many voters as there are men, but merely as many as there are associations” (Jean-Jacques Rousseau, \textit{The Social Contract: And Other Later Political Writings} (Cambridge: Cambridge University Press, 1997), p. 60).

\textsuperscript{44} Roederer, \textit{Œuvres}, VII, p. 21: “Une opinion collective exerce sur les opinions individuelles une sorte d’autorité contraière à la formation de l’opinion publique, qui ne peut naître que spontanément au sein de la liberté et des lumières ; des opinions de confréries, de corporation, de secte, de parti, sont substituées à l’opinion du peuple, qui, livrée à elle-même, ne se réglerait que sur l’intérêt général.”

\textsuperscript{45} Ibid., p. 20: “Elle donne à chaque individu les connaissances nécessaires pour avoir un vœu ou une opinion particulière, et que c’est de la somme des opinions particulières et individuelles que se forme l’opinion publique. L’opinion des sociétés n’en est que la fausse image, puisque l’opinion de la majorité des sociétés peut n’être pas celle de la majorité des citoyens, ni même celle de la majorité des membres de toutes ces sociétés pris en masse, attendu l’inégalité du nombre dont chacune est composée.”
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convenience, but also on the fact that it allowed individuals to be free from “the vexations of a political rival or canvassing for his vote . . . no opposition has to be endured.” In other words, individual voting freed people from local politics. As Crook notes, “The business of voting thus became an individual rather than a collective gesture, though it also became more susceptible to official rather than communal pressure as a consequence.”

For Roederer, the abstraction from social circumstance involved in this way of imagining what it was to be a “people” was a moment of liberation, an attack on the inherited, naturalized, and dominating authority of corporate entities in society. From the perspective of any ordinary part of society, however – from the perspective of a church, a family, an estate, a trade guild, a section or club, and so on – the “liberation” involved in this assertion of popular sovereignty appeared as an attack. Representative government based on this understanding of popular sovereignty seemed, from those perspectives, not a means of making government responsive to society, but rather of freeing government from society’s influence, of giving it a new autonomy and authority of its own. To picture “the people” as an entity constructed by individuals through voting was to create a powerful new authority – the state – above and independent of the regular texture of social life. Hobbes himself had never denied this. Even if he had introduced the somewhat disingenuous language of “natural” equality, he had also emphasized the artificiality of the sovereign that recognized that equality and so brought it into actual existence. He had recognized that while he often wrote of individuals as “natural persons” he was actually asking us to regard men “as if they had just emerged from the earth like mushrooms and grown up without any obligation to each other.” While the myth of the social contract suggested that we regard sovereignty as arising from agreements among individuals, the political reality evident in revolutionary France was that state sovereignty would have to come before the real existence of anything resembling a state of nature among individuals; the state is what made it possible to conceive of people as free and equal individuals. Only a sovereign authority separate from all social authorities would be able to free people from social


hierarchies and so turn simple biological and volitional individuation into a more salient political fact. “Popular sovereignty” understood as an appeal to the people through a plebiscite of individuals was therefore not the coming to power of any previously existing assemblage of people; it was the displacement of all such assemblages by a newly constructed entity given the name “the people.” The subsequent history of plebiscitary voting in France would only intensify the question of whether its institution was a moment of liberation or the enabling of a new form of despotism. 49

III

To better understand the assumptions at work in Roederer’s approach and that of his opponents, it will be helpful to turn to another controversy about electoral reform. This was the question of whether the people should elect their representatives directly or through electoral colleges. Sieyès and Roederer, for reasons already alluded to, generally preferred indirect procedures of election and appointment, in which citizens offered lists at the local level, thus selecting a smaller group of communal electors who could offer another set of lists, from which departmental officials would choose a final national list, from which representatives to the national government would be appointed. 50 On this point they ran into opposition from more democratically minded liberals such as Benjamin Constant, who objected to the distance such procedures introduced between the people and their government. Of course, introducing

49 That such a line of thinking could justify the plebiscitary approval of a dictator should be no surprise. Hobbes himself, when he refashioned the De Cive passage about auctoritas and ministerium in Leviathan, had moved in just this direction: “There is no great Common-wealth, the Soveraigny whereof is in a great Assembly, which is not, as to consultations of Peace, and Warre, and making of Laws, in the same condition, as if the Government were in a Child. . . . And as a Child has need of a Tutor, or Protector, to preserve his Person, and Authority; So also (in great Common-wealths,) the Soveraign Assembly, in all great dangers and troubles, have need of Custodes libertatis; that is of Dictators, or Protectors of their Authoritie; which are as much as Temporary Monarchs; to whom for a time, they may commit the entire exercise of their Power; and have (at the end of that time) been oftner deprived thereof, than Infant Kings, by their Protectors, Regents, or any other Tutors.” Cf. On the Citizen, 10.16 with Thomas Hobbes, Leviathan, ed. R. Tuck, rev. edn. (Cambridge: Cambridge University Press, 1996), chap. 19, p. 133. While Oliver Cromwell was not yet called “Lord Protector” when Hobbes was writing these words, at least one of Hobbes’s readers (Wallis) saw passages such as this one as evidence of his willingness to defend Cromwell, a charge that Hobbes denied. Thomas Hobbes, The English Works of Thomas Hobbes of Malmesbury, 11 vols., ed. W. Molesworth (London: John Bohn, 1840), IV, pp. 413–424.

this distance was exactly what the Hobbesian strategy followed by Roederer demanded. The people as they existed in their localities needed to demonstrate that they retained sovereign authority without straying too close to the domain of national administration for which they were, by virtue of their localism, ill suited. Pierre Rosanvallon notes that the structure of indirect elections adopted during the revolutionary period, in which the people who participated in the first and most inclusive stage of electing were not even called “electors,” served to institutionalize the difference between holding authority as citizens and playing any role in governing or administration: “The distinctive quality of the revolutionary period is to have to a great extent dissociated the register of citizenship from that of the exercise of popular power.”

