

## The Fact of Fiction

### *Popular Sovereignty as Belief and Reality*

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The notion of popular sovereignty is fraught with difficulty. It involves two concepts, each of which depends on assumptions that are hard to substantiate. The first is that there is *a* people, and the second is that that people is sovereign, that is, it has no superior. These difficulties are evident in the language one encounters in reflections on popular sovereignty, where terms such as “story,” “myth,” “creed,” “fiction,” and “make-believe” are not uncommon. Thus, Hume considered it a “wonder” how easily the many submit to the rule of the few, before declaring, “’Tis therefore on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular.”<sup>1</sup> Hume’s observation was, of course, not confined to his own time, but was meant to be universal. In the middle of the twentieth century, Hans Kohn called nationalism “a state of mind.”<sup>2</sup> In the late 1980s, Edmund S. Morgan, who began his study of the rise of popular sovereignty by quoting Hume, argued that “[t]he success of government [...] requires the acceptance of fictions, requires the willing suspension of disbelief, requires us to believe that the emperor is clothed even though we can see that he is not.”<sup>3</sup> Historian David Kennedy opened the 2017 film *American Creed* by stating that

The American story is all about individual aspiration and achievement. This is the land of absolutely unlimited opportunity. We can become whoever we want to be, we can go wherever we want to go. It’s part of our national myth. Indeed, no society can cohere over time if it doesn’t possess some myths that people believe in common.<sup>4</sup>

<sup>1</sup> Hume, “Of the First Principles,” quoted in Morgan, *Inventing the People*, 13.

<sup>2</sup> Kohn, *Nationalism*, 9.

<sup>3</sup> Morgan, *Inventing the People*, 13.

<sup>4</sup> *American Creed*.

In the same film, Condoleezza Rice added, “That’s what holds us together: this great American creed, that it doesn’t matter where you came from; it matters where you’re going.”<sup>5</sup> Even more recently, philosopher Kwame Anthony Appiah entitled his latest musings on identity *The Lies that Bind*.<sup>6</sup> These terms are unmistakable: life in common relies on belief.

Tocqueville captured this fact in a rich and oft-discussed passage, in *Democracy in America*, in which he argued,

The principle of the sovereignty of the people, which is always more or less at the foundation of almost all human institutions, ordinarily dwells there almost buried. One obeys it without recognizing it, or if sometimes it happens to be brought out in broad daylight for a moment, one soon hastens to plunge it back into the darkness of the sanctuary.

National will is one of the terms that intriguers in all times and despots in all ages have most largely abused. Some have seen its expression in the bought suffrage of a few agents of power; others in the votes of an interested or fearful minority; there are even some who have discovered it fully expressed in the silence of peoples, and who have thought that from the fact of obedience arises the right to command.<sup>7</sup>

There is a lot one could say about this passage, but I wish to single out a couple of issues of particular significance. First among them is Tocqueville’s assertion that the principle of the sovereignty of the people underlies virtually all human institutions. On a basic level this assertion is simply true. Where political constitutions are concerned, and as the second paragraph makes clear, all constitutions – monarchies included – require the acquiescence of the people they rule over in order to function. Where nonpolitical institutions are concerned, one might understand as “the people” the constituents of the group. Thus, for instance, the members of a family have to acquiesce to the rule of the mother if she is to be able to run the show. Tocqueville’s distinction between the *fact* of obedience and *right* to command is also important. Not all apparent obedience gives rise to a right to command. Indeed, most things that appear like tacit consent are in fact not. I am thus using the term “acquiescence” on purpose, to cover a category broader than tacit consent alone, since the absence of opposition can be due to a number of other reasons, such as inability to overcome the barriers to collective action, itself the result either of successful suppression or of an incapacity to organize.

But why should this principle be “ordinarily [...] almost buried?” In part, I think it is because of our frequent inability to determine whether a certain multitude is actually consenting to a particular rule (right) or simply putting up with it for whatever reason (fact). More importantly, if all forms of rule do have their foundations in the principle of the sovereignty of the people, not all forms of rule want their constituents to remember that fact.

<sup>5</sup> *American Creed*.

<sup>6</sup> Appiah, *The Lies that Bind*.

<sup>7</sup> Tocqueville, *Democracy in America* [Mansfield and Winthrop edition], I.i.4.

