Political Representation

Edited by
Ian Shapiro, Susan C. Stokes, Elisabeth Jean Wood, and Alexander S. Kirshner
Representative government and popular sovereignty

Bryan Garsten

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

The author would like to thank the following people for their comments and suggestions on previous versions of this chapter: Costin Alamaru, Onur Bakiner, John Perejohn, Hélie Landemore, Karuna Mantena, David Mayhew, Paulina Ochoa Espejo, Pasquale Pasquino, Melissa Schwartzberg, Annie Stilz, Susan Stokes, Elizabeth Wood, the members of the Brown University Political Philosophy Colloquium, and the participants at the conference on “Representation and Popular Rule” at Yale University, fall 2006.
must be, in Madison's words, "refined and enlarged"; it does not begin from a sense that public sentiment must be filtered through the minds of representatives or through a deliberative process before being allowed access to political power. There may be some validity to these ideas. Perhaps representatives sometimes are, by virtue of their competence or their deliberations or the influence of their office, better decision-makers than the people themselves. But this aristocratic point is not at all the consideration that lies behind the argument for representative government that I want to examine here. Too often, it is thought that such doubts about the capacities of ordinary citizens are the only reasons that one might have (aside from the practical impediments to gathering large groups) for preferring representative government to direct democracy. The aim of this chapter is to suggest that there are other reasons, more fundamentally democratic reasons, for creating a form of government that always remains at some distance from public opinion, and whose claim to represent that opinion can never be made fully convincing.

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

we will come closer to seeing the democratic argument for this liberal position.

I. Rousseau on popular sovereignty

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

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

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

This passage might make it sound as if Rousseau's primary reason for warning against direct democratic government was practical. Later in the book, however, he explicitly argued against the view that in large modern states it is impossible for the people to gather together and vote on important questions. He pointed out that Rome, no small polity, routinely asked citizens to vote directly on matters of importance, and he insisted that such regular meetings of the citizenry could be held in modern times as well (ibid.: 3.12). Whether he was right does not matter.
The problem with direct democratic government was that it asked the same people to act as both sovereign and government. In theory one person could play both roles without mixing them, but in practice it would be difficult to keep the two roles separate in one's mind. The people, while they were acting as a government, would tend to claim sovereign authority for their actions. And we might think, why not? The people themselves were, after all, the sovereign; if the people in their capacity as governors were usurping the authority of the sovereign, they were only usurping that authority from themselves. But Rousseau would insist that we consider this case more carefully: the party doing the usurping is "the people" acting in pursuit of particular interests or considerations. The party whose authority is being usurped is "the people" acting according to the general will. Rousseau's argument for the absolute sovereignty of the democratic people applies only to the latter version of "the people." If this sovereign authority is replaced by a people acting instead according to particular interests—either private interests or the interests of government as a particular body in society—then its legitimacy disappears. Thus, to say that a direct democracy has usurped the sovereign authority of the people is another way of saying that the people have become corrupted by private concerns, that they are no longer exercising their will in a way that is general enough to be democratically legitimate. In the chapter on democracy Rousseau therefore articulated his reason for being suspicious of direct democratic government in this way:

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

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

Direct democracies were not the only governments that Rousseau thought were likely to fall into usurpation, but they were especially ill-equipped to resist the impulse because they include no institutional separation of the legislative and executive roles. In other forms of government, the people acting as sovereign could check or slow the process of usurpation by expressing its judgment about the actions of the government. The most important practical recommendation of Book 3 of the Social Contract was that every form of government should be subject to periodic referenda in which all citizens could vote on two questions: whether the present form of government should continue, and whether the present office-holders should continue in office (ibid.: 3.12–14, 18). It is clear enough how this would work in an elective aristocracy: the people as a whole would vote on whether the few of them who had governmental offices should retain power. But in a direct democracy the people as a whole (as sovereign) would have to render judgment on themselves, the same people as a whole (as government). The problem is not that this is conceptually impossible; Rousseau mentioned that the British House of Commons sometimes transformed itself into a committee of the whole to discuss a matter and then transformed back into itself to hear the recommendations of the committee, so the same group of individuals performed two distinct roles (ibid.: 3.17). But Rousseau did not think such an arrangement was to be recommended if one wanted to prevent, or at least slow, the corruption of the people and the usurpation of its sovereign authority. The periodic referenda that he recommended to preserve the sovereignty of the people would work best if the people voting in them were not evaluating their own performance. Direct democratic government required every citizen to be judge in his own case, dividing himself into sovereign citizen and governing citizen. Rousseau suggested that usurpation was more easily avoided or delayed if this division were institutionalized in a distinction between the people and its government. Strikingly, he suggested that the sovereign people’s distance from the particular work of governing was precisely what enabled it to protect its own sovereignty.