Constant opposed this extent of dissociation when he objected, as he frequently did, to the system of indirect election. An associate of both Sieyès and Roederer, Constant nevertheless publicly broke with them on this point. Much of the material for his later works on political theory, especially Principles of Politics Applicable to All Representative Governments (1815), came from a manuscript he had composed earlier and never published, now known under the title Fragments d’un ouvrage abandonné sur la possibilité d’une constitution républicaine dans un grand pays. In that work we can see that he specifically had Roederer in mind when he wrote on the topic of direct elections. He wrote of the need to refute a set of “absurd arguments” that had been made in defense of aristocracy, apparently referring to a pamphlet of Roederer’s in which the latter had argued that the form of government trumpeted by Constant as new – “representative government” – was simply a form of elective aristocracy. To rebut Roederer’s concerns that direct elections would bring the tumult of mob politics, Constant drew upon his own experiences in England watching political campaigns. He admitted that he had witnessed rough-and-tumble local politics during the run-up to direct elections; he conceded the presence of clamors and violent disputes, especially among members of the lower classes. But he insisted that these happenings did not detract from the quality of the people elected and that they did not spill over into ordinary life after the election. On the day after the vote, he recounted, the same people who had been engaged in the disputes became “hardworking, docile and respectful, satisfied with having exercised their rights . . . [and] convinced of their political importance.” He condemned the passivity of the French people, attributed it to their long

51 Rosanvallon, Democracy Past and Future, p. 140.
oppression, and argued that “in order for the spirit of liberty to penetrate to a people’s soul” it was necessary to allow room for the “stormy and noisy” popular forms of participation. He insisted that “citizens are interested in their institutions only when they are called to participate in them with their votes.” Germaine de Staël also voiced support for direct elections in some of her writings, arguing that “a choice made directly by the people, and subjected to a fair qualification in point of property, is infinitely more favourable to the energy of a free government. A nation becomes attached to its representatives when it has chosen them itself: but when obliged to confine itself to the electing of those who are to elect in their turn, the artificial combination casts a damp on its interest.”

In response to the concern that people voting locally would prioritize their local or sectional interests over the general good, Constant developed several arguments. He first insisted that the reasoning was too “metaphysical.” By this he meant that it relied too heavily on the notion of generality, privileging the general interest, general legislation, and so on, assuming that the generality of a sovereign will would guarantee its justice. He denied that the general interest was wholly separate from and opposed to particular interests. “What is the general interest, if not the transactions at work among the particular interests? What is the general representation, if not the representation of all the partial interests that must compromise about objects that are theirs in common?” He argued that general and particular interests were not opposed in a zero-sum game, but instead that the former emerged only from the latter, from both sectional and individual interests as they encountered one another in the assemblies of representatives deliberating together. If one began with an overly abstract notion of unity at the top, instead of allowing a common good to emerge from the bottom, one risked imposing a uniform solution that would not be appropriate to particular situations.

53 Ibid., p. 319. It is relevant to note that Constant had read Machiavelli’s Discourses on Livy with some attentiveness.
55 Staël, Considerations, part II, chap. 22, p. 278. Staël’s use of the word “energy” in this way is striking, and seems similar to the word’s usage in Tocqueville’s writings. For other examples in Staël, see “The first quality of a nation that begins to weary of exclusive and arbitrary governments is energy. Other virtues can be only the gradual result of institutions which have lasted long enough to form a public spirit” (p. 630) and “that energy of independence which can resist everything upon earth and prostrate itself only before God” (p. 754). For the use of “energy” in Tocqueville see B. Berger, Attention Deficit Democracy: The Paradox of Civic Engagement (Princeton: Princeton University Press, 2011), chap. 4.
56 It is interesting to note that Napoleon also associated Roederer with “metaphysics.” By Roederser’s own account the emperor would tease him by greeting him with the question, “How goes metaphysics?” See Roederer, The Spirit of the Revolution, p. xvi.
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From this perspective Constant defended not only direct elections, but also federalism and, later, the importance of municipalities. Most significantly, however, he developed his own treatment of a theme that his hero, Montesquieu, had touched upon only briefly: the dangers of uniformity. Initially drafted as a part of Fragments, the passages that Constant drafted on this topic took on new importance when he included and amplified them in his anti-Napoleonic writings years later, The Spirit of Conquest and Usurpation (1814) and Principles of Politics Applicable to All Representative Governments (1815). Roederer, while working for Napoleon, had moved in a strongly social-scientific direction, and was ready to view uniformity as a mark of rationality. Similarly, for Sieyès, the most likely alternative to enlightened uniformity was “a chaos of local customs, regulations and prohibitions in each locality.” Constant answered this line of thought with a powerful defense of local habits and communities. In no sense reactionary, without a trace of patience for unjust customs and prejudices such as those that supported slavery, Constant nevertheless argued that slow processes of local social development would be, in general, more effective and ultimately more progressive than uniform regulations imposed from above. He remarked upon the greater likelihood of developing a “sentiment of liberty,” in communal settings and also noted that more robust forms of patriotism were rooted in local allegiances. His account of the spirit of the commune was not essentially different from Tocqueville’s later description of the spirit of the township in America, though it was less developed. In attempting to liberate individuals from local ties and prejudices, Constant argued, the state would be doing harm to one of its own prerequisites:

How bizarre that those who called themselves ardent friends of freedom have worked relentlessly to destroy the natural basis of patriotism, to replace it with a false passion for an abstract being, for a general idea deprived of everything which strikes the imagination and speaks to memory! How bizarre that to build an edifice, they have begun by crushing and reducing to powder all the materials they needed to use . . .

[Individuals,] detached from their native soil, with no contact with the past, living only in a swift-moving present and thrown like atoms on a monotonous plain, take no interest in a fatherland they nowhere perceive and whose totality


60 Archives Parlementaires, VIII, p. 593.
becomes indifferent to them, because their affection cannot rest on any of its parts.\textsuperscript{61}

In this passage Constant came upon the link between statist uniformity (based on the notion of a nation as an “abstract being”) and the rise of individuals as entities “detached [from one another] . . . like atoms.”\textsuperscript{62} Thus we find in one of the first liberals the complaint about atomized individualism that has so often been wielded against liberalism. Constant’s joint condemnation of statism and atomization, implicitly recognizing the link between them, was, however, only the first of his complaints against the kind of indirect popular sovereignty that Roederer introduced.

Constant’s second complaint was that establishing too great a distance between a government and its constituents, based on too abstract an understanding of what a “nation” should be, was dangerous because it opened the door to the usurpation of popular sovereignty by particular individuals or groups claiming to speak for the nation as a whole. Maistre had already noted this problem in his \textit{Considerations on France}, when he had remarked, of the 1795 constitution’s emphasis on the nation, “a wonderfully convenient word, since one makes of it whatever one wishes.”\textsuperscript{63} What was a quip in Maistre became, in Constant, a far-reaching argument about the inherent potential for abuse in any understanding of popular sovereignty that was so abstracted from actual communities.\textsuperscript{64} Constant readily conceded that the principle of popular sovereignty was not false: Where else could sovereignty lie but in the people?, he asked in chapter one of \textit{Principles of Politics}. But he thought that the notion was most useful in its negative moment, as what he called a “principle of constitutional guarantee,” which meant that it aimed “to prevent any individual from seizing the authority which belongs only to the political society as a whole.”\textsuperscript{65} Once the phrase “popular sovereignty” took on a


\textsuperscript{62} Another mention of individuals as atoms occurs in a passage arguing against the concentration of authority in the national capital: “The individuals, lost in an unnatural isolation, strangers to the place of their birth, cut off from all contact with the past, forced to live in a hurried present, scattered like atoms over an immense, flat plain, detach themselves from a fatherland which they can nowhere perceive, and whose whole becomes indifferent to them because they cannot place their affections in any of its parts” (Ibid., chap. 12, p. 255).

\textsuperscript{63} Maistre, \textit{Considerations on France}, p. 36.

\textsuperscript{64} This should not be taken to imply any general agreement between Maistre and Constant. In fact they were political enemies. Maistre’s \textit{Considerations on France} seems to have been written largely in response to Constant’s 1797 pamphlet, \textit{De la force du gouvernement actuel}. Constant replied in his 1799 work on the English revolution, \textit{De suites de la contre-révolution de 1660 en Angleterre}. See K. S. Vincent, \textit{Benjamin Constant and the Birth of French Liberalism} (New York: Palgrave Macmillan, 2011), pp. 92–93.

\textsuperscript{65} Constant, \textit{Principles of Politics}, book 1, chap. 3, p. 11.
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more positive valence – once it was thought to be a “principle of government” – it would be seized upon by all sorts of politicians ambitious for rule:

When, for example, a mistaken majority oppresses the minority or, which happens far more often, when a ferocious and noisy minority seizes the name of the majority to tyrannize society, to what does it lay claim in justification of its outrages? The sovereignty of the people, the power of society over its members.\(^{66}\)

Constant remarked that the understanding of popular sovereignty derived from Hobbes and Rousseau eschewed all external checks on authority. While Montesquieu had sought to restrain authority with the simple idea that “justice exists before the laws,” the new view of popular sovereignty insisted on the “total handing over of every aspect of our lives to the advantage of an abstract entity.” We were supposed to be reassured that this authority would not be abused by seeing that it had to be wholly \textit{general} in both its source and its application, that “each person, giving himself to everyone else, gives himself to no one.”\(^{67}\) The purifying effect of generality was meant to distinguish the sovereign and its actions from everyday policies advanced by particular people in government, and to give them special legitimacy. Constant was suspicious of the “metaphysics” of generality and regarded the distinction between sovereignty and government as “oversubtle.”\(^{68}\) He pointed out that a general concept of the popular will had no agency until it was represented by some particular person or group. As soon as it was so represented, the sovereign power lost all the qualities of generality that were supposed to prevent its being abused:

He [Rousseau] forgets that all the life-preserving properties which he confers on the abstract being he calls sovereignty, are born in the fact that this being is made up of all the separate individuals without exception. Now, as soon as the sovereign body has to use the force it possesses, that is to say, as soon as it is necessary to establish political authority, since the sovereign body cannot exercise this itself, it delegates and all its properties disappear. The action carried out in the name of all, being necessarily willy-nilly in the hands of one individual or a few people, it follows that in handing yourself over to everyone else, it is certainly not true that you are giving yourself to no one. On the contrary, it is to surrender yourself to those who act in the name of all.\(^{69}\)

The fact that sovereignty could not be exercised except through delegation meant that, in practice, any distinction between sovereignty and government was academic, “a chimera.” Any part of sovereign power that could not be exercised was not in fact a power at all, and any part that could be exercised was bound to be exercised by particular people, with all of their particularities and faults. The insistence that sovereign authority is unlimited amounted, in practice, to a justification of unlimited governmental authority. Constant located in Hobbes the basic argument that “democracy is an absolute sovereignty placed in the hands of everyone” and argued that French authors such as Molé had merely “reproduced” Hobbes’s arguments, though with less profundity. The basic error in this whole line of thinking, he asserted, was to imagine that one could give unlimited authority to any entity, even a fictional one, without helping to justify arbitrary rule by particular people claiming to represent that entity.\(^{70}\)

One might think that well-structured plebiscites could avoid this problem by fixing one authorized means of determining the popular will, thus closing the door on dubious interpretations of public opinion by its self-appointed prophets. However, plebiscites raised problems of their own. First, of course, there was the simple matter of fraud, which seems to have been widespread and quite significant during Napoleon’s rule.\(^{71}\) Second, plebiscites could be, and were, implemented without accompanying guarantees for freedom of association, opposition political parties, and a free press. In fact, such guarantees were often decried as contributors to the distortion of popular opinion for reasons similar to the ones Roederer had raised against clubs. In the absence of an active civil society, the results of plebiscites gave to “public opinion” a uniformity that did not do justice to the actual variety and substance of opinions in the public.\(^{72}\) And, when police power was in evidence, the apparently free votes of a majority reflected little more than the desires of those who

\(^{70}\) Ibid., chaps. 5–8. \(^{71}\) Crook, “The Plebiscite on the Empire.”

\(^{72}\) Hannah Arendt captured the spirit of this objection to plebiscites: “Opinion was discovered by both the French and American revolutions, but only the latter . . . knew how to build a lasting institution for the formation of public views into the very structure of the republic. What the alternative was, we know only too well from the course of the French Revolution and of those that followed it. In all these instances, the chaos of unrepresented and unpurified opinions, because there existed no medium to pass them through, crystalized into a variety of conflicting mass sentiments under the pressure of emergency, waiting for a ‘strong man’ to mould them into a unanimous ‘public opinion,’ which spelled death to all opinions. In actual fact, the alternative was the plebiscite, the only institution which corresponds closely to the unbridled rule of public opinion; and just as public opinion is the death of opinions, the plebiscite puts an end to the citizen’s right to vote, to choose and to control their government” (H. Arendt, \textit{On Revolution} (New York: Penguin Books, 1963), p. 228).
controlled the power. When Napoleon restricted discussion and the press, noticed Constant, “the nation might have been stunned by that silence.” Napoleon’s response? “He provided, extorted or paid for acclamation which sounded like the national voice.”

Constant thus saw in Napoleon’s use of plebiscites the seed of a wholly new form of despotism, one that penetrated more deeply into people’s lives precisely because it rested on “the counterfeiting of liberty” in voting. Napoleon’s despotism was worse than hereditary rule, Constant argued, because the usurper felt compelled to justify his position and so forced the people to express their support for him. “There is no limit to the tyranny that seeks to exact all the signs of consent,” he observed. As Melvin Richter has shown, this analysis was part of the development of a new understanding of illegitimacy in nineteenth-century France, one that culminated in the identification of a type of regime that was called, alternately, “democratic despotism” or “imperialism” or “Caesarism” or, once it had been repeated by Napoleon III, “Bonapartism.” Melvin Richter defines the type in this way: “a form of military usurpation historically novel because it based its legitimacy upon plebiscitary approval, and hence popular sovereignty as proclaimed during the French Revolution.” When the issue arose again later in the century, Tocqueville repeated the diagnosis in a letter describing the rise of Louis Napoleon to an American. Everyone saw, he wrote, “that in the name of the sovereignty of the nation all public liberties have been destroyed, that the appearance of a popular election has served to establish a despotism which is more absolute than any of those which have appeared in France before.”