During one of the most crucial moments in the evolution of popular sovereignty, in the early modern period, monarchs and their supporters had to deal with the question of the origin of political power and the role of the people in that process. Was it the people who conferred power upon kings and, if so, did that mean that kings were accountable to the people? In dealing with these questions, opponents of popular sovereignty sought to keep it buried, as much as possible. Even its friends, however, will be wary of the dangers inherent in activating it too often. Before it was rehabilitated in the last century and a half, roughly, the idea of the people was not a comforting one. Rather than signifying those immediately affected by the government and, thus, those who should rightfully determine its form and policies, the people usually evoked images of instability, disorder, and irrationality. It was more readily associated with the *vulgus* than the *populus*. Thus, even those interested in the well-being of the people have been wary of the inconstancy of the masses and the volatility that might result from truly popular sovereignty. Most famously, these concerns pervade the *Federalist Papers*. Reactions to recent referenda, such as those in Greece, on the Eurozone (2015), and, in particular, in the United Kingdom, on membership in the European Union (2016), reveal that contemporary democracies are far from immune to these concerns. Even under the best of circumstances, however, the need to get things done will require frequent suspensions of the sovereignty of the people in all but name. If “the people” refers to the vast majority of those living within a certain geographical space<sup>8</sup> and under common laws, then the progression from deliberation to action will involve smaller and smaller numbers of agents, so that if the entire people made a sovereign decision, its manifestation in a specific policy would be the result of ever smaller numbers of individuals charged with designing, implementing, and executing it. Thus, in his *Social Contract*, Rousseau distinguished between a body politic that is active, which he called “*Sovereign*,” and one that is passive, which he called “*State*.”<sup>9</sup> Using these terms, we could say that a frequently active people, that is, one exercising its sovereignty, would hamstring the state. At some point, deliberation has to end. There is, of course, immense value in reserving the right to return to and reexamine any decision, but that is the reason why in all constitutions, even the most popular, the principle of the sovereignty of the people spends some time buried.

Tocqueville’s passage raises a further set of issues: Of all the places to bury and rebury the principle of popular sovereignty, why the shadowy part of the sanctuary? This image is especially felicitous, for it captures simultaneously the theological dimension of sovereignty in general and of popular sovereignty in particular, as well as the fact that both components of the concept are shrouded in mystery, not simply in the sense that they are hard to understand or explain, but also insofar as they *defy* human understanding. Popular sovereignty is thus

<sup>8</sup> On the territorial dimensions of popular sovereignty, see Longo’s Chapter 10 in this volume.

<sup>9</sup> Rousseau, “Of the Social Contract,” I.6.

not only akin to the mysteries of faith, but also – frequently – directly tied to the divine.<sup>10</sup> For instance, King James VI of Scotland and I of England and Sir Robert Filmer, to invoke but two prominent theorists of Divine Right, argued that kings received their authority directly from God. Thus, the sovereign did not only rule by Divine Right, but as God’s lieutenant on Earth he also ruled over his subjects as God rules over human beings.<sup>11</sup> Some of his powers were discussed openly, but the imagination was free to range over how far those extended and what God might do to those who opposed His lieutenant. This connection was by no means limited to Divine Right theories. Jean Bodin, whose *Les six livres de la république* (1576) James VI owned and had read, had argued for absolute and perpetual power in accordance with the precepts of natural and divine law,<sup>12</sup> a position shared by Thomas Hobbes, who as we shall see paved the way for popular sovereignty by positing a social contract to which each individual was a party.<sup>13</sup> Indeed, fully cognizant of the significance and implications of this term, both theological and otherwise, Hobbes described that contract as a “covenant.”<sup>14</sup> Building on developments that can be traced back to Hobbes’s covenant, the Declaration of Independence asserted equality among human beings on account of their having been “endowed by their Creator with certain unalienable Rights.”<sup>15</sup> At the other end of the chronological spectrum, the theological dimensions of sovereignty are apparent in every major creation epic or story, from Gilgamesh and the Book of Genesis, to Hesiod’s *Theogony*. Hesiod told of how the titans and gods emerged, how human beings were made, of how power traveled from one stratum to the next until government arose among human beings.<sup>16</sup> Like the God of Bodin and James I, Hesiod and Homer’s gods never let go of their mortals; they remained directly involved in their affairs. Whereas Bodin’s God crafted man in His image, however, Hesiod’s gods were anthropomorphic to such an extent as to notoriously cause Socrates to ban poems about them from his city-in-speech, for lying about the divine.

<sup>10</sup> It is important to note here that in raising this point I am not paving the ground for an engagement with Schmitt’s *Political Theology*. In fact, one of the implications of the following sketch is that there is nothing new in Schmitt’s account of the theological aspects of sovereignty. Indeed, Schmitt’s own comment on his invocation of Bodin was “[t]hese are by no means new theses.” Schmitt, *Political Theology*, 8.

<sup>11</sup> King James VI, “The Trve Lawe,” 76, 84.

<sup>12</sup> In the famous Chapter 8 of Book I, Bodin declares, that the sovereign prince “who must give an account only to God,” and later adds that “such power is absolute and sovereign: because it has no other condition than, nor is it commanded by anything other than the law of God and of nature.” Bodin, *Les six livres*, 127, 130.

<sup>13</sup> Bodin, *Les six livres*, I.8. Bodin returns to this theme throughout, but see esp. VI.6; cf. Hobbes, *Leviathan* [1651], esp. Ch. 31. All subsequent references to *Leviathan* in this chapter will be by chapter and page numbers of the 1651 edition.

<sup>14</sup> Hobbes, *Leviathan*, 17: 87.

<sup>15</sup> “Declaration of Independence.”

<sup>16</sup> See Evrigenis, “Sovereignty, Rebellion, and Golden Age.”