Rousseau’s famous opposition to “representation” must be understood in light of what has just been discussed. The relationship between sovereign and government was not one of “representation,” as he most often used the term. Government did not represent the people in the sense of bearing their sovereign authority. Government officials held their power by “nothing but a commission, an office in which they, as mere officers of the Sovereign, exercise in its name the power it has vested in them, and which it can limit, modify, and resume” (ibid.: 3.1). Sovereign authority always remained with the people and could not be transferred to government; any effort by the governors to claim sovereign authority for themselves, by saying that they represented the people, was nothing other than a form of usurpation.1 The key point – and the counterintuitive one – was that the distinction between sovereign and government, and the distance that it recommended between the people and the government, was wholly consistent with and in fact a consequence of the impossibility of “representation” in Rousseau’s understanding of the word. In his terms, efforts to “represent” the sovereign people were efforts to usurp their authority.

Popular sovereignty in Rousseau thus functioned not only in a positive sense, as a way of thinking about what basic law the people might actively authorize and legislate, but also – more fundamentally – in a negative sense (Pasquino 2007). The negative function of popular sovereignty is to remind us that governing institutions and officers are not sovereign. Popular sovereignty understood in this way offers an argument to use against would-be usurpers. The statement that “the people” and only “the people” is sovereign is, precisely because of its abstract generality, a rebuttal of any claim that a particular official or assembly might make to fully represent or embody the popular will. This negative function of popular sovereignty is itself institutionalized in the regular referenda through which the people can reject the government and government officials. While Rousseau opposed “representation,” the recommendations that he made about government were not so different than those at the heart of our practice of representative democracy: he suggested that governmental functions should be delegated and that periodic popular elections should be held to judge the performance of the delegates.

---

1 Rousseau did say that acts of the government should be presumed to be consonant with the sovereign general will so long as there was an opportunity for the sovereign to voice opposition and it did not do so (ibid.: 2.1). But if the people did make its sovereign will known, no governmental authority had any standing at all to contest that will: “The instant the People is legitimately assembled as a Sovereign body, all jurisdiction of the Government ceases, the executive power is suspended, and the person of the last Citizen is as sacred and inviolable as that of the first Magistrate; because where the Represented is, there is no longer a Representative” (ibid.: 3.14). In this passage Rousseau slipped into using the language of representation to describe the relation of government to sovereign, but the general point is clear: sovereign authority always remains with the people and is never taken over by their governors.
The most significant differences between what Rousseau suggested and the basic structure of our liberal democracies are (a) that our regular elections ask only the second question that Rousseau thought should be put to the sovereign people—we ask whether office-holders should be changed, but not whether the offices themselves, the constitutional framework of government, should be changed; (b) that Rousseau did not envision the role of political parties; and (c) that Rousseau did not recommend the elaborate institutional checks and balances that we have, such as separation of powers and federalism. These differences are important, and so I do not claim that Rousseau had a modern theory of representative government. But he did prefer an indirect system of government to a more direct form of democracy, and he did so for democratic reasons. His suspicion of governmental claims to represent the popular will arose from his desire to protect the sovereignty of the people against potential usurpers. Many of the institutional arrangements promoted by theorists after the democratic revolutions in France and America can plausibly be viewed, I think, as aiming to do the same thing.