For the argument of this chapter, the most relevant and theoretical point is that this kind of election fraud and manufacturing of consent were made possible, and perhaps even likely, by the abstractness of the conception of “the people” that plebiscites institutionalized. When the voice of the people was conceived as an aggregate number of votes in support of a leader, rather than more substantive expressions of policy by coherent groups with identifiable perspectives and interests, the precise meaning of any electoral outcome was harder to identify; debates about what an election offered a “mandate” for allowed charismatic leaders

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73 Constant, Political Writings, p. 163.
to more easily present themselves as the agents of popular sovereignty. As Istvan Hont points out, the conception of the people as an imagined social contract among hypothesized individuals “undercut . . . traditional notions of popular sovereignty. In ‘pre-state’ idioms of popular government, it was the actual flesh-and-blood commonality of the people that controlled ultimate decision making . . . The idea of the ‘state’ destroyed the theory and practice of direct popular legitimation, as upheld previously by republicans and monarchomachs.” From Constant’s liberal democratic perspective, Roederer’s overly “metaphysical” understanding of what qualified a people to be a legitimate sovereign – an understanding rooted in Hobbes’s and Rousseau’s notions of the difference between popular sovereignty and popular government or administration – had opened the door to the rejection of local practices of republican politics and to the abuse of democratic language and institutions, both central features of Napoleonic despotism.

IV

Even as liberals such as Constant were suggesting that a Hobbesian interpretation of democracy could fuel plebiscitary despotism, they themselves were being attacked for helping to defend other forms of undemocratic politics. In particular, liberals were often described as “aristocratic,” a label that has been revived by recent commentators. There is truth in the label, and not just because writers such as de Staël and de Tocqueville were associated with aristocratic families and harbored aristocratic sentiments. The crucial point is that the liberals adopted patterns of argument against the state very similar to those that nobles had used to defend themselves against the Crown. If we were to accept that the state was the best or only way to enact popular sovereignty, then these liberal and anti-statist arguments would indeed be anti-democratic. The best response that can be made on behalf of these liberals from a democratic perspective, therefore, is that they did not accept the notion that the state was a desirable way to institutionalize popular sovereignty. As we shall now see, some liberals sought to escape this frame of thought by showing that a different kind of popular self-rule was possible, within the confines of the state but not solely through its mediation; they sought to show how a society transformed by the state could produce forms of popular self-rule that did not work through the consolidated agency of the state.

77 Hont, “Permanent Crisis of a Divided Mankind,” p. 465.
The aristocratic argument that the post-revolutionary liberals took up had its *locus classicus* in Montesquieu’s *The Spirit of the Laws*. Montesquieu had advanced a powerful case against the centralization of authority in the royal court. What distinguished a legitimate monarch from a despot, he had famously argued, was that legitimate monarchies did not try to eliminate the intermediary bodies between them and the people, especially the Church and the nobles. As he stipulated near the beginning of his work, “Intermediate, subordinate, and dependent powers constitute the nature of monarchical government, that is, of the government in which one alone governs by fundamental laws.” Montesquieu’s account of the separation of powers and checks and balances in England reflected the same sympathy for the social world and its authorities, in that it granted distinct places in government to representatives of the various corporate parts of society. Montesquieu had gone so far as to argue that monarchies that incorporated various social authorities into government through complex institutional checks, including the famous separation of powers, would protect freedom better than republics that had centralized authority in one council. “In the Italian republics,” he wrote, “where the three powers are united, there is less liberty than in our monarchies.”

After the Revolution, habits of resisting the centralization of power in a modernizing monarchy were transferred easily enough into the campaign against the administrative centralization of a modernizing representative state. In making his case for a plurality of authorities, Montesquieu had asked his readers to imagine that they found themselves on the wrong side of the monarchy, and unjustly. To whom would they turn for help, if the monarch were the only authority in the land? The nobility offered at least a source of resistance to the Crown. Constant, in his manuscript on the possibility of a republican government in a large state, had followed the spirit of Montesquieu’s original point, remarking that if there had to be a king, it would be better to have a nobility too, “because where a sole individual governs, it is desirable that there are other powerful men to stand up to him.” It is interesting to notice that when Constant briefly served under Napoleon during the Hundred Days of his return, he even suggested establishing a new, hereditary, nobility—a suggestion he later admitted had been ill-considered. The impulse, however fleeting, reveals a deep concern about allowing any centralized authority to...

81 Constant, *Fragments D’un Ouvrage Abandonné*, p. 196.
be unchecked. While Constant agreed with revolutionary authors who found Montesquieu’s approach too closely linked to feudalism, he found a way to adapt the argument to republican contexts. He argued that directly elected local representatives could offer the kind of resistance to centralized state power that nobles had offered. The representatives’ authority no longer came from inherited privilege; it came from their “inviolable credentials for opposing the government,” i.e. from the fact of having been directly elected.\footnote{Constant, \textit{Principles of Politics}, book 15, chap. 5, p. 332. He noted that he was adapting old regime arguments in other ways too, e.g.: “The benefits of feudalism have sometimes been praised for keeping the lord in the midst of his vassals and sharing out the opulence equally between all the parts of the territory. Popular election has the same desirable effect without entailing the same abuses” (p. 330).} The concrete allegiances of local communal life also created nodes of authority that could resist centralization, he observed: “The interests and memories that arise from local customs contain a germ of resistance that authority is reluctant to tolerate and that it is anxious to eradicate. It can deal more successfully with individuals; it rolls its heavy body effortlessly over them as if they were sand.”\footnote{Benjamin Constant, \textit{The Spirit of Conquest}, chapter 13 in \textit{Political Writings}, p. 74.} Constant thus suggested that healthy local politics, especially in cities, could recreate the benefits of feudal social plurality without reinstituting its unjust hierarchies and dominations.\footnote{Jacob Levy sums up Constant’s stance well: “Constant’s constitutional project was one of trying to simulate or recreate the benefits of a Montesquieuian ancient constitution in an age when that constitution’s social bases were lost and anachronistic” (Levy, “Montesquieu’s Constitutional Legacies,” p. 130).}