In what follows, I wish to focus on three critical moments in the evolution of the concepts of the people and of sovereignty: Plato's "Noble Lie," Hobbes's body politic, and Rousseau's sovereign people. I argue that the first identified the problem and offered a top-down solution, the second complemented that with a bottom-up approach, and the third used the other two to reverse the position of rulers and the people, thereby giving us a distinctly modern conception of popular sovereignty. A truly noble lie is one that skirts the literal truth for the sake of achieving a truly good end. In Plato's case, its purpose was to get the parts to work for a whole that is ultimately good for them, but which they cannot see. That noble lie, however, was predicated on the imposition and enforcement of a story from above. Sensing the need to satisfy the growing demand for agency among the people, Hobbes enlisted them and bound them in the social contract. On that foundation, Rousseau proclaimed the people sovereign and set the stage for a complete reversal, in which those in government are considered "servants" of the people. This type of comparison is especially useful in highlighting major shifts and differences and, thus, outlining the emergence and evolution of the concepts in question. At the same time, it reveals the degree to which the essential problems recur again and again, and that understanding their history is not an antiquarian exercise but an essential step to dealing with them in the present and future.

#### A NOBLE LIE

Socrates develops his city-in-speech in Plato's *Republic*. That work consists of Socrates' recollection of a long discussion whose aim was to discover the meaning of justice. Early on in that process the conversation diverges to consider "a far bigger thing," namely, Thrasymachus' assertion that the unjust man lives a "mightier and freer" life than the just. Socrates gains the upper hand over Thrasymachus, but rather than celebrating his apparent victory, he declares the inquiry a failure because the interlocutors debated the relative merits of justice and injustice without having defined them. To begin anew, Socrates proposes an analogy: If justice is a single thing with different manifestations, then perhaps it might be easier to look for it in something bigger than an individual, a city. They could then take what they learned about justice there and return to the individual, in order to pronounce on whether justice is preferable to injustice. Aided primarily by Plato's brother, Glaucon, Socrates thus builds a city-in-speech based on the principle that individuals are not self-sufficient and that each individual should devote all of his energies to the task he is suited to by nature, sharing the surplus with his fellow citizens, because no one can do everything (369e–70c). The division of labor that shapes the city quickly leads to the need for more individuals devoted to different tasks. This expansion, in turn, leads to the need for more land and, thus, the need for an army to seize and defend it (373d). Socrates calls this army the guardians, and notes that their education will be crucial, since it must strike a

balance between aggression (to defend the city) and moderation (to allow the guardians to distinguish their fellow citizens from their enemies, 375–76; cf. 410). To achieve this balance, the founders of this city must supervise its doctrines. They must discourage tales of weakness in the face of death, stories that malign the gods, and lies. The only exception to the last category is to lies told by the rulers “for the benefit of the city” (389b).

A division of the guardians into one group that should rule and another that should enforce the commands of the rulers and defend the city yields three classes: the guardians, the auxiliaries, and the craftsmen. Anticipating challenges to the city’s cohesion and its emerging hierarchy, Socrates proposes that they contrive a tale of the kind that he had made an exception for (414b7–8); Socrates’ term for this tale is *ψευδῶν* [...] *γενναῖόν τι*, which is usually translated as “noble lie.” While that translation is correct, it is worth adding, that the root of *γενναῖον* also points to generation or birth. As we will see, Socrates’ tale not only involves birth, but it is also generative of the city: that is, the city needs it in order to become established and to sustain itself. Socrates’ noble lie goes as follows:

I’ll attempt to persuade first the rulers and the soldiers, then the rest of the city, that the rearing and education we gave them were like dreams; they only thought they were undergoing all that was happening to them, while, in truth, at that time they were under the earth within, being fashioned and reared themselves, and their arms and other tools being crafted. When the job had been completely finished, then the earth, which is their mother, sent them up. And now, as though the land they were in were a mother and nurse, they must plan for and defend it, if anyone attacks, and they must think of the other citizens as brothers and born of the earth.

Upon hearing this, Glaucon interjects, “It wasn’t [...] for nothing that you were for so long ashamed to tell the lie.” Undeterred, Socrates continues,

“All of you in the city are certainly brothers,” we shall say to them in telling the tale, “but the God, in fashioning those of you who are competent to rule, mixed gold in at their birth; this is why they are most honored; in auxiliaries, silver; and iron and bronze in the farmers and other craftsmen [...]” (414d–15a).

The first part of the noble lie, then, binds these individuals together as brothers and to the land as their motherland, which they must defend if attacked. The second part explains the divine origin of the hierarchy in terms that preclude debate as to its validity; it has been ordained by the God and based on objective, if invisible, criteria. Together, they make up the story of how the city came to be, why it is special, why individuals in it are bound together and must sacrifice to preserve it, and why its hierarchy is as it should be.