II. Liberal democracy

Benjamin Constant, after having watched the course of the French Revolution from its hopeful beginnings through the Terror and eventually to Napoléon’s coup d’état, argued that the remedies for usurpation found in Book 3 of the Social Contract had been wholly ineffective. In fact, Con-stant thought, Rousseau’s writings had been used as a mask for new and more pernicious forms of despotism by politicians who claimed to act in the name of the people. Rousseau had meant to give sovereignty to the people, but politicians had quickly found that they could arrogate that sovereignty to themselves precisely by claiming to represent it, just as Rousseau had feared they would.

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

Beneath this disagreement with Rousseau about whether popular sovereignty was absolute, however, lay a more fundamental agreement with him. Constant did not dispute the idea that popular sovereignty was the only rightful source of political authority. In fact, he made the argument even more succinctly than Rousseau had, insisting that the only alternative to popular sovereignty was force, which was clearly illegitimate. What Constant feared was not the idea of giving sovereignty to the people, but the practical implication that particular individuals or assemblies would claim the right to exercise that sovereignty on behalf of the people. He acknowledged that Rousseau had feared precisely the same thing:

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

Constant’s difference with Rousseau was therefore more one of strategy than one of ultimate intention. He thought that Rousseau’s distinction between sovereignty and government, and the related claim that sovereignty could not be represented, were arguments that were too abstract to be successful in preventing governors from trying to usurp sovereignty. Once someone introduced a justification of absolute sovereignty into the political universe, no set of arguments, no matter how sophisticated, would succeed in preventing political actors from trying to use that justification to support their own power. Sovereignty and government could not be kept distinct (Constant 2003). The abstract idea of a sovereign people tended to become concrete in the form of demagogues claiming to rule in the name of the people. Popular leaders became aspiring tyrants. In the first version of Principles he described this process in a striking passage. Whenever the government wants to grab power, he wrote,
it quotes the imprescribable prerogative of the whole society... The government can do nothing, it says, but the nation can do everything. And upon the nation speaks. By this I mean that a few men, either low types or madmen, or hirelings or men consumed with remorse, or terror-struck, set themselves up as its instruments at the same time as they silence it, and proclaim its omnipotence at the same time as they menace it. In this way, by an easy and swift maneuver, the government seizes the real and terrible power previously regarded as the absolute right of the whole society. (ibid.)

Constant and Rousseau were thus united in their worry about government misuse of the language of popular sovereignty. Constant, of course, had the advantage of hindsight, having seen not only Robespierre use this language but also, later, Napoleon, whose particular form of despotism legitimated itself through elections and democratic justifications. Constant devoted another work exclusively to describing Napoleon’s democratically tinged despotism, and the second term in the title he chose for that work, “Conquest and Usurpation,” echoed Rousseau’s language of “usurpation” (Constant 1988). The real difference between Rousseau and Constant lay in their views of how best to combat the danger that usurpation posed. The philosophical part of Constant’s solution, as we have seen, was simply to deny that sovereignty could ever be absolute, to insist that the individual should be afforded rights with which no authority could rightfully interfere. This part of his solution is difficult to say much about, because Constant was not clear about the grounding of these rights. But there is also another part of his solution, the part that he wrote much more about, which focused on institutional design. Constant’s specific proposals, which varied over time, demonstrate an inability to settle on one best means of carrying out his ideas. Early in his career he seems to have been more republican, while later he embraced the idea of a constitutional monarchy. But what lay beneath all of his different institutional proposals was a fundamental and unchanging desire to find ways of institutionalizing resistance to centralizing and usurping authority. This is true even of his later arguments on behalf of a constitutional monarchy. He justified a monarch by arguing that it could be made into a “neutral” power that could check and keep in place the various “active” powers of government. When he defended the monarch’s power to dissolve representative assemblies, he claimed that it was a means of checking the assembly. Why did the assembly need checking? It is important not to misinterpret his point here (Holmes 1994). His worry about the danger was not that the people itself would act tyrannically through it. Unlike later liberals such as Alexis de Tocqueville and John Stuart Mill, he was not preoccupied with the danger that the people themselves would become a tyrannical majority. Instead he suggested that it was the representativeness who often became dangerous once they were separated from the people: “And truly, the power of which is unlimited, is more dangerous than the people” (Constant 1988). When he supported a monarch’s right to dissolve an assembly, he viewed this monarchical right as a way of defending the people against their own representatives: “The dissolution of assemblies is by no means, as some have argued, an insult to the rights of the people” (ibid.). On his plan, the monarch could not replace the representatives’ policy with his own will, but could only send the matter back for consideration by the next group of representatives to be elected. In exercising this power, the monarch was contesting the claim of the current representatives to be adequately representing the popular will. A very similar argument had been used to justify the monarch’s “suspended” veto during the Revolution. Even Constant’s support for constitutional monarchy, then, has a democratic justification: it was part of an institutional plan to ensure that no governmental power could advance a claim of its own in the name of the people without being subject to challenge from another governmental power capable of making the same claim. If usurpation could not be avoided, the best that could be done was to multiply the sites of usurpation and set them against one another.