It is not hard to see that Alexis de Tocqueville further adapted the same argument in \textit{Democracy in America}. In speaking of popular sovereignty, Tocqueville depicted the danger of its domination in the Montesquieuian way, asking to whom an individual could turn if there were no authority other than that of the majority.\footnote{Alexis de Tocqueville, \textit{Democracy in America}, trans. H. C. Mansfield and D. Winthrop (Chicago: University of Chicago Press, 2002), 1.2.7, p. 241: “When a man or party suffers from an injustice in the United States, whom do you want to address? Public opinion? that is what forms the majority; the legislative body? it represents the majority and obeys it blindly; the executive power? it is named by the majority and serves as its passive instrument; the public forces? the public forces are nothing other than the majority in arms; the jury? the jury is the majority vested with the right to pronounce decrees: in certain states, the judges themselves are elected by the majority. Therefore, however iniquitous or unreasonable is the measure that strikes you, you must submit to it.”} While he was somewhat interested in constitutional issues, he did not have as much faith as Constant did in the institutional arrangements of federalism and checks and balances to resist what he frankly called a “tyranny of the majority.” Instead, he pointed to other locations of informal social authority – to lawyers, with their “aristocratic character,” to individual rights which are “taken from...
the English aristocracy,” and to religion, which is “the most precious inheritance from aristocratic centuries.” In each of these discussions the word “aristocratic” designates a source of possible resistance to the centralization of power. There, in brief, is the case for Tocqueville’s “aristocratic” liberalism.

To many revolutionaries, arguments such as these seemed vestiges of the old regime and obstacles to its downfall. During the Revolution Montesquieu had been denounced as a “Gothic” or “feudal” thinker and the English system he praised had been regarded as, at best, a noble effort at republicanism that had stalled halfway through. Montesquieu’s arguments, and the versions of them we find in Constant, Tocqueville, and other liberals, seemed merely a return to the apparent justifications of the old regime that could be found in Grotius’s and Pufendorf’s sympathetic descriptions of “society,” and in the compilations of their writings that circulated so widely. The state, after all, was meant to be the agent of revolutionary change, and society remained the realm of aristocratic privilege and religious hierarchy. To argue against the state in the name of society, as liberals often did, could therefore seem to be a very familiar form of aristocratic self-justification. Roederer, for example, had argued against the view that the people needed intermediary bodies to protect them, preferring to put his faith in the enlightenment and democratic sympathies of the central authorities. And if revolutionaries viewed the liberal arguments as old-fashioned, so too did many legitimists; Tocqueville’s Democracy in America received a warm reaction from some conservatives who focused on its restatement of Montesquieuian themes.

What both revolutionaries and conservatives who saw only the aristocratic aspect of the liberals missed was the fact that Constant and Tocqueville had reconciled themselves to, and in some ways actively welcomed, the coming of democracy. Tocqueville, the less enthusiastic of the two, famously regarded democratization as a “providential fact.” His goal was not to return to aristocratic times, nor even to create a government that mixed democratic and aristocratic elements; he described the idea of mixed government as a “chimera.” Instead of returning to prerevolutionary politics, he aimed to find a new means of preventing

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87 Ibid., 1.2.8, p. 254; 2.4.4, p. 648; 2.2.15, p. 519.
88 The case for liberalism’s aristocratic sources is much richer. See Jaume, Tocqueville.
90 Roederer, Gouvern., VII, p. 20.
91 Jaume, Tocqueville, pp. 15 ff.
92 Tocqueville, Democracy in America, pp. 6–7.
93 Ibid., 1.2.7, p. 240.
despotism that was appropriate for a democratic age. This is what he meant when he wrote, in a one-sentence paragraph in the introduction to *Democracy in America*, that, “a new political science is needed for a world altogether new.”

What Tocqueville claimed to find in America was a situation in which defending “society” did not necessarily mean defending the dominations and hierarchies of feudal life, nor even defending all the new hierarchies of bourgeois life. “Society” was no longer synonymous with “inequality.” Tocqueville’s entire social science depended on that fact, which is why he announced early on that he had found in America a “democratic social state.” He understood a social state to be the “first cause of most of the laws, customs, and ideas that regulate the conduct of nations.” Sciences understand first causes, and he announced that to understand America it was above all necessary to see that “the social state of the Americans is eminently democratic” and that “not even the seed of aristocracy was ever deposited” in New England. The phrase “social state” (l’État social) in Tocqueville’s writings was not new; Roederer, for instance, had used it in his translation of Hobbes’s *De Cive* to translate societas, the social world in which people found themselves, and Lucien Jaume has found the phrase in Constant and Guizot, among others. It was almost unheard of, however, to speak of a “democratic” social state. Tocqueville’s claim that a general “equality of conditions” could be found in American society, and that this equality had emerged developmentally and not only through the revolutionary action of a state, was the crucial and distinctive part of his argument. This is what allowed a defense of society to escape the aristocratic register.