Just before launching into his lie, Socrates told Glaucon that this sort of thing has “happened in many places before, [...] but one that has not happened in our time – and I don’t know if it could” (414c). As he knew full well, however, even if the literal story sounded preposterous to his contemporaries, its essence was one that they would have been perfectly comfortable with. Indeed, it is hard to

think of a nation whose founding myth does not conform to the basic contours of this story. Of course, fifth-century Athens – the setting for Plato’s *Republic* – has a special significance for popular sovereignty. As Socrates’ contemporary, Pericles, noted in his Funeral Oration, Athens’ laws were unique and, because they favored the many rather than the few, it was called a democracy, signifying rule by the δῆμος, or, the body of the people, through the ἐκκλησία, its main assembly.<sup>17</sup> That meant that the people – namely, the citizens – were sovereign, making all important decisions in common and manning the city’s institutions, from minor assemblies to juries. The laws were indifferent to socioeconomic status and reputation, but looked to merit. While not using images as fanciful as those used by Socrates in his “noble lie,” Pericles nevertheless emphasized the active roles that Athens’ citizens played in its defense, in the rule of law, and in exhorting their fellows to act decently. As commentators have noted across the centuries, unlike his next speech, which was gloomier and given in the singular, the Funeral Oration is dominated by the plural, to reflect that at its best Athens was what Cicero and St. Augustine would later call “an affair of the people” (*res publica*), or, what later political thinkers would describe as a “commonwealth.”

#### A BODY POLITIC

The frontispiece of Thomas Hobbes’s *Leviathan* features the colossal figure of a sovereign presiding – with sword in one hand and crozier in the other – over a landscape meant to convey the peace and prosperity that result from his government (Figure 3.1). A superscript taken from the Vulgate version of Job 41.24 declares, “There is no power on Earth that compares to him.” Hobbes’s Introduction to that work quickly confirms the first impression that the figure on the frontispiece is a body politic. That idea was not exactly new. Plato had brushed up against it with his analogy between the city and the soul. In his actual city, “[w]hen an Athenian democrat said ‘*demos*’ he meant the whole body of citizens, irrespective of the fact that only a minority were able to turn up to meetings.”<sup>18</sup> Christians adopted the term the Athenians had used for their main assembly (ἐκκλησία) and used it to refer to their church, whose body consisted of the believers gathered together in Jesus’ name, so that by the twelfth century John of Salisbury could liken the parts of a republic to the parts of the body.<sup>19</sup> King James VI of Scotland could thus argue on well-established

<sup>17</sup> Thucydides, *Historiae*, II.37.

<sup>18</sup> Hansen, *The Athenian Democracy*, 125. Hansen adds that this was in the eye of the beholder: “critics of the democracy, on the other hand, especially philosophers, tended to regard the *demos* as the ‘ordinary people’ in contrast to the propertied class, and in their eyes the Assembly was a political organ in which the city poor, the artisans, traders, day labourers and idlers could by their majority outvote the minority of countrymen and major property owners.”

<sup>19</sup> John of Salisbury, *Policraticus*, V–VI. On the history of the idea in the Middle Ages, see Kantorowitz, *The King’s Two Bodies*, esp. 193–232. On John’s sources, see Liebeschütz, “John of Salisbury and Pseudo-Plutarch.”