That Constant was not worried about the people so much as about their representatives can also be seen in the fact that he opposed the Abbé Sieyès's system of indirect election for representatives. Sieyès had set up an elaborate set of electoral colleges to filter public opinion in the course of selecting delegates. Constant opposed the system and favored replacing the electoral colleges with direct elections (ibid.). And in the earlier, more theoretical version of Principles, he included an entire chapter devoted to arguing against the view that representatives, or those in government, were better suited to rule than the people themselves. The people who say that "light has to come from elevated places" may be right when speaking of uncivilized societies, he wrote, but their argument is wholly out of place in modern civilized societies with an educated class of any significant size. It was a mistake, he thought, to "attribute to governments the superiority of enlightenment": “We can reply to those who want to subject the intelligence of the many to that of the few what a famous Roman said to his son when the latter proposed to take a town, with the sacrifice of three hundred soldiers. Would you care to be one of this three hundred?” (Constant 2003).
who used the language of popular sovereignty to justify their own rule. His targets were not the people as a whole but the individuals such as Robespierre and Bonaparte who as usurpators had seized the symbols of sovereignty. If we turn to Constant's counterparts in the United States — those theorists who had framed the Constitution in the aftermath of the American Revolution — we find that many of them had had concerns similar to the ones that Constant voiced. James Madison, for example, harbored a similar wariness about the danger of popular demagogues, especially in light of activity in the state legislatures trying to respond to the post-revolutionary debt crisis. And, like Constant, Madison thought the solution to this problem was not to allow any one part of government to become the sole institutional locus of popular sovereignty. Too often, Madison's defense of representative government is reduced to his famous remark in Federalist 10 (Hamilton et al. 2003) about the need to "refine and enlarge" public opinion. But this consideration does not explain his stance on many of the provisions in the Constitution. The truth is that he opposed giving sovereign authority even to the most "refined" branch of public opinion. He did not, for instance, think that the Senate should have conclusive authority over the House of Representatives, even though he thought that the quality of deliberations would be higher there. Instead, he favored having two separate institutional efforts to represent the popular will present in government at once. He also favored staggered elections in the Senate, so that the assembly would contain members who were elected at different times, and who thus reflected different snapshots of the popular will taken at different times. Each of the equal officials — each chamber of Congress, the winners from each election cycle — has a plausible case to make that they represent the popular will, and yet they may often disagree. What this means is that no group of representatives can plausibly insist that they are the only representation of the popular will; none can claim popular sovereignty without their claim being contested by others with at least as plausible a claim (Ackerman 1991). Madison's position cannot be captured by saying that he feared the legislature or the people would become too powerful, because in the 1790s his worries were centered on the executive and he turned to popular electoral politics as a remedy (Ferejohn 2003). The common thread in his various political positions over the years was not an opposition to popular politics or the legislature's representation of the people, but a determination to resist allowing any one part of government, legislature or executive, to claim sovereignty unequivocally.