To fully escape the dilemmas about popular sovereignty that had mired Roederer and others in difficulties, however, it was necessary not only to show that equality did not need to be constantly reproduced by a centralized power, but also that democratic self-rule did not always, or even primarily, manifest itself through the consolidated agency of a sovereign representative. In the first volume of *Democracy in America* Tocqueville placed great emphasis on both the religious and associational practices he had seen in New England towns. These two sets of practices had been indissolubly linked together in the Puritan settlements of colonial America, which Tocqueville claimed represented the “point of departure” for understanding American democracy and, even more, constituted “the

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95 Tocqueville, *Democracy in America*, 1.1.5, p. 45.
96 Ibid., 1.1.3, pp. 45–46.
password to the great social enigma that the United States presents to
the world in our day.” He was struck by the fact that citizens of colonial
Connecticut had legislated for themselves but that they had done so using
religious texts and authorities. This, he thought, was a “strange idea.”

The strangeness was that the Americans had found a way to combine a
social authority (religion) with the political authority of the people without
inscribing the social authority into government and thereby politicizing it. Tocqueville’s complicated account of American religious authority
aimed to show that ordinary citizens wielded authority over themselves
directly. They gave the name of “religion” to this self-regulation, and
even gave credit to religious texts and leaders, but in fact their practice
revealed that they themselves were the active source of restraint on them-
selves. “If one looks very closely,” Tocqueville wrote, “one will see that
religion itself reigns there much less as revealed doctrine than as common
opinion.”

No church had political authority, yet religion functioned as an informal “political institution.” For Tocqueville religion in America was not, as commentators sometimes suggest, an authority wholly separate from majority rule; nor was it always a check upon it. Instead, religion in America was a manifestation of the way that the people exercised a kind of sovereignty over themselves within civil society and through its internal dynamics, rather than through an external tool such as the state.

The other famous location of civil self-regulation in Tocqueville’s
account was associational life. Associations lived entirely outside the
constitutionally mandated structures of government in America; they were voluntary; they came with no obviously hierarchical principles of authority; and yet they offered, Tocqueville thought, some of the benefits that the nobles’ secondary bodies had offered in the old regime. They differentiated the otherwise homogeneous landscape of social life into a pluralistic world where someone oppressed by one group or by the state might find refuge and voice opposition. Because they were constituted in a more democratic fashion, however, associations also offered training in democratic habits of mind and action; they offered training in persuasion. Unlike political associations in Europe, which were viewed as “weapons

98 Tocqueville, Democracy in America, 1.1.2, p. 104.
99 Ibid., 2.1.2, p. 404.
100 Ibid., 1.2.9, pp. 301–302.
101 Garsten, “Seeing ‘Not Differently, but Further.’” See P. Manent, Tocqueville and the
102 Tocqueville, Democracy in America, 1.2.4, pp. 183–184: “In aristocratic nations, secondary bodies form natural associations that halt abuses of power. In countries where such associations do not exist, if particular persons cannot create artificially and temporarily something that resembles them, I no longer perceive a dike of any sort against tyranny.”
of war” through which a group aimed to make its claim to speak for the people as a whole and so gain sovereign authority, associations in America implicitly conceded that they did not speak for the whole; they aimed not to supplant or speak for the majority, but to persuade it. And all of this occurred in a regime of unlimited freedom of association, without the regulations on societies that Roederer had thought necessary. This was possible in America because universal suffrage made it implausible for associations to pretend they represented the national will better than the government, and because the relative homogeneity of public opinion left no group so alienated that they could not imagine persuading others. In Tocqueville’s account, associations demonstrated that corporate entities in society could offer a check on the state without standing in the way of democratization. American associations, like American religions, showed that “society” was not always a regressive or aristocratic force.103

Tocqueville thought the civil self-regulation evident in religion, in towns, and in associational life had helped to make possible an astonishing administrative decentralization – an apparent absence of the state in everyday life:

What most strikes the European who travels through the United States is the absence of what is called among us government or administration. In America you see written laws; you perceive their daily execution; everything moves around you and nowhere do you discover the motor. The hand that directs the social machine vanishes at each instant . . .

The administrative power of the United States offers in its constitution nothing central or hierarchical; that is what causes one not to perceive it. Power exists, but one does not know where to find its representative . . .

Thus nowhere does there exist a center at which the spokes of administrative power converge.104

Tocqueville went on to raise and answer the questions that he thought any European would have about how such a system works: how are officials held accountable on matters of general concern? (Americans use a combination of electoral accountability from below and judicial authority from the county level, eschewing administrative oversight from the center.) Is there enough authority in the central government to allow the pursuit of a common good? (There is very strong “governmental centralization” even though there is no “administrative centralization,” and because the government represents the majority, there is no recognized check on it.) Isn’t it the case that a rationalized and centralized government can administer localities more effectively and more justly than localities could manage for themselves? (Not when the people are

103 Ibid., 1.2.4, pp. 184–186. 104 Ibid., 1.1.5, pp. 67–69.
“enlightened, awakened to their interests, and habituated to thinking about them as they are in America.”)\textsuperscript{105}