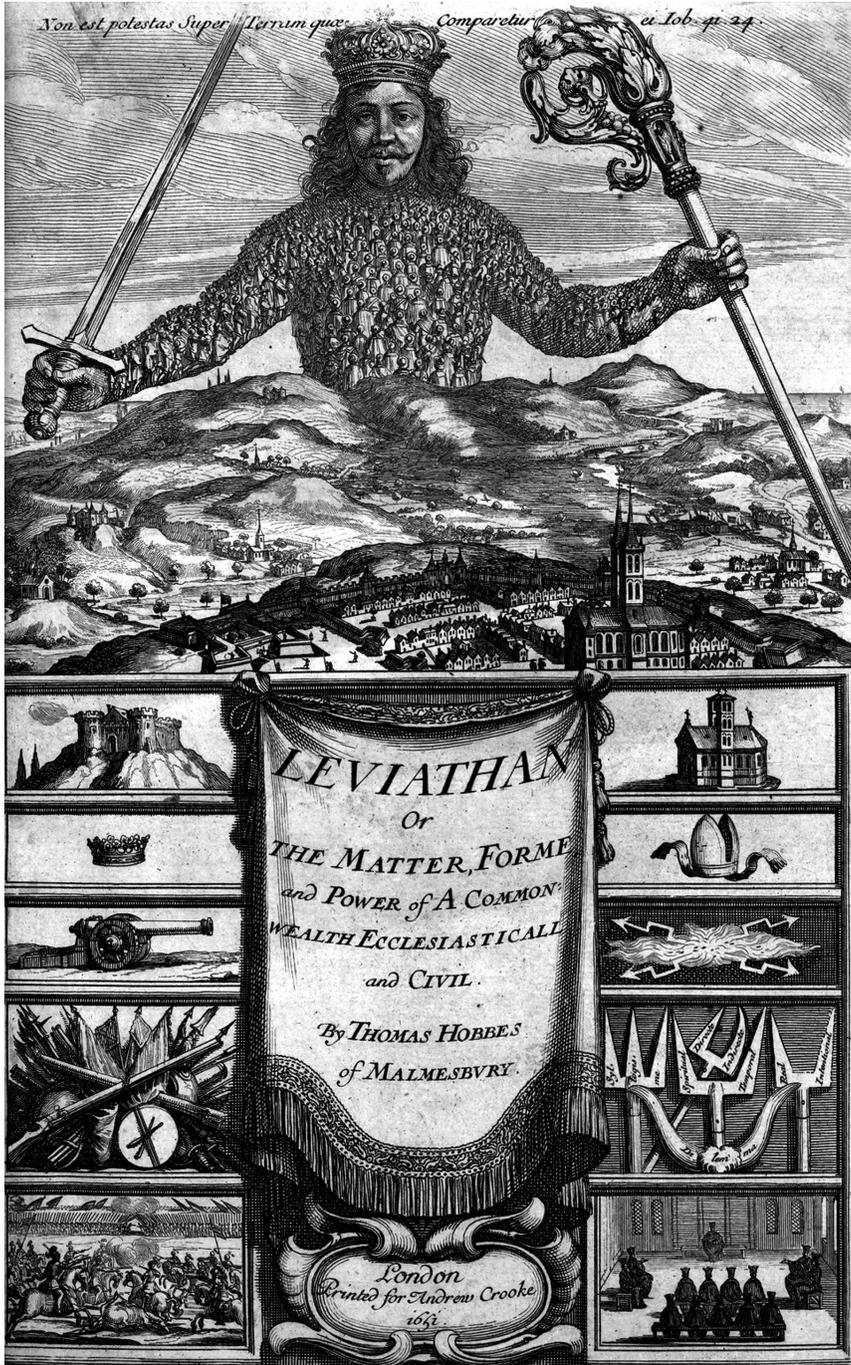


FIGURE 3.1 Frontispiece for the *Leviathan*

precedent that “[t]he King towards his people is rightly compared to a father of children, and to a head of a body composed of diuers members.”<sup>20</sup>

For Hobbes, the commonwealth or state,

is but an Artificiall Man; though of greater stature and strength than the Naturall, for whose protection and defence it was intended; and in which, Sovereignty is an Artificiall Soul, as giving life and motion to the whole body; The Magistrates, and other Officers of Judicature and Execution, artificiall Joynts; Reward and Punishment (by which fastned to the seate of the Sovereignty, every joynt and member is moved to performe his duty) are the Nerves, that do the same in the Body Naturall; The Wealth and Riches of all the particular members, are the Strength; Salus Populi (the peoples safety) its Businesse; Counsellors, by whom all things needfull for it to know, are suggested unto it, are the Memory; Equity and Lawes, an artificiall Reason and Will; Concord, Health; Sedition, Sicknesse; and Civil war, Death. Lastly, the Pacts and Covenants, by which the parts of this Body Politique were at first made, set together, and united, resemble that Fiat, or the Let us make man, pronounced by God in the Creation.<sup>21</sup>

This description leaves out something that the attentive reader would have noticed on the frontispiece, namely, that the torso and arms of the body politic are made up of individuals, all of whom are facing the head.

Hobbes gave the reason in Chapter 21, where he explained,

But as men, for the atteyning of peace, and conservation of themselves thereby, have made an Artificiall Man, which we call a Common-wealth; so also have they made Artificiall Chains, called Civill Lawes, which they themselves, by mutuall covenants, have fastned at one end, to the lips of that Man, or Assembly, to whom they have given the Sovereaign Power; and at the other end to their own Ears. These Bonds in their own nature but weak, may neverthelesse be made to hold, by the danger, though not by the difficulty of breaking them.<sup>22</sup>

The suggestion that the commonwealth is the result of covenants, however, raises a series of important problems. One might be excused, for example, for doubting that such covenants ever took place. Even if they had, at some point, how could they be seen as binding individuals who had not participated in them? Assuming that such covenants had existed and were binding, did they also extend to the sovereign? If so, was he a party and, thus, obliged and accountable to the other parties? To answer these questions, Hobbes conjured a series of images to depict a lawless condition he called the state of nature, in which there was no authority that could generate rules and enforce them.<sup>23</sup> Surely such a condition was one that any reasonable person would wish to avoid. Reason would thus lead individuals to realize that it would be preferable to establish a sovereign and obey

<sup>20</sup> King James VI, *The Trve Lawe*, 76.

<sup>21</sup> Hobbes, *Leviathan*, Introduction, 1.

<sup>22</sup> Hobbes, *Leviathan*, 21: 108–109.

<sup>23</sup> I discuss these in detail, in Evrigenis, *Images of Anarchy*.

him, on the condition that everyone else would do the same. Doing so would generate the body politic, a single entity with a single will.

How could this happen? Hobbes argues, “by Covenant of every man with every man, in such manner, as if every man should say to every man, *I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner.*”<sup>24</sup> This passage set in motion the modern revolution of popular sovereignty, by pointing out that every individual should act *as though* he had made a promise to every other individual, to confer upon a third party the right of governing his person. As the passage I quoted above shows, it is the specter of the alternative that would induce individuals to behave in accordance with these hypothetical covenants, but because “Covenants, without the Sword, are but Words, and of no strength to secure a man at all,” the surrender of individuals’ rights to rule themselves endows the sovereign with the power to be able to enforce the laws at home and defend the commonwealth abroad.<sup>25</sup> This idea contains two important points. First, that individuals *have* the *right* to govern themselves.<sup>26</sup> Their conferral of that right to the sovereign is thus, as Hobbes puts it, an authorization. The sovereign’s rule, therefore, is by right. Second, the sovereign’s ability to protect and defend is made possible only through the submission of the individuals who make up the body politic. To put it simply, the giant sword of the frontispiece is composed of the tiny individual swords that the sovereign unites and directs.