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

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

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

Of course the authors of the Constitution did not respond to this fear by looking for an alternative to representation. They also did not take Rousseau's advice to institute regular referenda on the form of government as a whole. Jefferson did propose something in this spirit in the form of new constitutional conventions every generation, but Madison and the framers rejected it for reasons set out in Federalist 49. Instead they sought to deal with the problem of usurpation by multiplying the points of representation within government and creating a contest between them. In the end they summarised that what distinguishes the system of representative government instantiated in the Constitution from the "mixed regime" described in classical sources such as Polybius is that in our system every branch is ultimately responsible to the people. In the classical mixed
regime, the people were represented by one of the powers, but the other powers were supposed to represent the nobles or the rich or other orders of society. In insisting that all three branches, and also all levels of government, local, state and federal, are in some sense representations of "the people," the American system aims to multiply the plausible claims to represent the popular will. In Rousseau's language, it multiplies the sites of usurpation. This multiplication in turn challenges any particular branch's claim that its representation is determinative. Perhaps, if all three branches and all levels of government come to reflect a similar sentiment over a sustained period of time, then the government as a whole will be said to represent the popular will in a particularly authoritative way (Ackerman 1991). But at least in the ordinary course of politics such an agreement is not to be expected or even hoped for. In fact, the system seems designed in part to resist registering any unified representation of the popular will. By striving to have multiple representations of the popular will present in government at the same time, the system aims to encourage contestation about what precisely it is that the people want. There is plenty of anecdotal evidence, at least, that the system achieves this goal; no piece of rhetoric is more omnipresent in American politics than the politician's claim to represent what the American people want or need – a claim made on every side of every issue by every sort of politician.

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

The view of representative government that I am describing takes advantage of a peculiar feature of the concept of representation itself. As Hanna Pitkin and others have noticed, the concept of representation seems to be structured in a way that makes its complete realization impossible. A representation that is identical to the represented object in every way is nothing other than the object itself, which is therefore not re-presented but simply present. Representation implies the absence of what is being represented (Pitkin 1967). Thus, political representation of the sovereign people implies that the people are not actually present themselves in government. The impossibility of fully and completely representing the people's will – the impossibility that Rousseau highlighted – is therefore integral to the concept of representation itself. Representation properly understood requires a distinction between representatives and the people. This is the distinction that demagogues aim to obscure whenever they claim to fully represent the people; it is the distinction that representative government, with its indirectness, aims to preserve; and it is the distinction that Rousseau, with his warnings about mixing sovereignty and government, wanted to protect. In this sense we can say that both Rousseau and the theorists of liberal representative government were responding to a feature inherent in the concept of representation itself. Liberal democratic governments – representative governments – are those that recognize the conceptual impossibility of adequately representing the popular will.

Of course this is not the only interpretation of representative government that could be drawn from the history of political thought. There is a competing story that can be traced from Chapter 16 of Hobbes's Leviathan, through Sieyès, the architect of the first National Assembly of the Revolution in France, and straight through to a commonly invoked understanding of the state today. In this alternate story, the sovereign power of the people is inert unless it is given coherence and agency by being represented in one unified authority – a single ruler, a
single assembly, or a government as a whole understood as having the mission of responding to one representative will. Hobbes is the crucial starting point for this story: he argued that a multitude could only be considered as a people, in the sense of being one entity capable of action, if it was represented in a single sovereign: “For it is the Unity of the Representative, not the Unity of the Represented, that maketh the Person One” (Hobbes 1996). And Sieyès, in spite of his many blueprints for institutions that would divide the government in various ways, insisted with Hobbes that a people or “nation” could not be a coherent entity except through a single representation. He opposed any effort to appeal past the representatives to the people themselves, viewing the suspensive royal veto, for example, as a compromise on the principle of representation; he insisted that the National Assembly was “the sole authorized interpreter of the general will” (Sieyès 1996). From the perspective outlined earlier, we might say that when the representatives of the Third Estate, inspired by Sieyès, gave themselves the name of “National Assembly” and then proceeded to govern, they thereby joined the people (the Nation) with the government (the State) in just the manner that Rousseau had warned against. Robespierre would, once in government, find himself unable to resist a similar act of usurpation. Insofar as we continue to think of ourselves as living in “nation-states” and ask only that the state reflect our will as accurately as possible, we treat our government as a more complex version of the National Assembly. If we accept this view of our governments, we implicitly accept the usurpation reflected in the joining of nation and state. We may insist that the representative nation-state nevertheless respects popular sovereignty, but we can do so only by adopting a view of popular sovereignty closer to the account put forth by Hobbes and Sieyès than to the democratic account we saw in Rousseau.