If a Hobbesian understanding of popular sovereignty conceived of the people as “sleeping” during the time they allowed representatives to administer or govern for them, Tocqueville’s understanding required a people very much awake, as he thought the Americans were.\textsuperscript{106} He admitted to not knowing how to reproduce that wakefulness in France: “It is difficult to point out in a sure manner the means of awakening a people that sleeps,” he lamented.\textsuperscript{107} He thought the French were passive and despot-prone, in part because they had resorted to the alienated agency of the state to enact their effort at holding sovereignty. Americans, in contrast, did not need to create an artificial authority built upon an abstraction from concrete social life in order to free themselves from social inequality or find a kind of democratic agency. That freedom and agency had come more or less on its own, the product of a seven-hundred year process of historical development and the unique geographical and historical position of the country, and it was preserved in habits and mores. When Tocqueville stated, in his introduction to Democracy in America, that “a great democratic revolution is taking place among us,” he chose his verb carefully: He did not say, “we are in the midst of accomplishing a great democratic revolution.” He thus went one step beyond Constant in his estimation of civil society’s potential for self-regulation. In Constant’s thought, society could be a lively source of political opinion but did not take on the function of actually governing until it somehow occupied state or municipal institutions, becoming what he referred to as “the social authority.” This is why Constant granted more agency to the revolutionaries than Tocqueville did. For Tocqueville, the revolution had come, and the task of politics now was not to accomplish or consolidate it but to grapple with its implications.

Among those implications was the actualization in real life of the atomized individualism that social contract theory had merely hypothesized, an individualism that Tocqueville, like Constant, thought too hospitable to despotic leaders and docile citizens. The structure of political life should aim to balance against, rather than institutionalize, this individualism. A single representation of the nation in government could not do that:

America’s lawmakers did not believe that, to cure a malady so natural to the social body in democratic times and so fatal, it was enough to accord to the nation as a whole a representation of itself; they thought that, in addition, it was fitting to

\textsuperscript{105} Ibid., 1.1.5, pp. 69–92.
\textsuperscript{107} Tocqueville, Democracy in America, 1.1.5, p. 86.
give political life to each portion of the territory in order to multiply infinitely the occasions for citizens to act together and to make them feel every day that they depend on one another.108

The statist model of popular sovereignty relied on the identification of oneself with the national vote or the leaders and policies selected by it. Tocqueville insisted that the classic problem of republicanism – to bring citizens to identify the public good as their own – was better addressed by involving as many citizens as possible in “the administration of small affairs.”109 Voting in elections to demonstrate one’s authority was not enough; involvement in administration (ministerium) was necessary too.

Tocqueville never suggested that America was not a state or that it should not be one. The mirage of social self-sufficiency never tempted him as it would tempt Karl Marx, who radicalized the liberals’ argument for limiting the state into a deeper critique of its very existence.110 Tocqueville did worry that the tendency of democratic life would make the centralization of administrative authority attractive, perhaps too attractive ultimately for even the Americans to resist. For the time being, however, he thought he spied practices that could, if interpreted correctly, challenge the tendency to always identify popular sovereignty with state authority. The example of America suggested that a modern state could be structured in such a way as to incorporate local practices of self-rule in society. In a letter to his father from America about American towns, he described the achievement he thought he had found: “that is how they made the republic practical. Individual ambition finds within reach everywhere a small focus where it can act without danger to the state.”111

That, in a nutshell, was the possibility that Hobbes and his followers had denied. American social–political life demonstrated, the young Tocqueville hoped, that self-interest, ambition, and pride could be channelled in productive ways, reinforcing civic habits of mind and action rather than always threatening factional conflict and encouraging demagoguery in the way that Roederer had feared. The crucial implication, and the one that the whole of Democracy in America was originally meant to illustrate, was that the concentration of authority in a unitary state structure justified by plebiscite was not the only means by which to bring democracy into being in a large territory, and not the only form that democracy could take there. Tocqueville’s liberal vision was not to replace the state with a self-governing society, but to envision the state’s

role as preserving and facilitating more substantive, local, and concrete forms of self-rule than could be enacted through the voting mechanisms of large-scale plebiscitary democracy.

Of course it is an open question whether the democratic practices that Tocqueville thought he saw in America had come about quite as easily as he suggested; he did not write much about the American Revolution. Nor did he emphasize the role that the state would have to play in continually combating the tendency of society to generate new social inequalities; he may have overestimated the strength of society’s movement toward equality. He was a young man when he wrote the first volume, and he had set out for America looking for a way out of the fruitless dichotomies of French politics; by 1840, in the second volume, his focus had already shifted toward the fragility of American democracy. And even if his description of America was more or less accurate, it is another open question whether the practices he saw have lasted, or could last, beyond the particular historical moment of Andrew Jackson’s America, a populist period under a weak and decentralized national government, a government that would soon find it could not survive except through a bloody assertion of its sovereignty over the South and a subsequent explosion of centralized administration. A generation earlier, Maistre had responded to writers inspired by America with a dismissively short paragraph: “America is often cited,” he wrote. “I know of nothing so provoking as the praises bestowed on this babe-in-arms. Let it grow.” Whether America’s undeniable growth away from the society and practices that Tocqueville admired indicates a fundamental flaw in the very idea of a democratic social state, or whether it is merely the product of contingencies unrelated to such theoretical questions, is a matter very much worth investigating. Constant and Tocqueville sought an understanding of popular self-rule that did not rely so heavily on the “mortal God” the Hobbesians had tried to construct. They were trying, in their theories of civil society, to find practices that could counteract the drift into despotism and docility that was, and remains, the most obvious danger in any Hobbesian account of democratic sovereignty.

112 Maistre, Considerations on France, p. 35.