It would have been easier to justify submission to a sovereign through force, what Hobbes called a commonwealth “by acquisition,” so one has to wonder why a theorist who favored monarchy would have chosen this elaborate and dangerous route that passed through the continuous authorization of sovereignty by the individual citizens of a commonwealth. The danger, of course, lay in the fact that Hobbes located the origin of sovereignty in the individuals who engaged in mutual covenants with one another. If they were the ones who had given it, could they not take it back? Hobbes addressed this problem by making the surrender of the right to govern oneself irrevocable, with the exception of cases in which one’s life was clearly and indisputably in danger. Perhaps more importantly, his covenants were between individual citizens only. The sovereign who resulted from them was not a party to the contracts and, hence, not accountable to the contracting parties, but only to God.<sup>27</sup>

Hobbes chose the path that he did because he saw that more and more people would begin to ask the question that Hume would pose a few years later. A number of developments would make that inevitable, but foremost among them were the Reformation and the Scientific Revolution, which shared one

<sup>24</sup> Hobbes, *Leviathan*, 17: 87; my underlining.

<sup>25</sup> Hobbes, *Leviathan*, 17: 85.

<sup>26</sup> In this regard, see Richard Boyd’s discussion of “generic” or “abstract” individuals in Chapter 4 of this volume.

<sup>27</sup> See, e.g., Hobbes, *Leviathan*, 31: 193.

basic characteristic: They enfranchised previously excluded, irrelevant, individuals by inviting them to think for themselves and bypass authorities. If one could commune with God and understand the mysteries of nature on one's own, how long would it be before that person wondered why he could not also govern himself? By persuading his readers that *they* had authorized the sovereign who ruled over them, Hobbes hoped to enlist them in the cause of peace.

Sir Robert Filmer captured the consequences of this move when he congratulated Hobbes for having treated the rights of sovereignty more “amply and judiciously” than anyone else, but rejected his premises, namely, his reliance on natural right.<sup>28</sup> Filmer, for whom the idea of popular sovereignty was anathema, saw that Hobbes had created a dangerous opening. Hobbes's many critics saw the opportunity in Hobbes's fictitious state of nature and social contract, and seized it, making these concepts mandatory points of reference for modern political thought. The theorists we have come to associate with the origins of modern democracy and popular sovereignty, such as John Locke and Jean-Jacques Rousseau, attacked Hobbes not for having offered these fictions, but for having gotten them wrong. In successive modifications of the state of nature and the social contract, Locke and Rousseau returned to natural right and cast it even more forcefully as the solid foundation for civil rights that could be used by citizens to hold sovereigns accountable.

#### A CIVIL RELIGION AND ITS PROPHET

Rousseau opened his *Social Contract* with a provocative observation:

Man is born free, and everywhere he is in chains. One believes himself the others' master, and yet is more a slave than they. How did this change come about? I do not know. What can make it legitimate? I believe I can solve this question.<sup>29</sup>

Much in this statement centers on belief, so it is interesting that we are asked to believe a lie. Rousseau had in fact devoted a lengthy treatise to the origins of inequality before turning to the *Social Contract*. Even more interesting, however, is the fact that he saw it as his task not to break the chains, but to render them legitimate. Following in the footsteps of Hobbes, despite having criticized him, Rousseau posited a social compact that could be captured by the following terms: “*Each of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.*”<sup>30</sup> The first step toward this contract is the unanimous acceptance, by the participants, of majority rule. Once in place, and to prevent the social compact from becoming

an empty formula, [...] whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be

<sup>28</sup> Filmer, *Observations*, 184–85.

<sup>29</sup> Rousseau, “Of the Social Contract,” I.1.

<sup>30</sup> Rousseau, “Of the Social Contract,” I.6.

free; for this is the condition which, by giving each Citizen to the Fatherland, guarantees him against all personal dependence; the condition which is the device and makes for the operation of the political machine, and alone renders legitimate civil engagements which would otherwise be absurd, tyrannical, and liable to the most enormous abuses.<sup>31</sup>

The difficulty in bringing this transformation about cannot be exaggerated. Rousseau writes of a multitude that is “blind,” of people who want what is good for them but cannot always see it, and of a judgment that seeks to know the general will but is not always “upright.”<sup>32</sup> To achieve public enlightenment in the face of these obstacles, it is necessary to have a lawgiver.

This lawgiver is not the member of a legislative body. He is a founder, a lawgiver in the sense of Lycurgus, Solon, or the members of the Constitutional Convention. He is a rare individual of exceptional intelligence, who can stand outside the state and determine what the best rules for it will be. He is one who “could work in one century and enjoy the reward in another,” notes Rousseau, before adding, “[i]t would require gods to give men laws.”<sup>33</sup> The task before the lawgiver is akin to changing human nature, because he must transform solitary, antisocial beings into social ones. Yet, the lawgiver must do this without having any power to compel individuals to submit to the whole. As there is no state, there are no offices and organized means of coercion. Thus, Rousseau argues, “one finds at one and the same time two apparently incompatible things in the work of legislation: an undertaking beyond human force, and to execute it an authority that is nil.”<sup>34</sup> To make matters worse, “there are a thousand kinds of ideas which it is impossible to translate into the language of the people.”<sup>35</sup>