Thus there are at least two conceptions of representative government that might guide our thinking. One views representative government as a “liberal democracy” in the sense that I have tried to invoke by joining the democratic Rousseau with the liberal Constant; the other views this form of government as a “nation-state” in the way just described. It is true that liberal democracies are nation-states, and therefore that some degree of usurpation is all but inevitable (as Rousseau himself acknowledged). Still, the emphasis in the two views is quite different. The first view of representative government accents the negative function of popular sovereignty and tries to multiply usurpations so as to weaken them, while the second view pursues a governmental representation of popular sovereignty and does not regard usurpation as a threat.

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

III. Research questions

In addition to asking which vision of representative government seems most attractive, scholars should also ask which vision best reflects what is actually going on in our system. What sort of empirical research questions could be formulated, in light of the issues raised here? We already have research designed to test how responsive government as a whole, or particular parts of it, is to public sentiment, and this line of investigation should surely continue. But we could also try to test the extent to which our system of representative government does what I have suggested early liberal theorists wanted it to do: multiply and challenge governmental efforts to represent the popular will. The institutional features of the US system that I mentioned in this regard – staggered elections with overlapping terms of office, the different chambers of Congress and branches of government, and so on – are familiar features of the constitutional system of “checks and balances” often mentioned in textbook accounts of government. These textbook structural features of constitutional government deserve serious consideration by political scientists (Manin et al. 1999). Work finding that the Senate and House do not differ much on measures of responsiveness (Stimson et al. 1995) begins to approach such questions, but does not fully address them. The question is not just how responsive these institutions are to public opinion.

2 If the term “nation” is understood precisely as Sieyès understood it, i.e. as a state, then the phrase “nation-state” becomes a tautology, as Istvan Hont argues (Hont 2005).
on a uniform scale of responsiveness, but whether they are responding
differently to the same public opinion. For example, the House and Senate
seemed to respond differently to the proposed impeachment of President
Clinton. At the time this chapter was written those same chambers were
responding differently to President Bush’s proposed strategy for the war
in Iraq. Yet both houses claim to represent the popular will. Political
scientists should investigate what considerations explain these different
representations of the popular will. What is it about the different insti-
tutions that influences the kinds of claims they make, and the extent to
which those claims are accepted by others? To what extent is there in fact
a practice of conflict between these institutions? David Mayhew’s work
on congressional opposition to the president in the United States offers
an example of the kind of work that could be done in this vein (Mayhew
2001).

To see whether claims to represent the people are successfully being
multiplied and challenged, we would also have to investigate whether one
kind of claim, or one institutional source of claims, is consistently win-
ing out, and whether any one institution is effectively being granted final
or sovereign authority on many issues and over a long period of time. I do
not know what we would find. Some political commentators worry that
the growth of the executive threatens this multiplicity, while others would
point to the Court’s use of judicial review as the real threat. Empirical
and historical research could yield insights into such questions. We could
also look to see whether there is more diversity among governmental
interpretations of the popular will at particular times, and why. How
does the multiplication and contestation of claims change in response to
stimuli such as wars, economic disturbances, technological innovations,
and demographic trends?