These obstacles, Rousseau claims, forced the founders of nations to resort to the heavens, to “honor the Gods with their own wisdom,” so that the people would “obey the yoke of public felicity, and bear it with docility.”<sup>36</sup> Rousseau’s guide here is Machiavelli, who in his *Discourses on Livy* had praised Numa who, wishing to reduce a “ferocious” people to civil obedience, turned to religion.<sup>37</sup> In footnotes to his chapter on the lawgiver, Rousseau attributes to Machiavelli the view that “there has never been in any country a lawgiver who has not invoked the deity; for otherwise his laws would not have been accepted,” and argues that those who see Calvin as a theologian “fail to appreciate the range of his genius.”<sup>38</sup> Using religion to achieve the superhuman feat of constitution is not an easy task, and one can only judge success by the later evidence of enduring institutions.

<sup>31</sup> Rousseau, “Of the Social Contract,” I.7.

<sup>32</sup> Rousseau, “Of the Social Contract,” II.6.

<sup>33</sup> Rousseau, “Of the Social Contract,” II.7.

<sup>34</sup> Rousseau, “Of the Social Contract,” II.7.

<sup>35</sup> Rousseau, “Of the Social Contract,” II.7.

<sup>36</sup> Rousseau, “Of the Social Contract,” II.7.

<sup>37</sup> Machiavelli, *Discourses on Livy*, I.II.

<sup>38</sup> Rousseau, “Of the Social Contract,” II.7, footnotes 2 and 3.

If the task of ancient lawgivers was superhuman, it was still made easier by the fact that their religions were national. Rousseau credits Hobbes with having been the only thinker to have seen that the advent of Christianity introduced a new difficulty by claiming allegiances across national boundaries and imposing two sets of often conflicting standards on its believers. Love of neighbor and love of fatherland do not go together, but “it certainly matters to the State that each Citizen have a Religion which makes him love his duties.”<sup>39</sup> Such a civil religion has to be separate from any dogma that pertains to the afterlife or salvation. It should be focused on sociability, and its articles

ought to be simple, few in number, stated with precision, without explanations or commentary. The existence of the powerful, intelligent, beneficent, prescient, and provident Divinity, the life to come, the happiness of the just, the punishment of the wicked, the sanctity of the social Contract and the Laws; these are the positive dogmas. As for the negative dogmas, I restrict them to a single one; namely, intolerance: It is a feature of the cult we have rejected.<sup>40</sup>

In the absence of a national religion, argues Rousseau, and as long as one is not interested in a theocratic government, religious intolerance must be unacceptable as destructive of civil peace.

#### A MIXTURE OF FACT AND FICTION

If the first requirement of popular sovereignty is the existence of a people, noble lies work to establish it and preserve it. This is not an easy task, because, as Kant observed, human beings are marked by unsocial sociability, namely, “their tendency to enter into society, combined, however, with a thoroughgoing resistance that constantly threatens to sunder this society.”<sup>41</sup> Effective noble lies must recognize that centripetal tendencies are not enough for lasting societies, and that centrifugal tendencies cannot be eliminated and will need to be counteracted consistently and constantly. For all their differences, the figures discussed above approached the questions surrounding the founding and preservation of societies as both immediate political problems calling for specific solutions and as theoretical questions requiring reflection on enduring and ineradicable elements of politics. Without spelling out every detail, they realized that human beings are self-interested, they are constitutionally incapable of always seeing what is in fact in their interest, they do not like to be told what to do, they desire recognition, and they seek to make sense of things. Although often centrifugal, these characteristics can also be used to buttress sociability, by enlightening self-interest and creating and strengthening bonds and obligations.

<sup>39</sup> Rousseau, “Of the Social Contract,” IV.8.

<sup>40</sup> Rousseau, “Of the Social Contract,” IV.8, my underlining.

<sup>41</sup> Kant, “Idea for a Universal History,” 31–32.

Founding myths and national creeds must do this work, yet as Hobbes observed they will not suffice if they do not take seriously the human desire for recognition and autonomy. One of Hobbes's great innovations was to harness these desires by enlisting individuals into the project of modern government. Realizing that people want more credit than they deserve and want to feel that they are in charge, he recruited them to the cause of order by telling them that they had authorized the sovereign. Another of Hobbes's great innovations was to use these (negative) human traits as building blocks for a new account of equality that did not depend directly on the divine. As Filmer warned, this kind of foundation was one that a proponent of monarchy could not trust, and it was but a short time before proponents of the people seized on it and made it the foundation of the modern popular state.