Having a research agenda based on this broader understanding of
the purpose of representative government would not only provide use-
ful descriptive information, it would also be normatively desirable. As
things stand now, if any of the studies of responsiveness mentioned at
the beginning of this chapter were to find that a particular institution in
government did accurately and reliably “translate” popular sentiment into
policy, there would be a strong tendency, I think, to conclude that that
institution should have final authority, that it was the legitimate bear-
or of our sovereignty. If responsiveness is the purpose of representative
government and the criterion of its legitimacy, there would be no reason
to deny this conclusion. I hope in this chapter to have indicated why it
is plausible to think that this conclusion might be wrong, and to think
so for democratic reasons. Popular sovereignty can be understood in a
negative sense, as Rousseau himself often seems to have understood it.
A government institutionalizes the negative sort of popular sovereignty
when it helps us to resist the ever-present temptation to grant final and
exclusive authority to the government, no matter how much we approve
of its interpretation of popular sentiment at any particular moment. What
BIBLIOGRAPHY

Ackerman, Bruce A. 1991. We the People: Foundations. Cambridge, MA: Belknap
Press.

Bartels, Larry M. 1991. “Constituency Opinion and Congressional Policy Mak-
ing: The Reagan Defense Buildup.” American Political Science Review 85 (2):
457-74.

Burke, Edmund. 2000. “Speech to the Electors of Bristol,” in On Empire, Liberty
McMahon. New Haven, CT: Yale University Press.

Constant, Benjamin. 1988. Political Writings, ed. B. Fontana. Cambridge:
Cambridge University Press.

E. Hofmann. Indianapolis, IN: Liberty Fund.

CT: Yale University Press.

University Press, 126-55.

Fishkin, James S. 1991. Democracy and Deliberation: New Directions for Demo-
cratic Reform. New Haven, CT: Yale University Press.

Cambridge, MA: Harvard University Press.

Hamilton, Alexander, James Madison, and John Jay. 2003. The Federalist Papers,

Cambridge University Press.

New Haven, CT: Yale University Press.

Hont, Istvan. 2005. Jealousy of Trade: International Competition and the Nation-
State in Historical Perspective. Cambridge, MA: Harvard University Press.

York: Library of America.


5 Making interest: on representation and democratic legitimacy

Clarissa Rile Hayward

Political representation has no necessary link to democratic legitimacy. As Hanna Pitkin (among others) has argued, there are ways of “making present” in a political sense people who are not literally present that stand at odds with basic democratic principles, such as political equality and inclusiveness in collective norm-making (Pitkin 1967: ch. 2). Representation is often considered a means to promoting legitimacy, however, when those who are subject to the norms representatives make first authorize those who represent them, and then hold them accountable for their choices and their actions. Such specifically democratic forms of representation often are understood to promote legitimacy in government under conditions in which all cannot participate directly in norm-making, if and to the extent that they enable and motivate representatives to track the interests of the represented (Przeworski, Stokes, and Manin 1999: 2).

Call this understanding of the democratic value of representation “the conventional view.” Although the conventional view does not provide the only way to understand the link between representation and democratic legitimacy, it provides one important way. In this chapter, I make trouble for the conventional view. In so doing, I join other theorists who have begun the project of rethinking this orthodox understanding of the nature and the value of political representation. David Plotke, for instance, has argued it is not the case that representation is a second-best alternative to direct, participatory democracy: an unfortunate necessity that follows from the complexities of modern political life (Plotke 1997). 2

1 This chapter was first presented at the fall 2006 meeting of the American Political Science Association, the fall 2006 Valle Conference on Representation and Popular Rule, and the spring 2007 Center for Interdisciplinary Law and Policy Studies workshop at Ohio State University’s Moritz College of Law. Thanks to all participants in these sessions, especially Khalilah Brown-Dean and Jonny Mambrouke.

2 Hobbesian representation, which is characterized by a total lack of responsibility or obligation on the part of the representative, is one example Pitkin (1967) discusses at length.

3 Participation in representative government is, Plotke claims, itself an important and democratically valuable form of political participation (Plotke 1997).