On the one hand, these developments furthered the political emancipation and enfranchisement of ever-increasing numbers of people. On the other hand, they generated large and active bodies politic of a new kind. These developments were already evident in Rousseau's thought. Having proclaimed the people sovereign, the general will infallible, and the need to set dissenters straight by forcing them to be free, and having railed against the "supposed cosmopolites," who "love the Tartars so as to be spared having to love [their] neighbors," it is unsurprising that Rousseau was not just credited with democracy, but also blamed for nationalism and totalitarianism.<sup>42</sup> When the Abbé de Saint-Pierre published his proposal for perpetual peace, Rousseau mocked him for having "judged like a child."<sup>43</sup> One could argue that Rousseau himself was naïve, or even irresponsible for proposing measures that required conditions quickly disappearing along with the city-states that had once made them possible. With technological advancement, trade, and innovations in bureaucratic efficiency, states began to grow and the raw material of the body politic changed dramatically. In these conditions, it became necessary to revisit and repackage noble lies, especially in relation to public education systems that began emerging at the time. These developments sped up the march toward universal enfranchisement that was long underway and impossible to halt.

It is perhaps apt that even though Rousseau died before the French Revolution, its principal agents (many of whom he had fallen out with) exhumed and transported his remains to the Pantheon, thereby elevating him to democratic sainthood and rendering his *Social Contract* a sacred text of modern democracy. This status is also ironic, however, because Rousseau envisioned a democracy very much unlike the ones that claimed him. In the *Social Contract*, he had notoriously held up Corsica as the nation that would astound all of Europe with its success, because it had all the right ingredients: It was a small island with a homogeneous population, isolated from the immediate effects of bad neighbors and commerce, and based primarily on an agricultural

<sup>42</sup> Rousseau, "Geneva Manuscript," I.ii; Rousseau, *Emile*, 39.

<sup>43</sup> Rousseau, "Abstract and Judgment," 94.

economy that could not lead to excessive economic inequality.<sup>44</sup> Its small size was crucial to its potential success because Rousseau's ideal state was one in which citizens would participate in legislation directly. Modeled after the small city-states of antiquity that Rousseau so admired, as well as his native Geneva, the polity that would make his social compact a reality would thus be one in which citizens would themselves participate directly in the proceedings that would declare the general will. As Rousseau warned, "[s]overeignty cannot be represented for the same reason that it cannot be alienated; it consists essentially of the general will, and the will does not admit of being represented."<sup>45</sup>

The thread that leads from Socrates' noble lie to the modern belief in the sovereignty of the people centers on the fact that government – whether monarchical, oligarchic, or popular – depends on the minds of the governed. Morgan noted that in thinking about the nascent United States of America, Madison did not foresee the ways in which parties and politicians would dominate its politics, which was ironic given his own role.<sup>46</sup> In its basic form, however, that problem had already plagued the model and inspiration of modern democracy, Athens. As Plato's Socrates had warned repeatedly, aided by self-congratulation and a chorus of ignoble lies, that great city had fallen into a slumber. The dependence of its politics on rhetoric and its susceptibility to manipulation weakened its body politic and paved the way for its downfall.

Madison and his colleagues were fully aware of the extent to which success depended on the establishment of realistic institutions that would serve as checks on human nature, which, as Rousseau had observed, cannot be changed. In Federalist 51, he noted that the issue which had occupied Rousseau and Hume was but a part of the problem:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.<sup>47</sup>

If this observation is correct, which I think it is, then we have to ask ourselves what it implies about a political system in which the people believe that they are sovereign. As a body they are in fact checked by governmental institutions and laws when these work well. As individuals, however, democratic citizens have been enfranchised and, increasingly, abandoned to figure out for themselves what they ought to do. The forces that used to offer direction, for better or worse, have waned, and new technologies have made it possible for more people than ever to catch glimpses of the rest of the world. Coupled with economic forces that have entangled parts of the globe with others

<sup>44</sup> Rousseau, "Of the Social Contract," II.10.

<sup>45</sup> Rousseau, "Of the Social Contract," III.15.

<sup>46</sup> Morgan, *Inventing the People*, 305.

<sup>47</sup> Madison, "No. 51: The Structure of the Government," 319.

previously unknown, individual citizens of democratic societies are facing the challenges that previous generations faced in the twentieth century, as well as ever more powerful ones imposed by globalization and cosmopolitanism. Calls for allegiance to humanity abound, and in a world that witnessed the horrors of the twentieth century they are necessary checks to parochialism and chauvinism, but they are rarely concerned with the practical implications of the concept. For better or worse, individual citizens have to face those or cede responsibility to others. Rousseau, who did so much to bring popular sovereignty to this point, had warned that “[a]s soon as public service ceases to be the Citizens’ principal business, and they prefer to serve with their purse rather than with their person, the State is already close to ruin.”<sup>48</sup> Instrumental rationality will confirm that it is better for an individual to serve with the purse, rather than her person, so reason alone will not be able to convey that true sovereigns have duties and ought to act. With precious few exceptions, in the grand scheme of things, popular sovereignty outside the darkness of the sanctuary and perpetually in daylight is a relatively new story. It is thus understandable that its emphasis has been on seizing power away from individuals and small numbers of people who wish to rule at the expense of the many. As it matures, however – and because the size of modern bodies politic makes them especially susceptible to free riders – it needs to develop a better story of the individual responsibility to know and act, as well as a convincing narrative in favor of solidarity, if it is to remain vibrant and beneficial.<sup>49</sup>

<sup>48</sup> Rousseau, “Of the Social Contract,” III.15.

<sup>49</sup> See Chapters 5 and 15 by Ewa Atanassow and Rogers M. Smith, respectively, in this volume.